BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

NAUTILUS DEVELOPMENT PARTNERS, L.L.P.,
2006-090S,

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

CASE NO.: 2006-O234C
FHFC Application No. 2006-090S

PETITION FOR INFORMAL ADMINISTRATIVE PROCEEDINGS

Pursuant to Sections 120.569 and 120.57(2), Fla. Stat., and Rules 28-106.201 and 67-48.005(1), Fla. Admin. Code, Petitioner NAUTILUS DEVELOPMENT PARTNERS, L.L.P ("Nautilus") hereby requests an informal administrative proceeding on Florida Housing Finance Corporation’s proposed determination that Nautilus’s application for a State Apartment Incentive Loan ("SAIL"), Application No. 2006-090S, in the Year 2006 Universal Application cycle does not meet threshold requirements and is not entitled to local government contribution points for local government issued tax-exempt bond financing. In support of this petition, Nautilus states as follows:

Parties

1. The agency affected is the Florida Housing Finance Corporation ("FHFC"), 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. FHFC has assigned Application No. 2006-090S to this matter.

2. The Petitioner is Nautilus Development Partners, L.L.P, ("Nautilus") whose address is 1551 Sandspur Road, Maitland, Florida 32751. For purposes of this proceeding,
Nautilus's address is that of its undersigned attorney, M. Christopher Bryant, Oertel, Fernandez, Cole, & Bryant, P.A., 301 S. Bronough Street, 5th Floor, Tallahassee, Florida 32301 (P.O. Box 1110, Tallahassee, Florida 32302-1110), Telephone: (850) 521-0700. Facsimile: (850) 521-0720.

Substantial Interests Affected

3. Nautilus has proposed the construction of a 168-unit multi-family housing development in Bay County, Florida to be known as Nautilus Cove Apartments. Nautilus has proposed to set aside 70% of the units for residents making 60% or less of Area Median Income. Nautilus has projected its total development costs to be $23,690,953. Nautilus proposes to finance a portion of these development costs with a SAIL loan of $4.8 million, awarded by FHFC through a competitive process. SAIL loans are desirable to developers of affordable housing because they have more liberal repayment provisions and lower interest rates than conventional financing.

4. As explained more fully in this Petition, Nautilus's substantial interests are affected by FHFC's scoring of its application in this competitive application process, including the determination of threshold failure and the proposed award of no local government contribution points. Currently, Nautilus's application has a score of 55 points out of a possible 66 points, and has been deemed to fail threshold. If Nautilus does not receive its SAIL loan, it would have to substitute other, more expensive financing for that portion of the construction and permanent financing, and would either not construct the proposed development, or would construct the development but would not operate it as affordable rental housing. Nautilus believes that a determination that its application meets threshold and is entitled to 60 points, as set forth in this petition, would position the Nautilus Cove application to be eligible for funding.

2

OERTEL, FERNANDEZ, COLE & BRYANT, P.A. P.O. BOX 1110 TALLAHASSEE, FLORIDA 32302-1110
Background

5. FHFC allocates several forms of financing for affordable housing, including federal low income housing tax credits ("Housing Credits"), State Apartment Incentive Loans ("SAIL"), and Multi-Family Mortgage Revenue Bonds ("MMRB"). Applicants compete for the award of these forms of financing, which provide more favorable financing terms than would be available through conventional financing sources. In exchange for the receipt of such financing from FHFC, applicants enter into long-term agreements to set aside all or a portion of the residential units within such developments to low income residents, and, depending on the requirements of the particular program, may also be required to limit the rents charged to such residents.

6. All three of the above-named forms of financing (Housing Credits, SAIL loans, and MMRB) were combined into a single "Universal Application Cycle" for 2006. Financing for any of these programs is sought through the use of a joint Universal Application form. SAIL and Housing Credit applicants are subject to FHFC Rule Chapter 67-48, Fla. Admin. Code, while MMRB applicants are subject to FHFC Rule Chapter 67-21, Fla. Admin. Code. The Universal Application form is incorporated by reference into FHFC's rules, as are exhibit forms to be used with the applications, and a 100-page document entitled Universal Application Instructions, designated UA1016 (revised 1-06).

7. Applicants in the Universal Application Cycle are scored on the various components of their applications, such as development features and amenities, greater numbers of units set aside, resident programs, and local government support. The maximum score that can be assigned to a Universal Application is 56 points. Applicants must meet certain threshold.
requirements in order to be even potentially eligible to receive FHFC financing. Further, applicants must achieve a score of at least 60 points to be reasonably competitive and have a chance to be selected for FHFC financing. FHFC has also established a series of “tie-breakers” to be utilized in choosing among applications meeting threshold which have equal scores. Further, FHFC has established other mechanisms to distribute funds geographically, through Set Aside Unit Limitations (SAULs) established for each county, as well as certain goals for funding housing for various demographic groups and geographic areas.

8. As part of the Application, FHFC requires applicants to demonstrate that a number of threshold criteria have been satisfied, such that the proposed development is reasonably positioned to proceed to development. One of these threshold requirements is that applicants must demonstrate that they have firm financing commitments for all non-FHFC sources of financing. Obviously, applicants are not in a position to document firm financing for those funding sources which will be competitively awarded by FHFC, such as a SAIL loan, since those funding awards will not be made available by FHFC until the end of the Universal Cycle process. In Nautilus’s case, Nautilus proposed that $12.0 million of its construction financing and permanent financing would come from first mortgage financing provided by the Bay County Housing Finance Authority (“HFA”) through the issuance of tax-exempt and taxable bonds.

Nature of the Controversy

9. Nautilus timely submitted its 2006 SAIL application to FHFC on February 1, 2006. FHFC preliminarily reviewed and scored the 2006 Universal Application Cycle applications, including Nautilus’s. On or about March 2, 2006, FHFC notified all applicants of the preliminary threshold responsiveness, scoring, and tie-breaker score determinations on their
applications. FHFC informed Nautilus that its application did not meet the required “threshold” responsiveness requirements, thus not allowing its application to continue to compete for a SAIL loan. FHFC also informed Nautilus, by way of a document labeled Universal Scoring Summary, that its score would be 50 points. A copy of that “preliminary” Scoring Summary is attached hereto as Exhibit “A”.

10. In its application as initially submitted, Nautilus did not include an exhibit documenting the Bay County’s pre-commitment for the tax-exempt bond issuance. The absence of this exhibit was noted in FHFC’s preliminary scoring of Nautilus’s application, as grounds for determining that the application did not meet threshold requirements. See Item 2T on page 2 of Exhibit “A”. The preliminary Scoring Summary also noted that Nautilus’s application would receive zero of the available five points for local government contributions (Scoring Item 7S); applicants who document that local HFA tax-exempt bonds will be issued for the development are automatically entitled to the maximum five points for this item, according to page 52 of the Universal Application instructions. Finally, the preliminary scoring summary noted that Nautilus did not designate any resident programs for non-elderly and non-homeless developments at Section III.F.1 of the application (such as children’s after-school programs, literacy training, and job training), and thus was not preliminarily awarded any of the available six points specifically designated for resident programs for non-elderly and non-homeless developments (Scoring Item 9S).

11. The preliminary Scoring Summary for Nautilus Cove noted three other threshold failures for this development: the absence of a zoning and land use verification form (Threshold Item 1T on page 2 of Exhibit “A”), and construction financing and permanent financing.
shortfalls (Threshold Items 3T and 4T). The construction and permanent financing shortfalls are a direct result of the lack of documentation of the first mortgage financing to be provided by the Bay County HFA bonds; since FHFC assumed there would be no first mortgage financing, the application was deemed not to demonstrate adequate sources of funding to cover construction and permanent financing.

12. Pursuant to Rule 67-48.004(6), Fla. Admin. Code, Nautilus took the opportunity to provide additional documentation to FHFC to address the threshold failures and the local government contribution point issue, as well as the resident program point issue. This additional documentation is generally referred to as a “cure.” The documentation submitted by Nautilus as a cure on the first mortgage financing issue, to address in substance threshold items 2T, 3T, and 4T, and scoring Item 7S is attached hereto as Exhibit “B”.

13. On or about May 4, 2006, FHFC released “final” Universal Scoring Summaries for all applicants. (Although designated “final,” the scoring summaries are accompanied by points of entry to request formal or informal administrative hearings.) FHFC’s final Universal Scoring Summary for Nautilus, which was received by Nautilus via overnight delivery on May 5, 2006, is attached hereto as Exhibit “C”.

14. The final scoring summary rescinded threshold failure item 1T, relating to the zoning and land use verification, accepting as sufficient the cure documentation submitted on that issue. The summary further rescinded threshold failure item 2T, regarding absence of any documentation on the first mortgage financing, but added a new threshold failure item 5T, concerning an alleged substantive deficiency in the first mortgage financing documents. The scoring summary maintained the loss of local government contribution points (Item 9S), due to
the same alleged substantive deficiency in the first mortgage documentation. The scoring summary also maintained threshold failure Items 3T and 4T, concerning construction and permanent financing shortfalls, presumably also due to the alleged FHA documentation deficiency. The final scoring summary also noted Nautilus’s cure on the resident program issue (Scoring Item 7S), and awarded Nautilus five of the available six points for resident programs.

15. In the final scoring summary, FHFC stated that the documentation submitted by Nautilus as a cure on the FHA financing issue. The comment provided on threshold failure Item 5T reads:

As a cure for Item 2T, the Applicant submitted a first mortgage financing commitment from the Housing and Finance Authority of Bay County. The commitment states “Private activity tax-exempt bond allocation has been approved for the Project (up to $10,500,000 tax-exempt and $1,500,000 taxable) by the Authority and shall be reserved upon application of the Authority to the Florida Division of Bond Finance.” Page 65 of the 2006 Universal Application Instructions states that in order to be considered a firm commitment the Applicant must provide “affirmation that the tax-exempt allocation has been reserved.” Since the allocation has not yet been reserved, the commitment cannot be considered a firm source of financing.

A similar explanation was provided as the final reason for the loss of local government contribution points, scoring Item 9S.

Notice

16. Nautilus received notice via Federal Express delivery on Friday, May 5, 2006, of FHFC’s scoring of Nautilus’s 9A1 application. This Petition is being accompanied by a completed Election of Rights form, electing informal administrative proceedings and stating its available dates for the informal hearing. A copy of the Election of Rights form is attached hereto.
as Exhibit "D". Pursuant to Rule §7-48.005(1), Fla. Admin. Code, this petition is being filed within twenty-one days of Nautilus’s receipt of the memorandum forwarding its score.

**HFA Commitment Letter**

17. The Bay County HFA letter submitted by Nautilus as its cure on threshold item 2T stated that it had approved bond allocation for the Nautilus Cove development of up to $10.5 million in tax-exempt bonds and $1.5 million taxable bonds. It further stated that all approvals precedent to the authorization of the bond issuance had been obtained; that all fees due to the authority had been paid; and that the authority had executed a firm commitment for the bonds in favor of the development.

18. The letter further stated that the bond allocation “shall be reserved upon application of the Authority of the Florida Division of Bond Finance.” This statement simply means that, to the extent the Division of Bond Finance (“the Division”) may interpret a “reservation” of bonds to only occur upon action of the Division, the HFA did not presume to act on behalf of the Division. However, the Bay County HFA is firmly committed to the issuance of tax-exempt and taxable bonds for this development.

19. However, nowhere in its rules, forms, or instructions does FHFC state or imply that “reserving” local HFA bonds for purposes of a first mortgage commitment can only occur upon application to the Division. Had FHFC’s rules clearly and unambiguously required that HFA bonds be “reserved” by the Division in order for such bonds to be firmly committed, then Nautilus would have been able to pursue either a different form of commitment or different financing for the Nautilus Cove development.
20. The Division's issuance of a letter "reserving" tax-exempt bonds for a local HFA is, generally a non-discretionary and ministerial act. Bond allocations are awarded by the Division upon submission of documentation that a valid TEFRA notice has been published and that the issuer's counsel has rendered an opinion that the development qualifies for the use of tax-exempt bonds; and upon verification that allocation is available for the development. In this case, there was (and is) ample tax-exempt bond allocation available to the Bay County HFA for the Nautilus Cove development. Further, there is likely ample SAIL funding available to FHFC, such that extending both local HFA bond financing and an FHFC SAIL loan to the Nautilus Cove development would provide much-needed affordable rental housing and would not deprive any other development of financing.

21. Nautilus adequately demonstrated that the Bay County HFA has firmly committed to issue tax-exempt and taxable bonds of up to $12.0 million for the Nautilus Cove development. As a result, Nautilus has commitments for the full amount of its construction financing and permanent financing. Further, the Bay County HFA commitment demonstrates a local government contribution which automatically entitles Nautilus to five points for such contribution.

**Disputed Issues**

22. Nautilus has initially identified the following disputed issues, which it reserves the right to supplement as additional matters become known to it.

(a) Whether Nautilus provided documentation that the Bay County HFA has reserved tax-exempt bond allocation for the proposed Nautilus Cove development. Nautilus contends that it has.
(b) Whether Nautilus has demonstrated firm commitments (except for the FHFC SAIL loan) for construction financing and permanent financing for the Nautilus Cove development. Nautilus contends that it has.

(c) Whether Nautilus is entitled to automatically receive five points for a local government contribution for the Bay County HFA tax-exempt bond commitment. Nautilus contends that it is.

(d) Whether FHFC has accepted as satisfactory in prior cycles evidence of local HFA bond financing when such financing was not "reserved." Nautilus contends that it has, and that this prior agency practice establishes a precedent upon Nautilus is entitled to rely.

Concise Statement of Ultimate Facts

23. Nautilus alleges as ultimate facts that its application, as cured, established a firm commitment for the Bay County HFA tax-exempt and taxable bond financing of up to $12.0 million; established firm financing commitments for all of its construction period and permanent period financing; and established local government contribution in the form of tax-exempt bond financing. Nautilus has thus met all threshold requirements and should be awarded a total score of 66 points.

Relief Sought and Law Entitling Applicant to Relief

24. Nautilus seeks entry of Recommended and Final Orders determining that its application meets all threshold requirements and should be awarded 66 points. Nautilus is entitled to this formulation of FHFC's action by Chapter 120, Fla Stat., including but not limited to Sections 120.569 and 120.57(2); and Rule Chapters 28-106 and 67-48, Fla. Admin. Code.
FILED and SERVED this 26th day of May, 2006.

M. CHRISTOPHER BRYANT
Florida Bar No. 434490
OERTEL, FERNANDEZ, COLE, & BRYANT, P.A.
Post Office Box 1110
Tallahassee, Florida 32302-1110
Telephone: (850) 521-0700
Telecopier: (850) 521-0720
Attorneys for Petitioner, Nautius Development
Partners, LLP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed via Hand
Delivery upon the Corporation Clerk, Florida Housing Finance Corporation, 227 North
Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, this 26th day of May, 2006.

M. CHRISTOPHER BRYANT

F:\MCF\CTD-2624\Pleadings\2624-38 Nautius\Petition for Injunctive Administrative Proceedings.doc
<table>
<thead>
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<th>Exhibit</th>
<th>Description</th>
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<tr>
<td>Exhibit A</td>
<td>Preliminary Universal Scoring Summary for Nautilus Cove, dated March 1, 2006</td>
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<tr>
<td>Exhibit B</td>
<td>&quot;Cure&quot; submitted by Nautilus Cove on Bay County HFA first mortgage financing issue on April 10, 2006</td>
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<td>Exhibit C</td>
<td>&quot;Final&quot; Universal Scoring Summary for Nautilus Cove, dated May 3, 2006</td>
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<td>Exhibit D</td>
<td>Election of Rights form</td>
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2006 MMRB, SAIL & HC Scoring Summary

As of: 03/01/2006

File #: 2006-005
Development Name: Nautilus Cove

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<td>7S</td>
<td>The Applicant failed to submit any Residency Programs for Non-Elderly and Non-Homeliness Developments and is therefore unable to achieve maximum points.</td>
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<td>8S</td>
<td>The Applicant failed to provide any of the Local Government Contribution forms and, since a fee financing commitment for the referenced tax exempt bond financing was not provided it was not qualify for automatic Local Government contribution points.</td>
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Threshold(s) Failed:

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<td>C</td>
<td>4</td>
<td>Zoning</td>
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<td>2T</td>
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<td>First Mortgage Financing</td>
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<td>3T</td>
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<td>Construction Financing Shortfall</td>
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<td>B</td>
<td>Permanent Financing Shortfall</td>
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Proximity Tie-Breaker Points:

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<td>A</td>
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<td>II</td>
<td>A</td>
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Reason(s) for Failure to Achieve Selected Proximity Tie-Breaker Points:

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## 2006 MMRB, SAIL & HC Scoring Summary

**As of:** 03/01/2006  
**File #:** 2006-0906  
**Development Name:** Nautilus Cove

### Reason(s) for Failure to Achieve Selected Proximity Tie-Breaker Points:

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2006 CURE FORM

(Submit a SEPARATE form for EACH reason related to EACH Application Part, Section, Subsection, and Exhibit)

This Cure Form is being submitted with regard to Application No. 2006-0005 and petition to:

Part V, Section B, Subsection ____, Exhibit No. 36 (see above)

The attached information is submitted in response to the 2006 Universal Scoring Summary Report because:

☐ 1. Preliminary Scoring and/or NOSPE scoring resulted in the imposition of a failure to achieve maximum points, a failure to achieve over/under, and/or a failure to achieve maximum provability points relevant to the Part, Section, Subsection, and/or Exhibit stated above. Check applicable item(s) below:

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

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

EXHIBIT B
In the 2006 NHBB, SAIL, & HH Scoring Summary dated 03/27/2006, for
the above referenced Application, Florida Housing indicated Threshold
Failed, designated as 2T. The reason stated by Florida Housing is as
follows:

"The Applicant failed to provide any documentation for the first
mortgage financing at Exhibit "56" as referenced in the
Development Cost Pro Forma."

As the submission for Cure, provided is Exhibit 56.a construction/permanent
first mortgage commitment from the Housing and Finance Authority of Bay
County. The commitment should be scored firm and this issue will no
longer exist.
April 7, 2006

Florida Housing Finance Corporation
State Apartment Initiative Loan (SAIL) Program
207 North Borough Street – Suite 500
Tallahassee, FL 32301-1329

RE: Nantica Cove, located in Panama City Beach (Bay County), Florida

Subject: Letter

In reference to the above-captioned matter, and at the request of Nantica Development Partners, L.L.C. (the "Owner"), this letter is supplied to you as part of the Owner’s application to the Florida Housing Finance Corporation for funds from the State Apartment Initiative Loan (SAIL) Program for the development of a multi-family housing project located in Panama City Beach, (Bay County, Florida, the "Project"). The SAIL loan is to be made in conjunction with the issuance of bonds (the "Bonds") by the Housing Finance Authority of Bay County, Florida (the "Authority"). The proceeds of which will be loaned to the Owner to finance the Project.

Please be advised of the following:

1. The private activity tax-exempt bond allocation has been approved for the Project (up to $10,000,000 in exempt and $1,000,000 taxable) by the Authority and shall be reserved upon application of the Authority to the Florida Division of Bond Finance.

2. Any approvals precedent to the construction of the issuance of the Bonds under the Authority’s implementing ordinance have been obtained.

3. All fees currently due to the Authority from the Owner in connection with the Project have been paid.

4. The Authority has received a firm commitment from FHL to issue the proposed Bonds.

[Signature]

04/10/2006 10:19 AM (SMT-04:00)
Florida Housing Finance Corporation
Homeownership Assistance Loan (HOAL) Program
Page 3

Very truly yours,

HOUSING FINANCE AUTHORITY OF BAY COUNTY

By: 

Name: 

Title: 

AGREED TO AND ACCEPTED THIS 

DAY OF APRIL, 2006

BY: NAUTILUS DEVELOPMENT PARTNERS, L.L.P., a Florida limited liability limited partnership

By: Nautilus Development Group Managers, LLC, a Florida limited liability company, its general partner

By: 

DATE: April 10, 2006 10:25 AM (GMT-04:00)
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*Developed to develop core program and statewide program.*

**2006 MRR: SAF & HC Scoring Summary**
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<th>Description of Request</th>
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2006 MASQA SPR & HC Scoring Summary


ELECTION OF RIGHTS

Application Number: 2006-090S  Development Name: Nautilus Cove

1. [ ] I do not desire a proceeding.

2. [x] I elect an informal proceeding to be conducted in accordance with Sections 20.569 and 120.57(2), Florida Statutes. In this regard I desire to (Choose one):
   [ ] submit a written statement and documentary evidence; or
   [x] 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 five preferences, in order from 1-5 (with 1 being my first choice, etc.) for scheduling my informal hearing. All formal hearings will be scheduled by the Division of Administrative Hearings.

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<tr>
<th>Hearing Dates</th>
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<td>June 15, 2006</td>
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<td>June 19, 2006</td>
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<td>June 20, 2006</td>
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<td>June 21, 2006</td>
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</table>

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

Please fax a Hearing Schedule to me at this number: (850) 521-0720

DATE: 26 May, 2006

Signature of Petitioner

Name: M. Christophe Bryant
Oertel, Fernandez, Cole & Bryant, P.A.
Address: P.O. Box 1110
         Tallahassee, Florida 32302-1110
Phone: (850) 521-0700

EXHIBIT D

TO PRESERVE YOUR RIGHT TO A PROCEEDING, YOU MUST RETURN THIS FORM WITHIN TWENTY-ONE (21) DAYS OF RECEIPT OF THIS NOTICE. THE FORM MUST BE RETURNED 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.