

IN RE: ASWAN VILLAGE APPLICATION  
to FLORIDA HOUSING FINANCE CORPORATION –  
APPLICATION #2003-026S

FHFC CASE # 2003-042

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**PETITION**

Aswan Village Associates, LLC., a Florida limited liability company, by and through its undersigned counsel hereby submits this Petition and request an evidentiary proceeding and asserts as follows:

1. The name and address of the Agency affected and the Agency's file or identification number are as follows:

Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, FL 32301-1329  
Agency's File or Identification Number: \_\_\_\_\_

2. Names, addresses and telephone numbers of Petitioner and Petitioner's representative and explanation of how interest will be affected:

- a. Petitioner: Aswan Village, Associates, LLC.  
c/o Banc of America Community  
Development Corporation  
100 S.E. Second Street, 14<sup>th</sup> Floor  
Miami, FL 33131  
Telephone Number: (305) 533-2348  
Fax Number: (305) 533-2309
- b. Petitioner's Representative: Holland & Knight LLP  
ATTN: Lynn C. Washington, Esq.  
701 Brickell Avenue, Suite 3000  
Miami, FL 33131  
Telephone Number: (305)789-7798  
Fax Number: (305)789-7799

c. The Petitioner applied for a SAIL Loan from the Florida Housing Finance Corporation (the "Agency") from the 2003 Universal Cycle. The Agency found that the Petitioner's application did not meet the threshold requirements and did not award a SAIL Loan to the Petitioner.

3. Notification to Petitioner

The Petitioner received notification of the Agency's decision by mail on July 21, 2003.

4. Statement of Disputed Facts

a. **The Agency's position is that the commitment for financing provided by the Petitioner was not a firm commitment for financing.**

A copy of the fully executed Operating Agreement in which the purchaser of the Housing Tax Credits is obligated to provide financing for the Petitioner's development is included as part of the Petitioner's SAIL Application and is a part of the record. Based on a review of the Operating Agreement, it is clear that the obligation of the Purchaser is firm because the Purchaser has commenced the funding under the Operating Agreement. The Corporation failed to take into account that the Housing Credits at issue in this matter were not the Housing Credits that came from the Housing Corporation's limited allocation, but were instead Housing Credits that were allocated based on a local government's tax exempt bond issue. An agreement pursuant to which one is presently making payments of funds is certainly a firm commitment.

- b. **The Agency's position is also that certain items are missing from the Operating Agreement.**

The Petitioner submits that all the required information is included: Syndication rate (page 20, section 3.03(a) and Exhibit A-1 and A-2), capital contribution pay in schedule (Exhibit A-1), percentage of the anticipated amount of credit allocation being purchased (Exhibit A, page A-1), total amount of equity being provided including the amount of credits being disbursed during construction (Exhibit A-1), and anticipated housing credit allocation (page 35, paragraph (aa), Exhibit A-2). The amount of equity required to be paid prior to closing was also provided.

- c. **The Agency's position is that the Applicant failed to provide documentation that it was entitled to the set-aside that it selected because it did not have an allocation of Housing Credits.**

The Petitioner's position is that it had an allocation of Housing Credits. The Housing Credits are as a result of the local government bond issue. Attached to this Petition is the "comfort letter" that was issued by the Corporation acknowledging that the Petitioner did not have to apply to the Corporation for the allocation of Housing Credits until a future date.

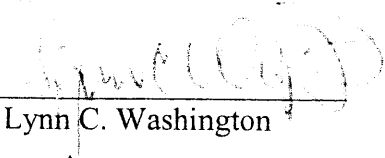
5. The rules of the Florida Housing Finance Corporation require reversal of the Agency's position.

6. The Petitioner requests that the Petitioner's Application be treated as meeting threshold and that the Applicant be eligible to participate in the FHFC 2003 Universal Application Cycle for an SAIL Loan and the Petitioner be awarded the appropriate points that

are associated with the reversal of the items set forth in this Petition. If this request is denied, the Petitioner requests a hearing.

Respectfully submitted:

HOLLAND & KNIGHT LLP  
701 Brickell Avenue, Suite 3000  
Miami, Fl 33131  
Tel: (305) 789-7798  
Direct Fax: (305) 789-7799

By:   
Lynn C. Washington

MIA1 #1244252 v1



February 17, 2003

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Mr. Gonzalo DeRamon  
Aswan Village Associates, LLC  
100 Southeast Second Street  
14<sup>th</sup> Floor  
Miami, Florida 33131-2100

Re: Aswan Village  
Housing Credit Allocation for Tax-Exempt Bond Financed Project

Dear Mr. DeRamon:

In accordance with Internal Revenue Code Section 42(h)(4)(B), if 50% or more of the aggregate basis of any building including the land is financed from tax-exempt bonds, the housing credits will come directly from the U.S. Treasury rather than from Florida's allocation authority.

This means that, although the Development's owner must *apply* to Florida Housing Finance Corporation for housing credits, competition is NOT required. The complete application for housing credits must be received by Florida Housing **no later than July 1 of the year the Development is placed in service**. Although competition is not required, the Application must achieve the required threshold score in order to qualify for the housing credits. Please contact the Housing Credit staff at (850) 488-4197 to obtain the current application.

Once the threshold score has been achieved, the Development will be subjected to credit underwriting. After underwriting, Florida Housing will issue a Preliminary Determination of housing credits and collect the required administrative fee. When all buildings are placed in service, the owner must submit the following to the Corporation: the executed Extended Use Agreement, certificates of occupancy for each building, photos of the Development, the syndication agreement, the applicable compliance monitoring fee, and the final cost certification, audited by an independent certified public accountant. These documents will be reviewed prior to issuance of the housing credit certificates (IRS Forms 8609).

Let me emphasize again that there is no need to compete for the credits. If this development meets the requirements of the Internal Revenue Code, the Qualified Allocation Plan and the Housing Credit Program Rule Chapter 67-48, F.A.C., housing credits will be available directly from Treasury (outside the Florida

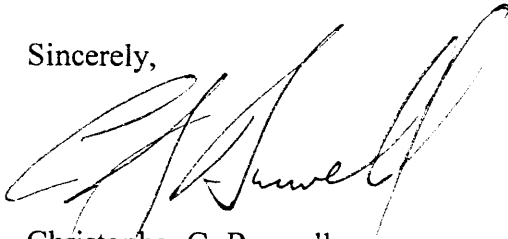
Mr. DeRamon  
February 17, 2003  
Page Two

allocation authority amount). For developments that meet the 50% tax-exempt financed requirements of Section 42, IRC, obtaining housing credits is largely a matter of completing paperwork and paying applicable fees.

Based on the estimated qualified basis of \$19,963,431.00, the owner can expect to receive an estimated annual allocation amount of \$708,702.00 for ten (10) years. Please understand that this is the very roughest of estimates and in no way binds Florida Housing. The Development will be further reviewed to determine the actual housing credit need prior to final allocation of the housing credits.

Please let me know if you have any questions or if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Buswell", written over a white background.

Christopher G. Buswell  
Housing Credit Administrator

CGB/jm

**ELECTION OF RIGHTS**

Application Number: 2003-0265 Development Name: ASWAN VILLAGE

- 1.  I do not desire a proceeding.
- 2.  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 28, 2003		
September 2, 2003		
September 3, 2003		
September 4, 2003		
September 5, 2003	2	1

Hearing Dates:	A.M.	P.M.
September 8, 2003		
September 9, 2003	8	7
September 10, 2003	6	5
September 11, 2003	4	3

Please fax a Hearing Schedule to me at this number: (305) 533-2390  
(include Area Code)

DATE: 8/11/03

G. Serrano  
Signature of Petitioner

Name: GONZALO DERRAMON

Address: 100 SE 2nd St 14th Floor  
MIAMI FL 33130

Phone: (305) 533-2348  
(include Area Code)

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**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.**