

IN RE: BROWNSVILLE MANOR APARTMENTS  
APPLICATION to FLORIDA HOUSING FINANCE  
CORPORATION – APPLICATION #2004-076S

**PETITION**

Florida Manor Apartments 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: 2004-029-UC

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

- a. Petitioner: Florida Manor Apartments Associates, LLC.  
1680 Michigan Avenue, Suite 1001  
Miami Beach, FL 33139  
Telephone Number: (305) 534-0551  
Fax Number: (305) 436-3779

- 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 2004 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 10, 2004.

4. Statement of Disputed Facts

- a. **The Agency's position is that the Applicant's Local Government Verification of Status of Site Plan Approval For Multifamily Development is deficient because the verification form "reflects an Address of Development site that is different from the Address stated elsewhere within the Application and the City is not stated." The Agency therefore asserts the Applicant failed threshold. Item 10T.**

The Petitioner's position on this issue is that the Agency cannot find a basis in the General Instruction to the Application to support this position. The General Instructions at Page 23, a copy of which hereto as Exhibit A, simply provides that the "Applicant must provide the applicable Local Government verification form." The clear purpose of this form is to provide the Agency and the reviewer with the required information and to verify that the required information was provided by the appropriate legally authorized body of the local government. The Agency could clearly ascertain from Exhibit 26 that Brownsville Manor was the property in question. The Agency also states that Exhibit 26 was rejected because the address is different from the address stated in the Application. The explanation for this is that elsewhere in the Application the mailing address of the Development was used as the address. However, Exhibit 26 asked for the "Address of the Development Site." The Development Site consists of several buildings with different addresses. The address that was used on Exhibit 26 was sufficient to provide

the Agency with verification that the property that was the subject of the government verification was the same property that was identified throughout the Application. Finally, the Agency states that Exhibit 26 was rejected because “the City is not stated.” The Petitioner submits that the name of the city is immaterial in this case: (1) because the property is located in unincorporated Miami-Dade County and not in a city; and (2) Exhibit 26 provides that Miami-Dade County is the appropriate authority to verify the status and therefore the designation of the city is unnecessary.

- b. The Agency's position is the letter submitted from Miami-Dade Water and Sewer Department to verify the availability of water is deficient because the letter “concerns a project for the proposed construction of one hundred fifty-eight residential multi-family units and the Development proposed in the Application consists of a total of 178 units” and that the letter did not contain a reference water was available to the site prior to March 31, 2004. Item 11T**

The Petitioner submits that the information in the letter is correct. The project in question consists of 158 new units and of 20 rehabilitated units. Therefore the water and sewer letter is correct that there will be 158 new construction units. We have attached a copy of a revised letter from the Miami-Dade Water and Sewer Department as Exhibit “B” which indicates that the project contains 178 units. We are submitting the revised letter (Exhibit B) for support that there is sufficient capacity for 178 units. We, however, maintain that

the cure should have been accepted because the project does consist of 158 new units and 20 existing units, for a total of 178 units.

The Agency also rejected the letter from Miami-Dade Water and Sewer letter because the letter did not provide a reference in the letter that water was available to the site on or before the Application Deadline. The Petitioner's position is that there is no basis for the Agency's position that the cure letter has to include a reference that pre-dates the cure letter. We have attached a copy of the Cure Instructions as Exhibit "C" and we were unable to find a reference to the requirement suggested by the Agency in the Cure Instructions. We were also unable to find a basis for the Agency's position in Agency Rule 67-48.004(6), which forms the basis for the cure procedure. Had Exhibit "C" provided that the requirement for the reference to the Application Deadline be stated in the Cure, the Petitioner could have satisfied that requirement. Further, it only seems logical that the Cure Period is part of the Application period. Otherwise, there would be no reason to allow cures to be accepted after March 31, 2004.

- c. **The Agency's position is the letter submitted from Miami-Dade Water and Sewer Department to verify the availability of sewer is deficient because the letter "concerns a project for the proposed construction of one hundred fifty-eight residential multi-family units and the Development proposed in the Application consists of a total of 178 units" and that the letter did not contain a reference sewer capacity was available to the site prior to March 31, 2004. Item 12T**

The Petitioner's position is that the same facts and legal arguments made in reference to Item 11T above are applicable to Item 12T and is restated and incorporated herein by reference.

**d. The Agency's position is the letter submitted from Miami-Dade County Public Work (Exhibit 31) to verify the availability of roads is deficient because that the letter did not contain a reference that the roads were in place prior to March 31, 2004. Item 13T**

The Petitioner submits that the Agency was aware that project site was an urban infill site and that the letter provides that access was available via Northwest 32 Avenue. Northwest 32 Avenue is a major county road and was known by the Agency to be in place prior to March 31, 2004. Furthermore, the Petitioner's position is that there is no basis for the Agency's position that the cure letter had to include a reference that pre-dates the cure. The Petitioner's position on this issue is the same as the position taken in Item 11T and Item 12T above, and is restated and incorporated herein by reference.

**e. The Agency's position is that the Applicant's submission of evidence of Zoning Approval failed threshold because the Local Government Verification is deficient because the verification form reflects an address of the development site that is different from the address stated elsewhere within the Application, the letter concerns a project for the proposed construction of one hundred fifty-eight residential multi-family units and the Development proposed in the Application**

**consists of a total of 178 units, and that the letter did not contain a reference that Zoning was in placed prior to March 31, 2004. Item 14**

The Petitioner has addressed each of the Agency's positions in reference to Item 11T, Item 12T and Item 13T above and will therefore present the arguments to Item 14T in summary fashion.

a. The difference in the address in Exhibit 32 is the because the zoning verification form (Exhibit 32) requested the development site address and the prior address had been the mailing address for the property.

b. The development consist of 158 new units and 20 rehabilitated units.

c. The cure provides that the zoning was in place on or before June 9, 2004. The Petitioner submits, in addition to the prior arguments that March 31, 2004 is on or before June 9, 2004.

5. The Petitioner requests that the Petitioner's Application be treated as meeting threshold and that the Applicant be eligible to participate in the FHFC 2004 Universal Application Cycle for a 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

Selecting these items commits the Applicant to provide them, unless the Board approves a change. Points will be awarded as indicated for each item up to the maximum allowed for each particular section, as indicated below.

The point value for each feature and amenity selected by the Applicant in the Optional Features and Amenities section of the Application will be doubled if the proposed Development:

- consists of 50 or fewer total units, and/or
- qualified for the Farmworker/Commercial Fishing Worker or Homeless (SRO or Non-SRO) Demographic Commitment at Part III.D.

Applications that reflect the Rehabilitation/Substantial Rehabilitation or Acquisition and Rehabilitation/Substantial Rehabilitation Development Category at Part III.A.3. will automatically receive 2 points for Energy Conservation Features and may achieve a maximum of 9 points by selecting items totaling at least 7 points.

The maximum available points for the Optional Features and Amenities section is as listed below:

- a. For New Construction Developments (maximum 9 points)
- b. For Rehabilitation/Substantial Rehabilitation Developments (maximum 9 points)
- c. For All Developments Except SRO (maximum 12 points)
- d. For SRO Developments (maximum 12 points)
- e. Energy Conservation Features for All Developments (maximum 9 points)

### C. Ability to Proceed

#### 1. Status of Site Plan Approval or Plat Approval (Threshold)

To achieve threshold, Applicant must provide the applicable Local Government verification form behind a tab labeled “**Exhibit 26**”. Site plan approval or plat approval may be verified by Florida Housing Staff during the scoring process.

- a. Site Plan Approval for Multifamily Developments
  - (1) If the final site plan has been approved, the verification form reflecting an approval date must be provided behind a tab labeled “**Exhibit 26**”.
  - (2) If the jurisdiction provides either preliminary or conceptual site plan approval and the preliminary or conceptual site plan has been approved, the verification form reflecting an approval date must be provided behind a tab labeled “**Exhibit 26**”.

- (3) If the jurisdiction provides neither preliminary nor conceptual site plan approval, nor any other similar process prior to issuing final site plan approval, the verification form reflecting a review date must be provided behind a tab labeled “**Exhibit 26**”.
- (4) If the Development is rehabilitation without any new construction and does not require additional site plan approval or similar process, the verification form reflecting this must be provided behind a tab labeled “**Exhibit 26**”.

b. Plat Approval for Single-Family Rental Developments

- (1) If the final plat has been approved, the verification form reflecting an approval date must be provided behind a tab labeled “**Exhibit 26**”.
- (2) If the preliminary or conceptual plat has been approved, the verification form reflecting an approval date must be provided behind a tab labeled “**Exhibit 26**”.
- (3) If the Development is rehabilitation without any new construction and does not require additional plat approval, the verification form reflecting this must be provided behind a tab labeled “**Exhibit 26**”.

2. Evidence of Site Control (Threshold)

Applicant must demonstrate site control by providing the documentation required in Section a., b. or c., as indicated below. The required documentation, including any attachments or exhibits, must be provided behind a tab labeled “**Exhibit 27**”. Site control must be demonstrated for all sites if the proposed Development consists of Scattered Sites. A legal description of the Development site must be provided behind a tab labeled “**Exhibit 27**”.

- a. 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.

OR





SERVE • CONSERVE

MIAMI-DADE WATER AND SEWER DEPARTMENT  
P.O. Box 330316, Miami, Florida 33293-0316 • 3575 S. LeJeune Road • Tel: 305-665-7471

**July 15, 2004**

Brownsville Manor Apartments  
c/o Dr. Odom  
1680 Michigan Avenue  
Suite #1001  
Miami, Florida 33139

**Re: Water and Sewer Availability for a proposed project to be located at  
4190 N.W. 32<sup>nd</sup> Avenue, Miami-Dade County, Florida.**

**Ladies and Gentlemen:**

This letter is in response to your inquiry regarding water and sewer availability to the above-referenced project for the proposed construction of one hundred seventy-eight (178) residential multi-family apartment units. Water and Sewer is available as of 3/31/2004.

The County owns and operates a twenty-four (24) inch water main located in N.W. 38 Avenue and N.W. 42 Street, from which the property owner shall connect and install a twelve (12) inch water main easterly in N.W. 42 Street to the northeast corner of said property.

The County also owns and operates an eight (8) inch gravity sewer main located in the alley abutting the western boundary of the referenced property, from which the property owner shall connect the said property, provided that there is sufficient depth and that there are no obstacles which would preclude construction of the sewer. Any proposed gravity sewer main extensions within the referenced property shall be eight (8) inches. Other points of connection may be established subject to approval of the **Department**.

Construction connection charges and connection charges shall be determined once the property owner enters into an agreement for water and sewer service with the **Department**.

Information concerning the estimated cost of facilities must be obtained from a consulting engineer. All costs of engineering and construction will be the responsibility of the property owner. Easements must be provided covering any on-site facilities, which will be owned and operated by the **Department**.

Please be advised that the right to connect the referenced property to the **Department's** sewer system is subject to the terms, covenants and conditions set forth in the Settlement Agreement between the **Florida Department of**

**Environmental Protection ("DEP") and the County** dated July 27<sup>th</sup>, 1993, the First Amendment to Settlement Agreement between **DEP** and the **County** dated December 21<sup>st</sup>, 1995, the First Partial Consent Decree and the Second and Final Partial Consent Decree entered in the **United States of America Environmental Protection Agency vs. Metropolitan Dade County (Case Number 93-1109 CIV-MORENO)**, as currently in effect or as modified in the future, and all other current, subsequent or future agreements, court orders, judgments, consent orders, consent decrees and the like entered into between the County and the United States of America, State of Florida and/or any other governmental entity, and all other current, subsequent or future enforcement and regulatory actions and proceedings.

This letter is for informational purposes only and conditions remain in effect for thirty - (30) days from the date of this letter. Nothing contained in this letter provides the property owner with any vested rights to receive water and/or sewer service. The availability of water and/or sewer service is subject to the approval of all applicable governmental agencies having jurisdiction over these matters. When development plans for the subject property are finalized, and upon the owner's request, we will be pleased to prepare an agreement for water and/or sewer service, provided the **Department** is able to offer those services at the time of the owner's request. The agreement will detail requirements for off-site and on-site facilities, if any, point of connections, connection charges, capacity reservation and all other terms and conditions necessary for service in accordance with the **Department's** rules and regulations. If applicable, further study conducted during agreement preparation may result in the requirement of a monetary contribution in aid of construction of facilities, in lieu of any actual construction of water main facilities specified above.

If we can be of further assistance in this matter, please contact us.

Very truly yours,



**Clementine Sherman**  
New Business AO2  
Utilities Development Division

## INSTRUCTIONS FOR FILING CURES

Additional documentation, revised pages and other information (“Cures”) must be submitted in accordance with the following instructions required by the Rule:

- Do not submit pages of the Application that are not revised or otherwise changed. Pages of the Application that are not revised or otherwise changed may not be resubmitted, except that documents executed by third parties must be submitted in their entirety even if only a portion of the original document was revised.
- Where revised or additional information creates an inconsistency with another item in that Application, the Applicant must make such other changes as necessary to keep the Application consistent as revised.
- Submit an original labeled “Original” and three photocopies of the original Cures.

To better facilitate the processing of Cures, Florida Housing requests Applicants to follow these additional instructions:

- Provide all documentation in three-ring binders.
- Label the front of the binders with the Development Name.
- Label the spine of the binders with the assigned Application Number.
- Complete and submit a Cure Form for each revision or additional documentation. Insert each Cure Form immediately preceding the applicable revised form, additional documentation or other information.
- Provide a brief statement explaining each revision or additional documentation so that Florida Housing will understand the reason the Cure is being submitted. Place the statement behind the applicable completed Cure Form for that Cure.
- Separate each part for which you are providing revisions or additional documentation with divider tabs labeled for that part. For example, insert a divider tab labeled “Part V” in front of the Cure Form and accompanying revisions submitted concerning Part V.
- Organize your submission by grouping all revisions and additional documentation for each part together in the same order the parts and exhibits appear in the most recent Application Summary Report.
- Complete and submit a Cure Summary Form. Insert the Cure Summary Form in the front of the Original and each photocopy.