

COPY

2005-009UC

BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

VILLA AURORA, LLLP,

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

Agency Case No. 2005-020CS

**PETITION REQUESTING INFORMAL HEARING
AND GRANT OF THE RELIEF REQUESTED**

Pursuant to Sections 120.569 and 120.57, Florida Statutes ("F.S."), Rule 67-48.005(2), Florida Administrative Code ("FAC") and Rule 28-106.301, FAC, Petitioner, VILLA AURORA, LLLP ("Petitioner") requests an informal hearing concerning the scoring by Florida Housing Finance Corporation ("FHFC") of Petitioner's Application No. 2005-020CS, and to then grant the relief requested. In support of this Petition, Petitioner states as follows:

AGENCY AFFECTED

1. The name and address of the agency affected is Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The Agency's file or identification number with respect to this matter is 2005-020CS.

PETITIONER

2. The Petitioner is Villa Aurora, LLLP, a Florida limited liability limited partnership. The address of the Petitioner is c/o Carrfour Supportive Housing, Inc., 155 South Miami Avenue, Suite 1150, Miami, Florida 33151, telephone number (305) 371-8300. Petitioner's representative is Gary J. Cohen, Esq., whose address is c/o Shutts & Bowen LLP,

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

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m. Cohen /DATE. 6/9/05

201 S. Biscayne Boulevard, Suite 1500, Miami, Florida 33131, telephone number (305) 347-7308.

PETITIONER'S SUBSTANTIAL INTERESTS

3. Petitioner's substantial interests will be affected by the determination of FHFC as follows:

(a) Petitioner has applied for an allocation of low-interest loan funds under the FHFC State Apartment Incentive Loan ("SAIL") program, and an allocation of competitive 9% low-income housing tax credits under the FHFC Housing Credit ("HC") program. The HC Program is set forth in Section 42 of the Internal Revenue Code of 1986, as amended, and it awards developers and investors a dollar for dollar reduction in income tax liability through the allocation of tax credits in exchange for construction of affordable rental housing units. FHFC is the agency designated by the United States Treasury to administer the allocation of tax credits in the State of Florida.

(b) The application for SAIL and HC is comprised of numerous forms which request information of each applicant. FHFC adopted the forms by reference in Rule 67-48, FAC.

(c) On or about February 16, 2005, Petitioner submitted to FHFC a SAIL and HC application in the SAIL Homeless Special Set Aside for the 2005 funding cycle. The application was submitted in an attempt to assist in the financing of the construction of a 76 unit apartment complex in Miami, Florida.

(d) The application was scored by FHFC in accordance with the provisions of Rule 67-48, FAC. By letter dated on or about March 18, 2005, FHFC advised Petitioner that its preliminary score was 62 points, together with 7.5 proximity tie-breaker points, and was found to have failed the threshold requirements of site plan approval, site control, zoning and shortage of

financing funds. No points were deducted and no additional grounds for threshold failure or rejection created as a result of any Notices Of Potential Scoring Error (“NOPSE’s”) filed against Petitioner.

(e) On or about April 26, 2005, Petitioner submitted “cure” documentation to FHFC requesting four additional points for local government incentives, and curing all of the above-referenced threshold failures (including providing a lease with Miami-Dade County to evidence to satisfaction of the threshold requirement of site control). No Notices of Alleged Deficiency (“NOAD’s”) were filed against Petitioner’s application.

(f) On or about May 25, 2005, FHFC advised Petitioner that its total points were increased to 66, that Petitioner’s total proximity tie-breaker points remained at 7.5, and that (with one exception) Petitioner had satisfied and cured all prior failures of threshold requirements. FHFC, in the 2005 Universal Scoring Summary attached as Exhibit “A” determined, with respect to the threshold requirement of site control, that “Applicant attempted to cure Item 2T by submitting a long term lease, executed by Villa Aurora Inc. with an Assignment to Villa Aurora, Ltd. However, the cure is deficient because neither the Lease nor the Assignment reflects the Applicant, Villa Aurora, LLLP, as the Lessee/Assignee.”

(g) Under the SAIL and HC program, the applications are scored by FHFC. A finite amount of SAIL Funds and tax credits are allocated to applicants in certain geographic areas (large county, medium county and small county areas as defined by FHFC) and pursuant to certain set-aside classifications (including the SAIL Homeless Special Set Aside in which Petition has applied). Only those applications receiving the highest scores are awarded SAIL funds and tax credits. Petitioner’s ability to finance its proposed project will be jeopardized if

SAIL funds and tax credits are not obtained; accordingly, Petitioner's substantial interests are affected by this proceeding.

NOTICE OF AGENCY DECISION

4. Petitioner received notice of FHFC's notice of its "cure" documentation by Federal Express delivery on or about May 26, 2005. Attached as Exhibit "A" is a copy of the Universal Scoring Summary setting forth the scoring, which scoring gives rise to this Petition.

ULTIMATE FACTS ALLEGED

5. In Petitioner's initial application submitted on or about February 16, 2005, Petitioner did not submit any evidence of site control. On or about April 26, 2005 Petitioner submitted (as part of its cure documentation, in response to Item 2T of the preliminary scoring summary report issued on March 18, 2005 (copy attached as Exhibit "B") the following documents: (a) a lease agreement (entitled "Second Amended Lease Agreement") dated April 21, 2005 by and between Miami-Dade County and Villa Aurora, Inc.), and (b) an Assignment of Lease dated April 22, 2005 by and between Villa Aurora, Inc. (the lessee under the lease with Miami-Dade County) and Villa Aurora, Ltd. (the Assignment of Lease is attached as Exhibit "C").

6. FHFC determined (in the final scoring summary report attached as Exhibit "A") that the site control cure was deficient, because the tax credit/SAIL applicant (Villa Aurora, LLLP) was neither the lessee under the lease with Miami-Dade County, nor the assignee of the lease under the Assignment of Lease from Villa Aurora, Inc. For the reasons set forth below, this conclusion as a matter of law by FHFC was incorrect.

**FACTS WHICH WARRANT REVERSAL
OF AGENCY'S PROPOSED ACTION**

The specific facts which warrant reversal of FHFC's proposed action are as follows:

FHFC has incorrectly determined that Petitioner has failed the threshold requirement of site control. The assignee under the April 22, 2005 Assignment of Lease from Villa Aurora, Inc. (Villa Aurora, Ltd., a Florida limited partnership) is the same exact legal entity as Petitioner (Villa Aurora, LLLP, a Florida limited liability limited partnership).

7. In Exhibit 3 of Petitioner's initial SAIL/HC application, the organizational documentation of the Applicant was included. Villa Aurora, Ltd., a limited partnership, was organized on January 24, 2005 upon its filing of an Affidavit and Certificate of Limited Partnership (attached as part of Exhibit "D"). On that same date, Villa Aurora, Ltd. applied for status as a "limited liability limited partnership" under Florida Statutes §§620.187 and 620.9001(3) (copies attached as part of Exhibit "D"). See attached Statement of Qualification filed by Villa Aurora, Ltd. with Secretary of State of January 24, 2005 (attached as Exhibit "D"). As required by Florida Statute §620.9002 and reflected in the Department of State forms suggested for utilization by limited liability limited partnerships (Form 42 attached as Exhibit "E"), a limited partnership adopting limited liability limited partnership status must add the suffix "LLLP" to its name. As such, in the statement of qualification attached as Exhibit "D" attached hereto, Villa Aurora, Ltd. changed its name in the Statement of Qualification to Villa Aurora, LLLP.

8. Under Florida law, Villa Aurora, LLLP is not a different legal entity than Villa Aurora, Ltd.; it is the same entity. See Florida Statute §620.187(2) ("a limited liability limited partnership continues to be the same entity that existed before the filing of a statement of

qualification under Florida Statute §620.9001(3) of the Revised Uniform Partnership Act of 1995”) attached as part of Exhibit “D”.

9. As such, the Assignment of Lease from Villa Aurora, Inc. dated April 22, 2005 was legally effective to Villa Aurora, LLLP, which was the same entity as the assignee Villa Aurora, Ltd. This conclusion can be obtained within the “four corners” of Petitioner’s application, by virtue of reference to the documentation included behind Exhibit 3 of Petitioner’s original application.

10. Petitioner has adequately demonstrated the satisfaction of the threshold requirement of site control, due to a valid Assignment of Lease to Petitioner.

RELEVANT RULES AND STATUTES

11. Rule 67-48, FAC, specifically incorporates the SAIL and HC application, and the forms referenced therein. The instructions to Part III Section C Subsection 2 (incorporated by the aforementioned Rule) provide, in relevant part, that evidence of site control may be met by provision of a lease where the lessee is the Applicant (see page 26 of the Universal Application Instructions). Petitioner has complied with the instructions for Part III Section C Subsection 2 and provided evidence (in its “cure documentation”) that Petitioner is the valid assignee of a lease which satisfies the threshold requirement of site control.

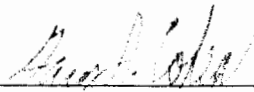
RELIEF SOUGHT

12. The specific action which Petitioner wishes FHFC to take is to reverse its previous decisions and determine that Petitioner has met the threshold requirement of site control.

WHEREFORE, Petitioner respectfully requests FHFC:

1. To find that Petitioner has met the threshold requirement of site control, and as a result Petitioner's application has received 66 points, with 7.5 proximity tie-breaker points, and has satisfied all threshold requirements.

Respectfully submitted,

By: 
GARY J. COHEN, ESQ.
Florida Bar No. 353302
Shutts & Bowen LLP
201 South Biscayne Boulevard
1500 Miami Center
Miami, Florida 33131
(305) 347-7308 telephone
(305) 347-7808 facsimile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and one copy of the foregoing have been filed with Stephen P. Auger, Deputy Development Officer, Attn: Corporation Clerk of the Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301, on this 9th day of June, 2005.



GARY J. COHEN, ESQ.

EXHIBIT A

2005 MMRB, SAIL & HC Scoring Summary

As of: 05/24/2005

File # 2005-020CS

Development Name: Villa Aurora

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?
05 - 24 - 2005	66	N	7.5	\$215,208.05	13.82%	Y
Preliminary	62	N	7.5	\$215,208.05	13.82%	Y
NOPSE	62	N	7.5	\$215,208.05	13.82%	Y
Final	66	N	7.5	\$215,208.05	13.82%	Y
Final-Ranking	0	N	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	0	0	0	0
7S	III	F	2	Programs for Homeless (SRO & Non-SRO)	6	6	6	6	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	0	0	4	0

2005 MMRB, SAIL & HC Scoring Summary

As of: 05/24/2005

File # 2005-0200CS

Development Name: Villa Aurora

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded as Result
10S	Applicant failed to submit any of the Local Government Verification of Affordable Housing Incentives forms. Therefore, zero points were awarded.	Preliminary	Final

Threshold(s) Failed:

Item #	Part Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	1	Site Plan Approval	Preliminary	Final
2T	III	C	2	Site Control	Preliminary	Final
3T	III	C	4	Zoning	Preliminary	Final
4T	V	D	Reserve Funds	As a construction financing source, the Applicant listed "reserves not funded until after construction completion" and listed the amount of the reserves as \$1,560,000. This does not meet any of the criteria stated in the Universal Application Instructions for a firm financing source commitment. As such, the reserve amount was not counted as a source of financing.	Preliminary	Final
5T	V	B	Construction Financing Shortfall	The Applicant has a construction financing shortfall of \$1,599,998.	Preliminary	Final
6T	III	C	2 ex. 27	Site Control	Final	Final

Proximity Tie-Breaker Points:

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

As of: 05/24/2005

File # 2005-020CS

Development Name: Villa Aurora

2005 MMRB, SAIL & HC Scoring Summary

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
1C	V			Deep Targeting Incentive (DTI)	The Application earned a DTI of \$18,000.	Preliminary	

9

EXHIBIT B

2005 MMRB, SAIL & HC Scoring Summary

As of: 03/18/2005

Development Name: Villa Aurora

File # 2005-020CS

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?
03 - 18 - 2005	62	N	7.5	\$215,208.05	13.82%	Y
Preliminary	62	N	7.5	\$215,208.05	13.82%	Y
NOPSE	0	N	0		0	
Final	0	N	0		0	
Final-Ranking	0	N	0		0	

Scores:

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

2005 MMRB, SAIL & HC Scoring Summary

As of: 03/18/2005

File # 2005-020CS Development Name: Villa Aurora

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded as Result
10S	Applicant failed to submit any of the Local Government Verification of Affordable Housing Incentives forms. Therefore, zero points were awarded.	Preliminary	

Threshold(s) Failed:

Item #	Part Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	1 Site Plan Approval	The Applicant failed to provide the required Local Government Verification of Status of Site Plan Approval for Multifamily Developments form.	Preliminary	
2T	III	C	2 Site Control	The Applicant failed to provide any of the required documentation to demonstrate site control.	Preliminary	
3T	III	C	4 Zoning	The Applicant failed to provide the required Local Government Verification that Development is Consistent with Zoning and Land Use Regulations form.	Preliminary	
4T	V	D	Reserve Funds	As a construction financing source, the Applicant listed "reserves not funded until after construction completion" and listed the amount of the reserves as \$1,560,000. This does not meet any of the criteria stated in the Universal Application Instructions for a firm financing source commitment. As such, the reserve amount was not counted as a source of financing.	Preliminary	
5T	V	B	Construction Financing Shortfall	The Applicant has a construction financing shortfall of \$1,599,998.	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	V		Deep Targeting Incentive (DTI)	The Application earned a DTI of \$18,000.	Preliminary	

EXHIBIT C

ASSIGNMENT OF LEASE

THIS ASSIGNMENT OF LEASE AGREEMENT ("Assignment") is made and entered into as of the 27th date of April, 2005, by and between Villa Aurora, Inc., a Florida non-profit corporation ("Company") and Villa Aurora, Ltd., a Florida limited partnership (the "Partnership").

RECITALS

A. Miami-Dade County, Florida and Company have entered into that certain lease agreement dated as of April 11, 2005 (the "Lease") pertaining to real property located in the City of Miami, Florida, as more particularly described therein (the "Property").

B. As permitted by Section XII of the Lease, Company desires to convey its interest in and to the Lease to Partnership, and Partnership desires to assume Company's interest in and to the Lease, on the terms and conditions set forth therein and herein.

AGREEMENT

NOW, THEREFORE, in light of the foregoing and in consideration of the mutual covenants, promises and agreements contained herein, Company and Partnership hereby agree that the Lease is assigned as follows:

1. Recitals. The above Recitals are true and correct and by this reference are incorporated as if fully set forth herein.

2. Assignment. Company hereby assigns, transfers and conveys unto Partnership all of Company's right, title and interest in, to and under the Lease.

3. Assumption. Partnership hereby accepts the Lease, assumes the obligations of Company thereunder, ratifies and confirms the Lease and agrees to be bound by all of its terms and conditions. Company hereby acknowledges this assignment and assumption of the Lease.

4. No Further Modification. Except as expressly set forth in this Assignment, the Lease is unmodified and remains in full force and effect, and is hereby ratified and confirmed by Partnership.

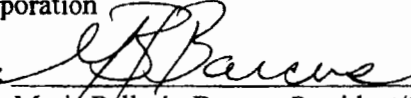
5. Counterparts. This Assignment may be executed in any number of counterparts, any one and all of which constitute the contract of the parties and each of which shall be deemed an original.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, we have executed this Assignment of Lease Agreement as of the 22 day of April, 2005.

COMPANY:

Villa Aurora, Inc., a Florida non-profit corporation

By: 
Maria Pellerin Barcus, President/CEO

PARTNERSHIP:

VILLA AURORA, LTD., a Florida limited partnership

By: Villa Aurora, Inc., a Florida non-profit corporation, as general partner

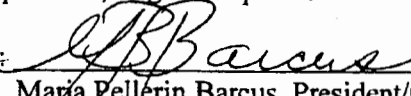
By: 
Maria Pellerin Barcus, President/CEO

EXHIBIT D



FLORIDA DEPARTMENT OF STATE

Glenda E. Hood
Secretary of State

January 24, 2005

SUNSTATE RESEARCH

TALLAHASSEE, FL

The Affidavit and Certificate of Limited Partnership of VILLA AURORA, LTD. were filed on January 24, 2005 and assigned document number A05000000163. Please refer to this number whenever corresponding with this office.

The certification you requested is enclosed.

A limited partnership annual report/uniform business report will be due this office between January 1 and May 1 of the year following the calendar year of the file/effective date. A Federal Employer Identification (FEI) number will be required before this report can be filed. Please apply NOW with the Internal Revenue Service by calling 1-800-829-3676 and requesting SS-4.

Please be aware if the limited partnership address changes, it is the responsibility of the limited partnership to notify this office.

Should you have any further questions concerning this matter, please contact this office at the address given below.

Buck Kohr
Document Specialist
Registration/Foreign Qualification
Division of Corporations

Letter Number: 605A00004676

State of Florida



Department of State

I certify from the records of this office that VILLA AURORA, LTD., is a Limited Partnership organized under the laws of the state of Florida, filed on January 24, 2005.

The document number of this Limited Partnership is A05000000163.

I further certify said Limited Partnership has paid all filing fees due this office through December 31, 2005, and its status is active.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Twenty-fourth day of January, 2005



CR2EO22 (2-03)

Glenda E. Hood
Glenda E. Hood
Secretary of State

State of Florida



Department of State

I certify the attached is a true and correct copy of the Affidavit and Certificate of Limited Partnership of VILLA AURORA, LTD., a Limited Partnership organized under the laws of the state of Florida, filed on January 24, 2005, as shown by the records of this office.

The document number of this limited partnership is A05000000163.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Twenty-fourth day of January, 2005



CR2EO22 (2-03)

Glenda E. Hood
Glenda E. Hood
Secretary of State

FILED
05 JAN 24 PM 1:51
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

CERTIFICATE OF LIMITED PARTNERSHIP

VILLA AURORA, LTD.

Pursuant to the provisions of the Florida Revised Uniform Limited Partnership Act (1986) and Section 620.108 of the Florida Statutes, the undersigned, being the sole general partner of VILLA AURORA, LTD., duly executes and files with the Florida Secretary of State this Certificate of Limited Partnership.

**ARTICLE 1
NAME**

The name of the limited partnership is VILLA AURORA, LTD.

**ARTICLE 2
ADDRESS**

The business address of the limited partnership is 155 South Miami Avenue, Suite 1150, Miami, Florida 33130.

**ARTICLE 3
REGISTERED AGENT**

The name of the registered agent for service of process is Maria P. Barcus.

**ARTICLE 4
ADDRESS OF REGISTERED AGENT**

The street address for the registered agent is 155 South Miami Avenue, Suite 1150, Miami, Florida 33130.

**ARTICLE 5
MAILING ADDRESS**

The mailing address of the limited partnership is 155 South Miami Avenue, Suite 1150, Miami, Florida 33130.

**ARTICLE 6
TERM**

The latest date upon which the limited partnership is to be dissolved is December 31, 2050.

**ARTICLE 7
GENERAL PARTNER**

The name and business address of the sole general partner is as follows:

Villa Aurora, Inc.
155 South Miami Avenue
Suite 1150
Miami, Florida 33130

Under penalties of perjury, I declare that I have read the foregoing and know the contents thereof and that the facts stated herein are true and correct.

Signed this 20th day of January, 2005

VILLA AURORA, INC.
General Partner

By: 

Name: Maria Pellerin Barcus

Its: President

ACCEPTANCE BY REGISTERED AGENT

HAVING BEEN NAMED TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED LIMITED PARTNERSHIP, THE UNDERSIGNED HEREBY AGREES TO ACT IN THIS CAPACITY, AND FURTHER AGREES TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATIVE TO THE PROPER AND COMPLETE DISCHARGE OF HER DUTIES.

DATED THIS 20th DAY OF JANUARY, 2005.



Maria P/Barcus

AFFIDAVIT OF CAPITAL CONTRIBUTIONS

VILLA AURORA, LTD.

The undersigned, constituting the sole general partner of VILLA AURORA, LTD., a Florida limited partnership, certifies as follows:


1. The initial Limited Partners of VILLA AURORA, LTD. have contributed \$1,000 to the Partnership as the initial capital contribution.
2. The initial Limited Partners anticipate making no additional capital contributions other than the contributions stated above.

Signed this 20th day of January, 2005.

FURTHER AFFIANT SAYETH NAUGHT.

Under penalties of perjury, I declare that I have read the foregoing and that the facts alleged are true to the best of my knowledge and belief.

VILLA AURORA, INC.
General Partner

By: 
Name: Maria Pellerin Barcus
Its: President

Leading Cases

Grossman v. Greenberg, 619 So. 2d 406 (Fla. 3d DCA 1993), review den 629 So.2d 133: where FRULPA does not govern a particular situation, FUPA governs (unless the sections are inconsistent). Thus, pursuant to FUPA s. 620.66, general partner had fiduciary duty to give notice to the other partners in limited partnership of profit derived by him without the other partners' consent.

Cross References

FUPA s. 620.585(2): applicability of FUPA to FRULPA.

620.187. Limited liability limited partnership

(1) A limited partnership may become a limited liability limited partnership by:

(a) Obtaining the approval of the terms and conditions of the limited partnership becoming a limited liability limited partnership by the vote necessary to amend the limited partnership agreement; however, in the case of a limited partnership agreement that expressly considers contribution obligations, the vote required is the vote necessary to amend those provisions;

(b) Filing a statement of qualification under s. 620.9001(3) of the Revised Uniform Partnership Act of 1995; and

(c) Complying with the name requirements of s. 620.9002 of the Revised Uniform Partnership Act of 1995.

(2) A limited liability limited partnership continues to be the same entity that existed before the filing of a statement of qualification under s. 620.9001(3) of the Revised Uniform Partnership Act of 1995.

(3) Sections 620.8306(3) and 620.8307(2) of the Revised Uniform Partnership Act of 1995 apply to both general and limited partners of a limited liability limited partnership. *Added by Laws 1999, c. 99-285, § 31, eff. June 8, 1999.*

Author Commentary

Since 1995, limited partnerships have been able to qualify as registered limited liability partnerships. Initially, the statutory provisions were contained in F.S. 620.78 through 620.789. Registration resulted in an immunity for general partners in both general and limited partnerships from vicarious liability for the acts of other partners, except for contract liability. In 1999, sweeping amendments were made that created a "full shield" for partners from both tort and contract liability. The 1999 amendments repealed the prior provisions and replaced them with limited liability partnership provisions that are scattered throughout the general partnership statute (for a description of these provisions see "Florida Revised Uniform Partnership Act of 1995 and Limited Liability Partnership Provisions—Overview"). The general partnership provisions are cross-referenced and incorporated by reference in this s. 620.187. If a limited partnership so registers, the concept of unlimited personal liability for general partners reflected in older case law would not be applicable to liabilities of the partnership that arise after the registration, except if the general partner expressly assumes a particular liability (as in a contract) or is an actual tortfeasor.

In light of the ease of becoming a registered limited liability limited partnership, it is difficult to understand why all limited partnerships would not avail themselves of this shield. Individuals managing limited partnerships might choose to protect themselves from personal liability through other measures, such as creating a corporate or LLC general partner owned and controlled by the individuals. While these measures are often effective, the risk of personal liability remains, however, if the corporate or LLC shield can be "pierced" through equitable principles. See "Piercing the Corporate Veil" in "Florida Business Corporations—Overview, s. III.D."

620.192. Registered agent; duties

(1) This section applies to each domestic limited partnership and applies to each foreign limited partnership that owns real property located in this state, owns a mortgage on real property located in this state, or transacts business in this state.

(2) Each domestic and each foreign limited partnership subject to this section shall have and continuously maintain in this state a registered office and registered agent, and shall file with the Department of State notice of the registered office and registered agent. The appointment of a registered agent in this state pursuant to the provisions of ss. 620.105 and 620.108 or s. 620.169 is sufficient to meet the requirement for a registered agent under this section, provided that the registered agent so appointed files, in such form and manner as prescribed by the Department of State, an acceptance of the obligations provided for in this section. A foreign limited partnership may meet the requirement for a registered office in this state by designating the street address of the registered agent as its registered office in the notice filed with the Department of State.

(3) Each domestic and each foreign limited partnership subject to this section shall, pursuant to subpoena served upon the registered agent by the Department of Legal Affairs, produce, through its

Florida Comment

The statement of merger, which is optional, is analogous to the statement of authority authorized by Section 303 [Section 620.8303]. The Committee suggests that Section 303 and Section 907(a) [Section 620.8907(1)] may present particular filing problems to the Department of State, inasmuch as the statement covers general partnerships as well as limited partnerships. Unlike limited partnerships, general partnership agreements can be oral or written and there is no mandatory filing of organization papers. Therefore, it may be impossible to trace the genealogy of a general partnership which is referred to in a statement of merger.

Section 907(b) [Section 620.8907(2)] is taken without change from the RUPA text.

A new Section 907(c) [Section 620.8907(3), (4), and (5)] has been added to require, as a condition of filing the statement of merger, that limited partnerships which are a party to the merger first have complied with the limited partnership organizational filing requirements, or registration filing requirements in the case of foreign limited partnerships.

Former Sections 907(c), (d) and (e) [Section 620.8907(3), (4), and (5)] have been relettered to reflect the addition of new Section 907(c) [Section 620.8907(3)]. As relettered, they are taken without change from the RUPA text, except that the language in new Section 907(e) [Section 620.8907(5)] with respect to the local place of filing has been modified to parallel Section 607.1105(2), Florida Statutes.

Uniform Comment

Section 907(a) provides that the surviving entity may file a statement of merger. The execution, filing, and recording of the statement are governed by Section 105.

Subsection (b) requires the statement to contain the name of each party to the merger, the name and address of the surviving entity, and whether it is a general or limited partnership.

Subsection (c) provides that, for the purpose of the Section 302 rules regarding the transfer of partnership property, all personal and intangible property which before the merger was held in the name of a party to the merger becomes, upon the filing of the statement of merger with the secretary of state, property held in the name of the surviving entity.

Subsection (d) provides a similar rule for real property, except that real property does not become property held in the name of the surviving entity until a certified copy of the statement of merger is recorded in the office for recording transfers of that real property under local law.

Subsection (e) is a savings provision in the event a statement of merger fails to contain all of the information required by subsection (b). The statement will have the operative effect provided in subsections (c) and (d) if it is executed and declared to be accurate pursuant to Section 105(e) and correctly states the name of the party to the merger in whose name the property was held before the merger, so that it would be found by someone searching the record. Compare Section 303(c)(statement of partnership authority).

620.8908. Nonexclusive

Sections 620.8901-620.8907 are not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law. *Added by Laws 1995, c. 95-242, § 13, eff. Jan. 1, 1996.*

Historical and Statutory Notes

Laws 1995, c. 95-242, § 13, which added this section, provides in its directory language that the sections created in § 13 are effective January 1, 1996, however, § 33 of Laws 1995, c. 95-242 provides that the act shall take effect July 1, 1995.

Uniform Law:

This section is similar to § 908 of the Uniform Partnership Act (1994) and (1997). See Vol. 6 Uniform Laws Annotated, Master Edition or ULA Database on WESTLAW.

Florida Comment

This section is substantially unchanged from the RUPA text.

Uniform Comment

Section 908 provides that Article 9 is not exclusive. It is merely a "safe harbor." Partnerships may be converted or merged in any other manner provided by statute or common law. The limited partnership acts of several states authorize the conversion of a general partnership into a limited partnership or the merger of a limited partnership with a general partnership. See Comment 2 to Section 901. Those procedures may be followed in lieu of Article 9.

620.9001. Statement of qualification

- (1) A partnership may become a limited liability partnership pursuant to this section.
- (2) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a

partnership agreement that expressly considers contribution obligations, the vote necessary to amend those provisions.

(3) After the approval required by subsection (2), a partnership may become a limited liability partnership by filing a statement of qualification. The statement must contain:

- (a) The name of the partnership as identified in the records of the Department of State;
- (b) The street address of the partnership's chief executive office and, if different, the street address of its principal office in this state, if there is one;
- (c) The name and street address of the partnership's agent for service of process, who must be an individual resident of this state or other person authorized to do business in this state;
- (d) A statement that the partnership elects to be a limited liability partnership; and
- (e) A deferred effective date, if any.

(4) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to s. 620.8105(7) or revoked pursuant to s. 620.9003.

(5) The status of a partnership as a limited liability partnership and the liability of its partners are not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (3).

(6) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(7) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation. *Added by Laws 1999, c. 99-285, § 23, eff. June 8, 1999.*

Historical and Statutory Notes

Uniform Law:

This section is similar to § 1001 of the Uniform Partnership Act (1997). See Vol. 6 Uniform Laws Annotated, Master Edition or ULA Database on WESTLAW.

620.9002. Name

The name of a limited liability partnership must end with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP." *Added by Laws 1999, c. 99-285, § 24, eff. June 8, 1999.*

Historical and Statutory Notes

Uniform Law:

This section is similar to § 1002 of the Uniform Partnership Act (1997). See Vol. 6 Uniform Laws Annotated, Master Edition or ULA Database on WESTLAW.

620.9003. Annual report

(1) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this state, shall file an annual report in the office of the Secretary of State which contains:

- (a) The name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;
- (b) The current street address of the partnership's chief executive office and, if different, the current street address of its principal office in this state, if there is one;
- (c) The partnership's Federal Employer Identification Number, if any, or, if none, whether one has been applied for; and
- (d) The name and street address of the partnership's current agent for service of process, who must be an individual resident of this state or other person authorized to do business in this state.

(2) An annual report must be filed between January 1 and May 1 of each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this state.

(3) The Secretary of State may administratively revoke the statement of qualification of a partnership that fails to file an annual report when due or to pay the required filing fee. The Secretary

State of Florida



Department of State

I certify from the records of this office that VILLA AURORA, LLLP, is a Limited Partnership organized under the laws of the state of Florida, filed on January 24, 2005.

The document number of this Limited Partnership is A05000000163.

I further certify said Limited Partnership has paid all filing fees due this office through December 31, 2005, and its status is active.

I further certify that said Limited Partnership obtained limited liability limited partnership status on January 24, 2005 and its status is active.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Twenty-fourth day of January, 2005



CR2EO22 (2-03)

Glenda E. Hood
Glenda E. Hood
Secretary of State



FLORIDA DEPARTMENT OF STATE
Glenda E. Hood
Secretary of State

January 24, 2005

SUNSTATE RESEARCH
TALLAHASSEE, FL

Re: Document Number: A05000000163

The Statement of Qualification for VILLA AURORA, LLLP, was filed on January 24, 2005.


The certification you requested is enclosed.

Should you have any questions regarding this filing, please contact this office at (850) 245-6051.

Sincerely,
Buck Kohr
Document Specialist
Partnership Section
Division of Corporations

Letter Number: 505A00004677

State of Florida



Department of State

I certify from the records of this office that VILLA AURORA, LLLP, is a Limited Partnership organized under the laws of the state of Florida, filed on January 24, 2005.

The document number of this Limited Partnership is A05000000163.

I further certify said Limited Partnership has paid all filing fees due this office through December 31, 2005, and its status is active.

I further certify that said Limited Partnership obtained limited liability limited partnership status on January 24, 2005 and its status is active.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Twenty-fourth day of January, 2005



CR2EO22 (2-03)

Glenda E. Hood
Glenda E. Hood
Secretary of State

State of Florida



Department of State

I certify the attached is a true and correct copy of the Statement of Qualification of VILLA AURORA, LLLP, filed on January 24, 2005, as shown by the records of this office.

The document number of this entity is A05000000163.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Twenty-fourth day of January, 2005



CR2EO22 (2-03)

Glenda E. Hood
Glenda E. Hood
Secretary of State

**STATEMENT OF QUALIFICATION FOR
FLORIDA LIMITED LIABILITY LIMITED PARTNERSHIP
OF
VILLA AURORA, LTD.**

05 JAN 21 PM 1:51
FILED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

**ARTICLE 1
NAME**

The name of the Limited Partnership, as identified in the records of the Florida Department of State, is VILLA AURORA, LTD. A completed Certificate of Limited Partnership, Affidavit of Capital Contributions and applicable limited partnership filing fees are attached hereto.

**ARTICLE 2
SUFFIX**

The suffix to be adopted for the above-named Limited Partnership is LLLP. Thereafter, the name of the Limited Partnership shall be "VILLA AURORA, LLLP."

**ARTICLE 3
ADDRESS - EXECUTIVE OFFICE**

The street address of the Chief Executive Office of the Limited Partnership is:

155 South Miami Avenue
Suite 1150
Miami, Florida 33130

**ARTICLE 4
ADDRESS - PRINCIPAL OFFICE**

The street address of the Principal Office in Florida is:

155 South Miami Avenue
Suite 1150
Miami, Florida 33130

**ARTICLE 5
REGISTERED AGENT FOR SERVICE OF PROCESS**

The name and street address of the Limited Partnership's registered agent for service of process is:

Maria P. Barcus
155 South Miami Avenue
Suite 1150
Miami, Florida 33130

**ARTICLE 6
ELECTION AS LIMITED LIABILITY PARTNERSHIP**

The Limited Partnership hereby elects to be a Limited Liability Limited Partnership.

**ARTICLE 7
EFFECTIVE DATE**

The effective date of this filing shall be as of the date this document is filed with the Secretary of State of Florida.

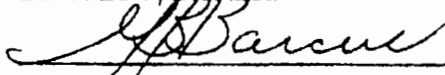
Signed this 20th day of January, 2005.

GENERAL PARTNER:

VILLA AURORA, INC.

By: 
Name: Maria Pellerin Barcus
Its: President

LIMITED PARTNER:



(The execution of this document constitutes an affirmation
under the penalties of perjury that the facts stated herein are true.)

EXHIBIT E

LIMITED LIABILITY PARTNERSHIP FORMS

Form 42. Statement of Qualification for Florida Limited Liability Limited Partnership

STATEMENT OF QUALIFICATION FOR FLORIDA LIMITED LIABILITY LIMITED PARTNERSHIP

1. The name of the limited partnership as identified in the records of the Florida Department of State:

Insert limited partnership's Florida document number: _____

or

Attach certificate of limited partnership, affidavit of capital contributions and applicable limited partnership filing fees.

2. Suffix adopted for the above named partnership: _____

(LLLP, LLLP)

3. The street address of its chief executive office: _____

(if different from current recorded address): _____

4. The street address of principal office in Florida: _____

(if different from above) _____

5. The limited partnership hereby elects to be a limited liability limited partnership.

6. The effective date of this filing shall be:

___ as of the date this document is filed with the Florida Secretary of State

or

___ a date later than the time of filing: _____

7. The name and Florida street address of the partnership's agent for service of process:

_____, Florida _____

The execution of this statement as a partner constitutes an affirmation under the penalties of perjury that the facts stated herein are true.

Signed this _____ day of _____.

Signature of TWO Partners: _____

Typed or printed names of partners signing above: _____

Filing Fee: \$25.00
Certified Copy (optional): \$52.50
Certificate of Status (optional): \$8.75

INHS66(1/00)