

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

PEBBLE HILL ESTATES LIMITED
PARTNERSHIP,

Petitioner

vs.

APPLICATION NO. 2005-123C

FLORIDA HOUSING FINANCE CORP.,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.004(14)(e), F.A.C.

PEBBLE HILL ESTATES LIMITED PARTNERSHIP, a Florida limited partnership (“Petitioner”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for a waiver of Rule 67-48.004(14)(e), Florida Administrative Code (2005). This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

1. The address, telephone number and facsimile number of the Petitioner is:

Pebble Hill Estates Limited Partnership
c/o RLI Beneficial Holdings 2005, LLC
Donald W. Paxton
6455 Gateway Avenue, Suite A
Sarasota, Florida 34231
(941) 929-1270
(941) 929-1271 Facsimile

2. The address, telephone number and facsimile number of Petitioner’s counsel is:

Maureen McCarthy Daughton
Broad and Cassel
215 S. Monroe Street, Suite 400
Tallahassee, FL 32301
(850) 681-6810
(850) 521-1478 Facsimile

RECORDED
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FLORIDA HOUSING FINANCE CORPORATION

3. Petitioner successfully applied for financing from the Housing Tax Credit (“HC”) program in the 2005 Universal Application Cycle – Multifamily Mortgage Revenue Bonds (MMRB) Program; State Apartment Incentive Loan (SAIL) Program; Home Investment Partnership (HOME) Rental Program and Housing Credit (HC) Program (the “Universal Cycle”) that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner’s application number is 2005-123C (the “Application”). Petitioner applied for HC Funds to finance a portion of the costs to develop an 80-unit single-family rental development in Jackson County, Florida, to be known as Pebble Hill Estates (the “Development”). In the Application the Development site was identified as the southeast corner of the intersection of South Street and Pebble Hill Road in Marianna, Florida. The Site control documentation filed as part of the Application identified the parcel as approximately 45 acres.

4. On December 8, 2005, the Corporation issued its Preliminary Allocation of Housing Credits reserved in the amount of \$941,011. As permitted by Rule 67-48.028, F.A.C., Pebble Hill and the Corporation entered into a Carryover Allocation Agreement (“Carryover Agreement”). Under the Carryover Agreement the Development’s Placed-in-Service Date was December 31, 2007. The Petitioner also applied for and received a USDA Loan Guarantee with an interest rate subsidy of 2.5% for 40 years at the end of 2005. In September 2006, Petitioner requested an extension of the construction commencement condition of the Carryover Agreement. This request was granted by letter dated October 4, 2006. In December 2006, Petitioner received a grant in the amount of \$500,000 from the Federal Home Loan Bank. The construction commencement was extended again by letter on December 20, 2006. Construction for purposes of the Carryover Agreement was commenced on December 29, 2006.

5. In March 2007 Petitioner filed a Petition for Variance of the 2005 Qualified Allocation Plan to enable it to return its Housing Credit allocation for an immediate allocation of 2007 Housing Credits. An Order was entered by the Corporation on April 27, 2007 allowing the Petitioner to return its 2005 Housing Credits allocation and to receive an allocation of 2007 Housing Credits. Petitioner closed this transaction in May 2007.

6. While in the process of completing the 2007 carryover documentation Corporation staff requested the Petitioner certify that the “site” had not changed. While the location of the Development, on approximately 20 of the originally described 45 acres, has *not* changed most, if not all, of the remaining land has been dedicated to the City of Marianna as part of the Development process. This dedication, according to Corporation staff, has resulted in a “change” to the “site” thus requiring a Petition for waiver. As part of the development approval process the acreage for the Development has been reduced to approximately 33.30 acres which is reflected in the legal description attached as Exhibit Number 1. This reduction in total acreage does not impact the location of the Tie Breaker Measurement Point, or the location of the Development on the site.

THE RULE FROM WHICH WAIVER IS SOUGHT

Rule 67-48.004(14)(e), provides in part:

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

* * *

(e) Site for the Development;

STATUTES IMPLEMENTED BY THE RULES

7. The Rule implements, among other sections of the Florida Housing Finance Corporation Act,¹ the statute that created the Housing Credits Program. See §420.5093, Florida Statutes. The Act designates the Corporation as the State of Florida’s housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, the Corporation is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits (“Allocation Procedures”). Section 420.5099(1) and (2), Florida Statutes (2005). Accordingly, the Rules subject to Pebble Hill’s variance requests are implementing, among other sections of the Act, the statutory authorization for the Corporation’s establishment of Allocation Procedures for the HC Program.

8. The pertinent statute regarding granting of waivers provides: “Waivers shall be granted when the applicant demonstrates that application of the rule would create a substantial hardship or would violate principles of fairness.” Section 120.542(2), Florida Statutes. “Substantial Hardship” is defined as a demonstrated economic, technological, legal or other type of hardship “to the applicant.” The hardship in this case to the Petitioner is that this transaction will not be able to proceed.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

9. At the Corporation’s instruction and in order to demonstrate that it did not receive any unfair advantage in the scoring of the initial application Petitioner has submitted a *new* Surveyor Certification, Form 25 and the requisite sketches depicting the Tie-Breaker Measurement Point and services information. These are attached hereto as Exhibits 2 and 3 respectively. The Surveyor Certification shows exactly the same latitude and longitude

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes.

coordinates as was submitted on the Surveyor Certification submitted with the original application.²

10. In light of the considerable time that it takes to develop multi-family rental housing the Corporation's statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances, particularly those that arise through no fault of the Petitioner, which might necessitate a modification in a Development. FHFC routinely approves such changes when they would not have otherwise affected the scoring of the application, because the Applicant thus derives no unfair advantage over its competitors in an application cycle. Indeed the specific purpose of Rule 67-48.004(14) is to prevent an applicant from changing key elements in its application after reviewing the applications of its competitors, thereby allowing the Applicant to gain a possible competitive advantage. Due to the fact that the coordinates have not changed the Tie Breaker measurement score is the same, the Petitioner has not received any unfair advantage over its competitors.

11. The violation of principles of fairness and imposition of a substantial hardship which would result from strict compliance with the provisions of F.A.C. Rule 67-48.004(14), would be as follows. Unless the foregoing request is granted the Development will not go forward, the obligation to convey this land to the City of Marianna is a condition of the Development Order that has been issued. The substantial hardship which would result from strict compliance with the foregoing is obvious.

12. Petitioner believes that a waiver of these rules will serve the purposes of Section 420.5099 and the Act which is implemented by the rule, because one of their goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households by ensuring:

² These respective certifications were performed by two different surveyors.

The maximum use of available tax credits in order to encourage development of low-income housing in the State, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the Applicant to proceed to completion of the project in the calendar year for which the credit is sought.

Section 420.5099(2), Florida Statutes (2005).

The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in persons of low income. The creation of the Housing Tax Credit Program was to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver requesting and permitting Petitioner to make the aforementioned changes, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

13. The requested waiver will not adversely impact the Development or the Corporation.

TYPE OF WAIVER

14. The waiver being sought is permanent in nature.

15. Should the Corporation have questions or require any additional information, Petitioner is available to provide any additional information necessary for consideration of the Petition.

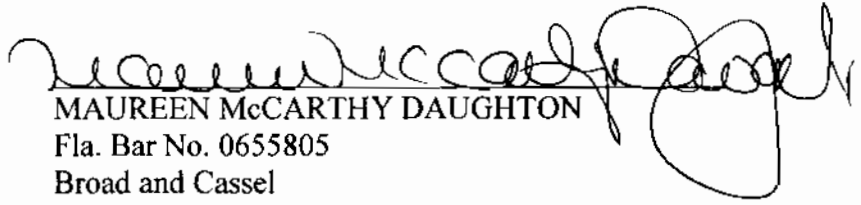
ACTION REQUESTED

16. Petitioner requests the following:

- a. Grant the Petition and all the relief requested here;

17. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Respectfully submitted this 20 day of August, 2007.



MAUREEN McCARTHY DAUGHTON

Fla. Bar No. 0655805

Broad and Cassel

215 S. Monroe Street, Suite 400

Tallahassee, FL 32301

(850)681-6810

(850)521-1478 Facsimile

Counsel for Petitioner

LEGAL DESCRIPTION:

COMMENCE at an existing 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) marking the Northeast corner of the Northwest 1/4 of Section 9, Township 4 North, Range 10 West, Jackson County, Florida, and call this the POINT OF COMMENCEMENT; thence South 01 degrees 26 minutes 14 seconds West a distance of 93.78 feet to an existing 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) on the Southerly right of way of State Road 167 (South Street) and call this the POINT OF BEGINNING; thence leaving said right of way South 01 degrees 26 minutes 14 seconds West a distance of 1232.23 feet to an existing 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106); thence North 88 degrees 15 minutes 31 seconds West a distance of 30.00 feet to an existing 4 inch x 4 inch concrete monument with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106); thence South 01 degrees 26 minutes 14 seconds West a distance of 346.51 feet to an existing 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106); thence North 88 degrees 15 minutes 38 seconds West a distance of 84/33 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 01 degrees 35 minutes 24 seconds East a distance of 316.53 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence South 88 degrees 15 minutes 31 seconds East a distance of 148.23 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 01 degrees 44 minutes 29 seconds East a distance of 34.45 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 70 degrees 37 minutes 38 seconds West a distance of 44.84 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 69 degrees 15 minutes 43 seconds West a distance of 53.76 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 61 degrees 10 minutes 41 seconds West a distance of 55.57 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 58 degrees 08 minutes 04 seconds West a distance of 46.58 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 56 degrees 58 minutes 24 seconds West a distance of 53.22 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 47 degrees 26 minutes 44 seconds West a distance of 67.43 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 33 degrees 56 minutes 29 seconds West a distance of 64.64 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 26 degrees 22 minutes 20 seconds West a distance of 52.60 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 22 degrees 26 minutes 59 seconds West a distance of 59.53 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 10 degrees 04 minutes 48 seconds West a distance of 69.84 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 04 degrees 14 minutes 31 seconds East a distance of 69.89 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 02 degrees 15 minutes 47 seconds West a distance of 44.14 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 48 degrees 45 minutes 39 seconds West a distance of 75.00 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 40 degrees 57 minutes 57 seconds East a distance of 112.44 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 49 degrees 05 minutes 37 seconds West a distance of 0.61 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence Northwesterly along a curve being concave towards the left having a delta angle of 39 degrees 14 minutes 15 seconds, a radius of 170.00 feet, a length of 116.42 feet, a chord bearing of North 58 degrees 42 minutes 44 seconds West and a chord distance of 114.16 feet to a 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) set; thence North 88 degrees 19 minutes 52 seconds West a distance of 86.68 feet to an existing 4 inch x 4 inch concrete monument with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) on the Easterly right of way of Pebble Hill Road (a 60 foot right of way, paved road); thence North 01 degrees 40 minutes 08 seconds East a distance of 370.71 feet to an existing 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106); thence leaving said right of way South 88 degrees 18 minutes 35 seconds East a distance of 491.46 feet to an existing 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106); thence South 01 degrees 41 minutes 25 seconds West a distance of 200.50 feet to an existing 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106); thence South 88 degrees 03 minutes 56 seconds East a distance of 425.00 feet to an existing 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106); thence North 01 degrees 41 minutes 25 seconds East a distance of 400.00 feet to an existing 5/8 inch iron rod with an aluminum cap stamped Bannerman Surveyors, Inc. (LB 5106) on the Southerly right of way of State Road 167 (South Street); thence South 88 degrees 00 minutes 33 seconds East along the Southerly right of way of said road a distance of 368.33 feet to the POINT OF BEGINNING.

SUBJECT TO:

A 30 FOOT WIDE ROADWAY EASEMENT PER O. R. BOOK 54, PAGE 400 ALONG THE EASTERLY LINE OF SAID PARCEL:

This parcel contains 33.30 acres, more or less, and is located in the East 1/2 of the Northwest 1/4 of Section 9, Township 4 North, Range 10 West, Jackson County, Florida, and within the city limits of Marianna, Florida.



2007 UNIVERSAL CYCLE - SURVEYOR CERTIFICATION

Name of Development Pebble Hill Estates
 Development Location 2817 Brightwell Ave, Marianna FL 32446
 (At a minimum, provide the address assigned by the United States Postal Service, including the address number, street name and city, or if the address has not yet been assigned, provide the street name, closest designated intersection and city)

* If the Development consists of Scattered Sites, the Development Location stated above must reflect the site where the Tie-Breaker Measurement Point is located
 The undersigned Florida licensed surveyor confirms that the method used to determine the following latitude and longitude coordinates conforms to Rule 61G17-6, F.A.C

| State the Tie Breaker Measurement Point means 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. For a Development which consists of Scattered Sites, this means a single point on one of the Scattered Sites which comprises the Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. In addition, the Tie Breaker Measurement Point must be located on the site with the most units if any of the Scattered Sites has more than 4 units. | Latitude | | | Longitude | | |
|---|---|------------|--|---------------|------------|--|
| | N 30 Degrees | 46 Minutes | 05.9 Seconds (truncated after 1 decimal place) | W 085 Degrees | 14 Minutes | 30.8 Seconds (truncated after 1 decimal place) |
| If the Development consists of Scattered Sites, is a part of the boundary of each site located within 1/2 mile of the Tie-Breaker Measurement Point? <input type="checkbox"/> Yes or <input checked="" type="checkbox"/> No (Must check one if Development consists of Scattered Sites) ("divided parts") and (ii) it is readily apparent from the proximity of the non-contiguous parts or the divided parts of the real property, chart of title, or other information available to the Corporation that the non-contiguous parts or the divided parts of the real property are part of a common or related scheme of development. (See Rules 67-48 002 and 67-21 002, F.A.C) | No (Must check one if Development consists of Scattered Sites) | | | | | |
| To be eligible for proximity tie-breaker points, Degrees and Minutes must be stated as whole numbers and Seconds must be truncated after 1 decimal place. The Corporation will utilize Street Atlas USA 2007, published by DeLorme, to determine the proximity of an eligible service to the proposed Development's Tie-Breaker Measurement Point. | The Corporation will utilize Street Atlas USA 2007, published by DeLorme, | | | | | |

| Location of closest Public Bus Stop or Metro-Rail Stop | Latitude | | | Longitude | | |
|--|---|------------|--|---------------|------------|--|
| | N 30 Degrees | 46 Minutes | 05.9 Seconds (truncated after 1 decimal place) | W 085 Degrees | 14 Minutes | 30.8 Seconds (truncated after 1 decimal place) |
| State the name, Address and latitude and longitude coordinates of the closest service(s) on the chart below. The latitude and longitude coordinates for each service must represent a point that is on the doorway threshold of an exterior entrance that provides direct public access to the building where the service is located. If there is no exterior public entrance to the service, then a point should be used that is at the exterior entrance doorway threshold that is the closest walking distance to the doorway threshold of the interior public entrance to the service. | State the name, Address and latitude and longitude coordinates for each service must represent a point that is on the doorway threshold of an exterior entrance that provides direct public access to the building where the service is located. If there is no exterior public entrance to the service, then a point should be used that is at the exterior entrance doorway threshold that is the closest walking distance to the doorway threshold of the interior public entrance to the service. | | | | | |

| Grocery Store Name | Address | Latitude | | | Longitude | | |
|-----------------------|---------------------------------------|--------------|------------|--|---------------|------------|--|
| | | N 30 Degrees | 46 Minutes | 05.9 Seconds (truncated after 1 decimal place) | W 085 Degrees | 14 Minutes | 36.8 Seconds (truncated after 1 decimal place) |
| Grocery Outlet | 4230 Lafayette St, Marianna, FL 32446 | N 30 Degrees | 46 Minutes | 55.7 Seconds (truncated after 1 decimal place) | W 085 Degrees | 14 Minutes | 36.8 Seconds (truncated after 1 decimal place) |
| Public School Name | Marianna Middle School | N 30 Degrees | 46 Minutes | 00.2 Seconds (truncated after 1 decimal place) | W 085 Degrees | 15 Minutes | 05.6 Seconds (truncated after 1 decimal place) |
| Medical Facility Name | 4144 South Street, Marianna FL 32448 | N Degrees | Minutes | Seconds (truncated after 1 decimal place) | W Degrees | Minutes | Seconds (truncated after 1 decimal place) |
| Pharmacy Name | Watson's Drugs | N 30 Degrees | 46 Minutes | 27.8 Seconds (truncated after 1 decimal place) | W 085 Degrees | 13 Minutes | 41.5 Seconds (truncated after 1 decimal place) |

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

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

Signature Paul A. Snelgrove Date 8/15/07
 Signature Paul A. Snelgrove Date (month/day/yyyy)

Name of Surveyor Paul A. Snelgrove Address P.O. Box 836
 Florida License Number 4952 Address Marianna FL 32447

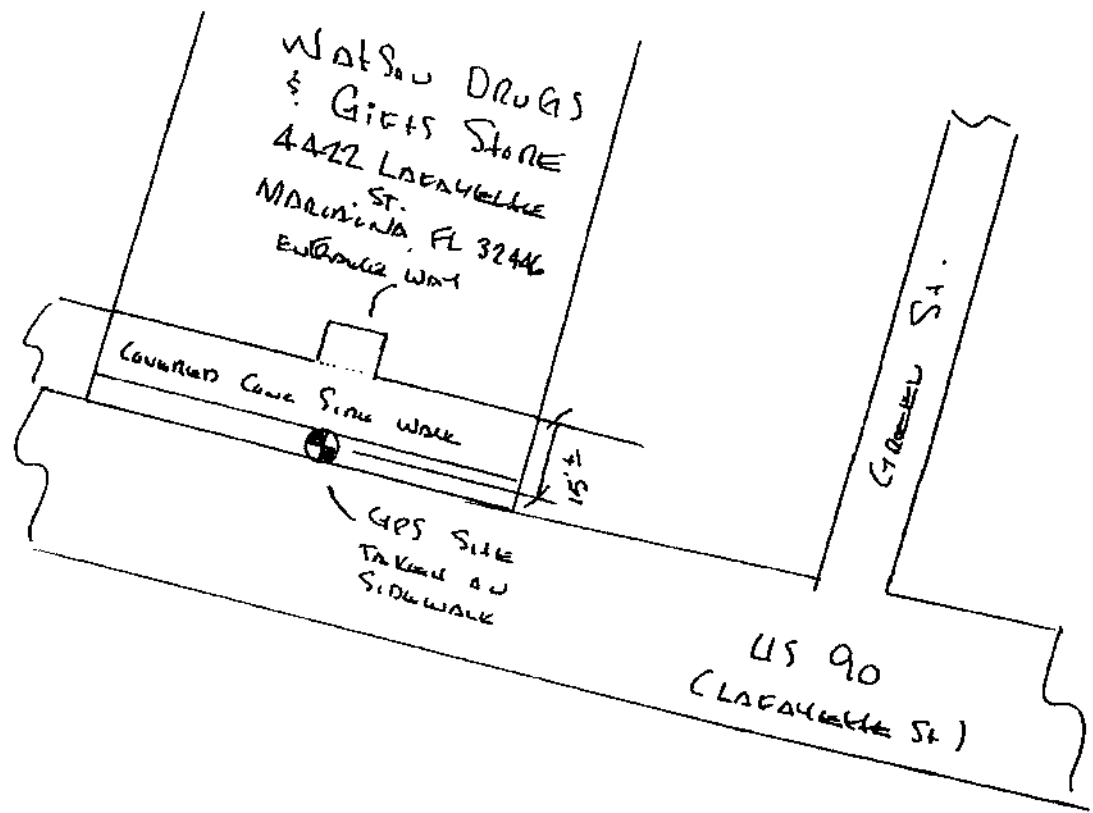
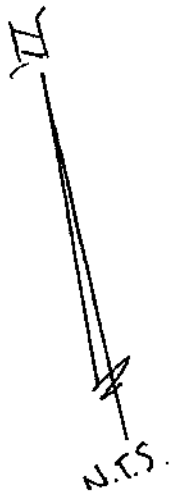
Print or Type Name of Signatory President
 Print or Type Title of Signatory President
 Telephone Number (including area code) 850-526-3991

This certificate may not be signed by the Applicant, or by any related parties of the Applicant, or by any Principals or Financial Beneficiaries of the Applicant. If the certification is inappropriately signed, the Application will not receive proximity tie-breaker points. If this certification contains corrections or "white-out", or if it is scanned, unleged, altered, or reprinted, the Application will not receive proximity tie-breaker points and will fail to meet threshold. The Application may #03 be eligible for automatic points. The certification may be photocopied.

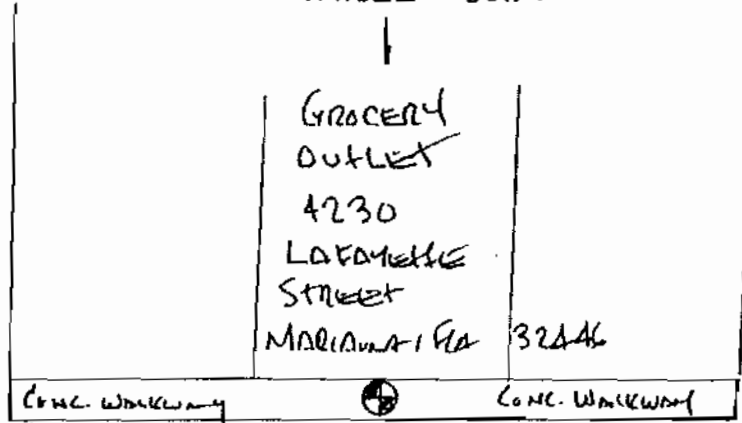




EXHIBIT
3
COMPOSITE



PART OF STRIP
MALL BLDG

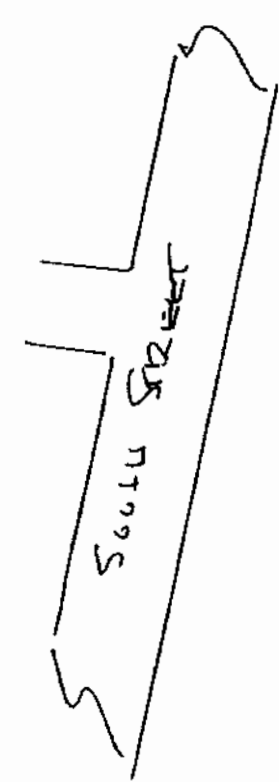
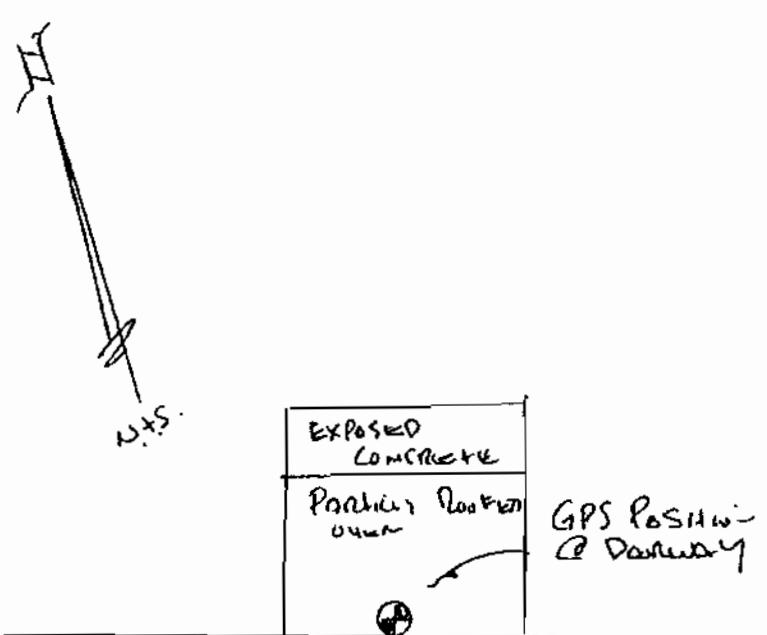


GPS TAKEN
@ DOORWAY

ASPHALT
PARKING

CONC WALK

US 90
(LAFAYETTE ST.)



MARIANA
MIDDLE SCHOOL
4144 South Street
MARIANA, FLA. 32448