

BOARD OF COUNTY COMMISSIONERS

DATE: March 12, 2013

AGENDA ITEM NO. 14

Consent Agenda ☐

Regular Agenda ☒

Public Hearing ☐

County Administrator's Signature *[Signature]*

Subject:

Request for Approval to Subordinate and Release Lien for Green Energy for North America, LLC.

Department:

Community Development
County Attorney

Staff Member Responsible:

Anthony M. Jones
Dennis Long

Recommended Action:

I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS (BCC) APPROVE THE ATTACHED AGREEMENT WITH GREEN ENERGY FOR NORTH AMERICA, LLC RELATING TO SUBORDINATION AND RELEASE OF LIENS AND AUTHORIZE THE CHAIRMAN TO EXECUTE AND THE CLERK TO ATTEST THE AGREEMENT.

Summary Explanation/Background:

In 2004, Pinellas County provided funding through the State Housing Initiatives Partnership (SHIP) Program for the site acquisition and development of a townhome project containing an affordable housing component. The developer receiving the SHIP funds failed to develop the townhomes. The BCC authorized foreclosure on the property on April 17, 2007. The outcome of the lawsuit resulted in the issuance of a final judgment dated July 15, 2010.

Pinellas County holds liens on the property by virtue of a mortgage dated October 8, 2004, recorded in OR Book 13382, Pages 1476-1482, modified on December 16, 2004, and recorded in OR Book 14008, Page 1447 and by Final Judgment dated July 18, 2010, recorded in OR Book 16978, page 702 and rerecorded in OR Book 16994, Page 1870, of the Official Records of Pinellas County, Florida.

The property was acquired by Green Energy of North America, LLC ("Owner") by Tax Deed recorded in OR Book 17357, Pages 1986-1988, of the Official Records of Pinellas County, Florida. Although the new Owner disputes the liens, the Owner has proposed the development of a residential project with an affordable housing component. The Owner intends to enter into a development loan secured by a mortgage on the Property to construct the project.

In order to support the redevelopment of the property, Community Development recommends the County subordinate and release the liens encumbering the property contingent upon the development of the property as a residential project that includes an affordable housing component.

Fiscal Impact/Cost/Revenue Summary:

Release of Judgment Lien for loan amount (\$3,429,126.00) if project completed.

Loan funds previously provided and encumbered by the judgment lien are State Housing Initiative Partnership (SHIP) program dollars allocated to Pinellas County for affordable housing activities. The SHIP program does not require repayment upon completion of an eligible project.

Exhibits/Attachments Attached:

Contract Review Transmittal Slip

Agreement Relating to Subordination and Release of Liens

Exhibit A – Property Description

Modification Agreement, December 16, 2004, OR Book 14008, page 1447

Final Judgment, July 15, 2010, OR Book 16978, page 702

CATS # 41538CONTRACT REVIEW TRANSMITTAL SLIPPROJECT: Agreement Relating to Subordination and Release of Liens with Green Energy for North America, LLC

BID / CONTRACT NO.: N/A ESTIMATED EXPENDITURE / REVENUE: N/A
 (Circle appropriate choice above.) (Circle appropriate choice above.)

In accordance with the policy guide for Contract Administration, the attached documents are submitted for your review and comment.

Upon completion of your review, please complete the Contract Review Transmittal Slip below and **forward to the next Review Authority on the list, skipping any authority marked "N/A."** Please indicate suggested changes by revising, in RED, the appropriate section(s) of the document(s) to reflect the exact wording of the desired change(s).

OTHER SPECIFICS RELATING TO THE CONTRACT: _____

REVIEW SEQUENCE	DATE	INITIALS/ SIGNATURE	COMMENTS (IF ANY)	COMMENTS REVIEWED & ADDRESSED OR INCORPORATED (ORIGINATOR'S INITIALS & DATE)
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Originator 1/17/13 Michelle Stanback _____

Risk Management 1/18/13 VEH _____

Finance 1/25/13 N/A CBW _____

Legal 1/23/13 Janet Ester _____

Assistant County Administrator 1/24/13 CH _____

Please return to Michelle Stanback by ASAP. All inquiries should be made to Maggie Miles at ext. 48263. Thank you.

**AGREEMENT RELATING TO SUBORDINATION AND
RELEASE OF LIENS**

THIS AGREEMENT relating to Release and Subordination of Liens ("Agreement") is made and entered into as of the _____ day of _____, 2013 ("Effective Date"), by and between Green Energy for North America, LLC, a Florida Limited Liability Company ("Owner"), and Pinellas County, a political subdivision of the State of Florida ("County").

RECITALS:

WHEREAS, Owner is owner of the real property described in Exhibit A attached hereto and incorporated herein by reference ("Property"), having acquired the Property pursuant to a tax deed sale conducted pursuant to Chapter 197, Florida Statutes, by Tax Deed recorded in OR Book 17357, pages 1986-1988, of the Official Records of Pinellas County, Florida; and

WHEREAS, the County asserts it has liens on the Property by virtue of the mortgage dated October 8, 2004, recorded in OR Book 13382, pages 1476-1482, of the Official Records of Pinellas County, Florida, as modified by the modification agreement dated December 16, 2004, recorded in OR Book 14008, page 1447, of the Official Records of Pinellas County, Florida (together, the "Loan") and that Final Judgment dated July 18, 2010, recorded in OR Book 16978, page 702, of the Official Records of Pinellas County, Florida, and rerecorded in OR Book 16994, page 1870, of the Official Records of Pinellas County, Florida ("Final Judgment") (the Loan and Final Judgment are sometimes hereinafter referred to as the "Liens"); and

WHEREAS, the County made the Loan to a predecessor in title to the Owner to acquire the Property to develop a townhouse project containing an affordable housing component in accordance with SHIP program guidelines and the County Land Development Code; and

WHEREAS, while the Owner disputes the validity of the Liens on the Property, the Owner has proposed a residential development on the Property that has an affordable housing component ("Project") and the Owner has represented it intends to enter into a development loan secured by a mortgage on the Property to construct the Project; and

WHEREAS, in support of its affordable housing goals, the County is willing to subordinate and release the Liens encumbering the Property contingent upon the development of the Property as a residential project that includes an affordable housing component as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties herein, and other good and valuable consideration, receipt of which is hereby acknowledged, the Owner and the County covenant and agree as follows:

A handwritten signature in dark ink, appearing to be "JL Gher", is located at the bottom center of the page.

1. RECITALS. The above Recitals are acknowledged to be true and correct and are, by this reference, incorporated herein and made a part of the Agreement.

2. CONDITIONS PRECEDENT. The County's obligation and agreement to subordinate and release the Liens as provided in Sections 3 and 4 herein are contingent upon the Owner's satisfaction of the following conditions precedent:

A. The Owner has secured and closed on a development loan no later than December 31, 2015, from a third party lender that funds development of a residential project on the Property ("Development Loan") that includes an affordable housing component that meets one of the following requirements: (i) for a rental project, at least 105 units will be constructed with a minimum of 42 units set aside for households with an annual income of less than 60% AMI; or (ii) for homeownership units, at least 105 units will be constructed with a minimum of 42 units set aside for households with an annual income of less than 120% AMI. For purposes of the subsection, "set aside" means the Owner will establish restrictive covenants, agreements or other assurances acceptable to the County providing for the affordable housing component as described herein on a continuing basis for a minimum of 30 years for rental units and 20 years for owner-occupied units.

B. The Owner completes construction of the residential development on the Property in accordance with the terms of the Development Loan that includes the affordable housing component required in Section 2.A. above.

C. The Owner grades, landscapes, and either fences or buffers the undeveloped portions of the Property in accordance with County development requirements no later than the completion of construction of the residential development on the Property as provided in Section 2.B. above.

3. TERM. The term of this Agreement shall commence on the Effective Date, and remain in full force and effect through December 15, 2017, or the satisfaction of the conditions precedent in Section 2 herein, whichever occurs first.

4. SUBORDINATION. Subject to the satisfaction of the condition precedent in Section 2.A. above, the County agrees to subordinate and postpone payment and enforcement of the Liens to the Development Loan in the aggregate amount of all advances to be made on the Development Loan, by separate instrument in a form agreeable to the parties hereto, to be recorded in the Office Records of Pinellas County, Florida, at Owner's cost.

5. RELEASE. Subject to the satisfaction of the conditions precedent in Sections 2.B. and C. above, the County agrees to release the Property from the Liens upon the completion (issuance of Certificate of Occupancy) of the Project, pro rata by unit as mutually agreed to by the parties if the project includes homeownership units, by separate instrument(s) in a form agreeable to the parties hereto, to be recorded in the Office Records of Pinellas County, Florida, at Owner's cost.

6. COUNTY'S RIGHT OF TERMINATION. The failure of the Owner to comply with its obligations set out in Section 2 herein shall constitute a material breach of the Agreement, and in



that event the County may terminate this Agreement, as determined in the sole discretion of the County Administrator, after written notice to the Owner.

7. ASSIGNMENT. The Owner shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the County, through the County Administrator, and any attempted unpermitted assignment shall be null and void and without further effect. Provided, however, that upon the sale or transfer of ownership of the Property, this Agreement will inure to the benefit of and be binding upon the person or entity acquiring ownership of the Property. Any attempted assignment, transfer, pledge hypothecation, or any other disposition of this Agreement or of such rights, interests and benefits contrary to the foregoing shall be null and void and without further effect.

8. WAIVER OF LIMITATIONS. To the extent the County's Liens are enforceable against the Property, Owner expressly agrees to toll and suspend, and hereby waives, releases and forebears any statute of limitations or claims of laches applicable to the Liens or the enforcement thereof, including any defenses in any enforcement action relating to the Liens for the term of this Agreement.

9. MISCELLANEOUS.

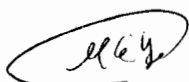
A. Paragraph headings used herein are for convenience only and shall not be construed as controlling the scope of any provision hereof. As used herein, the neuter gender shall include the masculine and feminine genders, and vice versa, and the singular the plural, and vice versa, as the context demands.

B. Owner and the County hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury with respect to any litigation based herein, or arising out of, under or in connection with this Agreement and any Agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of either party. This provision is a material inducement for the bank entering into this Agreement.

C. This Agreement embodies the entire Agreement between the parties relative to the subject matter hereof, and there are no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter hereof, which are not expressly set forth herein.

D. All of the parties to this Agreement have participated freely in the negotiation and preparation hereof; accordingly, this Agreement shall not be more strictly construed against any one of the Parties hereto.

E. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be construed and enforced as if such illegal, invalid or unenforceable provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

A handwritten signature, possibly reading "el G. G.", is written in dark ink and enclosed within a hand-drawn oval.

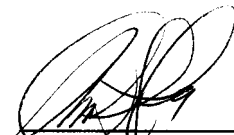
F. This Agreement may be amended only by written instrument executed by the party or parties to be bound thereby.

G. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

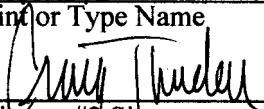
H. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective duty authorized officers as of the day and year first above written.

ATTEST:



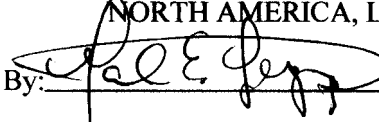
Witness #1 Signature
MICHAEL S. LLOVERAS

Print or Type Name


Witness #2 Signature
CRAIG THADEU

Print or Type Name

AGENCY: GREEN ENERGY FOR
NORTH AMERICA, LLC

By: 

Mack E. Yegge / President

Name/Title

ATTEST:

Ken Burke, Clerk


PINELLAS COUNTY, FLORIDA
a political subdivision, by and through
its Board of County Commissioners

Deputy Clerk Signature

By: _____
Kenneth Welch, Chair

Deputy Clerk Print or Type Name

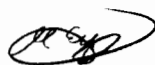
APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY

By: 

Jason C. Ester
Assistant County Attorney

Exhibit A

**The Southeast ¼ of the Southeast ¼ of Section 5, Township 30 South,
Range 15 East, Pinellas County, Florida, LESS AND EXCEPT the North
664 feet thereof, and LESS AND EXCEPT road right-of-ways.**

A handwritten signature or set of initials, possibly "R. S.", written in black ink.

LOW INTEREST LOAN MODIFICATION AGREEMENT

THAT, WHEREAS, Pinellas County, Florida, by and through its STATE HOUSING INVESTMENT PARTNERSHIP PROGRAM hereinafter called "Lender", is the holder and owner of a certain mortgage loan given by Crest Capital, LLP, a Florida Partnership, whose address is 1125 Second Avenue South, Tierra Verde, Florida, 33715 executed on October 8, 2004, recorded on October 13, 2004 in O.R. Book 13882, Pages 1476-1482, of the Public Records of PINELLAS COUNTY, FLORIDA, to wit:

THE SE 1/4 OF THE SE 1/4 OF SECTION 5, TOWNSHIP 30 SOUTH, RANGE 15 EAST, LESS THE NORTH 664 FEET THEREOF, AND LESS ROAD RIGHTS-OF-WAY, PINELLAS COUNTY, FLORIDA.

and WHEREAS, the original loan amount was Three Million Four Hundred Ten Thousand and no/100 Dollars (\$3,410,000),
and WHEREAS, said loan has an existing principal balance of Three Million Four Hundred Three Thousand One Hundred Eighty and no/100 Dollars (\$3,403,180), the original loan amount being reduced by a rebate of Six Thousand Eight Hundred Twenty and no/100 Dollars (\$6,820) for improperly applied intangible tax,
and NOW THEREFORE, in consideration of a future advance in the sum of Twenty Five Thousand Nine Hundred Forty Six and no/100 Dollars (\$25,946.00), it is agreed that: Said loan shall hereby be modified to a new principal amount of Three Million Four Hundred Twenty Nine Thousand One Hundred Twenty Six and 00/100 Dollars (\$3,429,126.00),
and WHEREAS, the modified obligation shall be repaid as stated in the original mortgage and promissory note,
and WHEREAS, the effective date of the Modification Agreement is December 16, 2004 or the date signed, whichever is later,
and WHEREAS, all said other conditions of the above-referred Mortgage and Promissory Note recorded in O.R. Book 13882, Pages 1476-1482 shall remain as previously agreed upon and recorded.

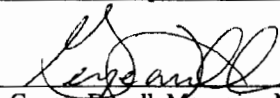
THE TERMS, Conditions, and Provisions of the said loan except as expressly altered hereby shall remain in full force and effect.
In Witness Whereof, Borrower has executed this Modification Agreement.

Signed, sealed, and delivered in the presence of:
(please type or write names underneath signatures)

CREST CAPITAL, LLP

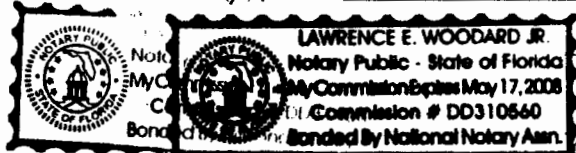
Lawrence E Woodard Jr
Witness: **LAWRENCE E WOODARD JR**

By: Milmarson Development, LLC, general partner

Name: 
George Farrell, Managing Member
Fed ID # 20-1717476

STATE OF FLORIDA } §
COUNTY OF PINELLAS

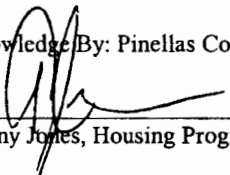
The foregoing instrument was acknowledged before me this 16th, day of December 2004 by George Farrell, Managing Member who is () personally known to me or who have (X) produced FLORIDA DRIVERS LICENSE as identification.



Lawrence E Woodard Jr
(signature)
LAWRENCE E WOODARD JR
(Name of Notary, typed, printed or stamped)

(NOTARY STAMP/SEAL ABOVE)

Acknowledge By: Pinellas County Community Development


Anthony Jones, Housing Programs Manager

Modification is exempt from intangible taxation

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

PINELLAS COUNTY,
a political subdivision of the State of Florida,

Plaintiff,

UCN:522007-CA-004938

9.5

v.

Case No. 07-4938-CI-20

CREST CAPITAL, LLP, a limited liability partnership,
MILMARSON DEVELOPMENT, LLC,
a limited liability company, and DENIS R. GRANT,

Defendants.

FINAL JUDGMENT

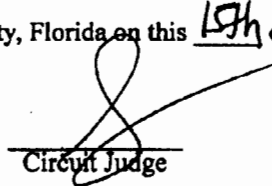
This action was heard by the court. On the evidence presented

IT IS ADJUDGED that:

1. Plaintiff, PINELLAS, shall recover from Defendant, CREST CAPITAL, LLP, the sum of \$3,429,126.00 with costs of \$3,882.65, making a total of \$3,433,008.65, that shall bear interest at the rate of 14% a year, for which let execution issue forthwith.

2. Defendant shall furnish plaintiff's attorney, John A. Powell, Jr., Pinellas County Attorney's Office, 315 Court Street, Clearwater, FL 33756, with a Fact Information Sheet in Form 1.977 (b) within 45 days of this date and file a notice of compliance with the clerk of this court as required by Rule 1.560.

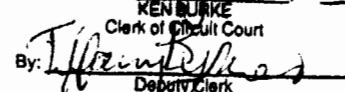
ORDERED at Clearwater, Pinellas County, Florida on this 19th day of July, 2010.


Circuit Judge

Conformed copies to:
John A. Powell, Jr., Esq.
Nick Kotaiche
Charles P. Chritton, Esq.

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STATE OF FLORIDA - PINELLAS COUNTY
I hereby certify that the foregoing is a true
copy as recorded in the official records of
Pinellas County.
This 19th day of August, 2010
KEN BURKE
Clerk of Circuit Court
By: 
Deputy Clerk