

## **AFFIDAVIT IN SUPPORT OF PROBABLE CAUSE**

**BEFORE ME, A NOTARY PUBLIC**, personally appeared Anthony Espinosa who duly sworn says:

### **BACKGROUND OF AFFIANTS**

Your Affiant, Anthony Espinosa, has been employed with the State of Florida for fourteen (14) years. Your Affiant Espinosa was first employed with the Justice Department, Drug Enforcement Administration, as an agent for six (6) years. During this period, your Affiant Espinosa investigated approximately three hundred (300) drug cases. Your Affiant Espinosa was in the employ of the Department of Health, Education and Welfare, Inspector General's Office, as an agent for three (3) years. During this period, your Affiant Espinosa has investigated approximately one hundred fifty (150) Medicare cases. Your Affiant Espinosa was in the employ of the State of Florida, Department of Professional Regulation for two (2) years as a Medical Investigator. Your Affiant Espinosa investigated numerous malpractice complaints and conducted pharmacy audits. For the last twelve (12) years, your Affiant Espinosa has been employed by the State of Florida, Department of Financial Regulations, Bureau of Financial Investigations as a Financial Investigator. Your Affiant Espinosa's present duties and responsibilities include the collection and processing of evidence, taking statements from witnesses and victims, review and analysis of financial records. Your Affiant Espinosa has participated in hundreds of financial investigations involving allegations of white-collar crime and securities fraud. As a result, your Affiant Espinosa has testified in administrative hearings, civil proceedings and criminal trials. Your Affiant Espinosa has a B.A. Degree in Social Science from the University of South Florida, and has received training and attended courses dealing with organized crime, drug crimes, money laundering, white-collar crime, Medicare fraud, computer crime, bank fraud, securities fraud, mortgage fraud, and financial investigative techniques. Your Affiant Espinosa, is employed as a Financial Investigator-Criminal Enforcement and as such is empowered by the Department of Financial Services to investigate violations of the laws of the State of Florida including Chapter 517, 812, 895 and 896, Florida Statutes.

### **SUMMARY OF CRIMINAL VIOLATIONS**

Your Affiant Espinosa has probable cause to believe that between April 1999 to present, PATRICK BOYD KIRKLAND and LAURA M. WADE through the businesses of TROPICAL VILLAGE, INC., CLARITY DEVELOPMENT CORPORATION, and SENIOR ADULT LIVING CORPORATION violated F.S. 517.301 by falsely representing to the investors that each investor would make a significant profit derived from the rental income from the triplex, after operating expenses, debt service, property taxes and their monthly mortgage payments and that their participation was not subject to risk of loss.

Section 517.301, F.S., provides that it is unlawful for any person who offers or sells any security in Florida to scheme to defraud and obtain monies by means of any untrue statement of a material fact, or any omission.....

PATRICK BOYD KIRKLAND and LAURA M. WADE through the businesses of TROPICAL VILLAGE, INC., CLARITY DEVELOPMENT CORPORATION, SENIOR ADULT LIVING CORPORATION engaged in a systematic, ongoing course of conduct and a regular way of

doing business through its long term existence for the purpose of marketing and selling securities in the form of investment contracts for the purchase of Units (triplexes) in developments identified as Harbor Bay Retirement Village Condominium Association, Inc. Kissimmee, Fl., Osceola County; Sunset Bay Club, Inc., New Port Richey, Fl., Pasco County; Pelican Bay Club, Inc., Palm Bay, Fl., Brevard County; Turtle Cove, Inc., Lakeland, Fl., Polk County; Summerhill Senior Village, Marietta, Ga., and Isleworth Adult Community, Houston, Tx. PATRICK BOYD KIRKLAND and LAURA M. WADE through the businesses of TROPICAL VILLAGE, INC., CLARITY DEVELOPMENT CORPORATION and SENIOR ADULT LIVING, INC. engage in the fraudulent sale of securities as contemplated by Chapter 517, Florida Statutes, with the intent to defraud one or more persons, or with the intent to obtain from one or more persons, by false or fraudulent pretenses, representations, or promises, or willful misrepresentations of a future act obtaining property with an aggregate value of \$50,000 or more, a violation of Chapter 817, Florida Statutes.

Further, your Affiant Espinosa has probable cause to believe that during this same time period, PATRICK BOYD KIRKLAND and LAURA M. WADE did sell unregistered securities and act as an unregistered securities dealer in violation of Chapter 517, Florida Statutes.

Further, your Affiant Espinosa has probable cause to believe that during this same time period, PATRICK BOYD KIRKLAND and LAURA M. WADE, knowing that the proceeds from the sale of the securities represented proceeds from an unlawful activity, did engage in financial transactions with the intent to promote the carrying on of the unlawful sale of securities in violation of Chapter 896, Florida Statutes.

Further, your Affiant Espinosa has probable cause to believe that from May 2000 to the April 2005, PATRICK BOYD KIRKLAND and LAURA M. WADE, through the business of TROPICAL VILLAGE, INC. (TROPICAL) and CLARITY DEVELOPMENT CORPORATION, (CLARITY) solicited eighty (80) investors and received deposits totaled 9,148,519 (nine million, one hundred forty eight thousand, five hundred nineteen dollars. Those investors have a potential loss of \$60,602,200 (sixty million, six hundred two thousand, two hundred dollars). Further, TROPICAL's General Ledgers for 2003 and to September 2004, indicates that TROPICAL received approximately 13 million dollars from investors and from December 2004 to September 2005, bank records shows that CLARITY received approximately 3 million dollars from investors, a total of 16 million from January 2003 to September 2005.

Further, your Affiant Espinosa has probable cause to believe that from January 2001 to September 2004, PATRICK BOYD KIRKLAND used the funds for personal and business expenses. These accounts shows that KIRKLAND commingled investor's funds with other deposits and TROPICAL paid over \$8 million to KIRKLAND for personal expenses, over \$788 thousand for expenses related to an airplane that had limited business use, and over \$1 million, 352 thousand for stock purchases made by KIRKLAND in a brokerage account which was in TROPICAL's and KIRKLAND's name, receiving a grand total of over \$10.2 million from TROPICAL. The proceeds represent the sale of unregistered securities in violation of Chapter 517, Florida Statutes.

Further, your Affiant Espinosa has probable cause to believe that from December 2001 to August 2004, LAURA M. WADE, as KIRKLAND's Assistant Secretary and as a TROPICAL's Director, received one hundred thirty seven thousand eight hundred and three dollars (\$137,803) from TROPICAL. WADE is presently the Administration Director of CLARITY DEVELOPMENT. The proceeds represent the sale of unregistered securities in violation of Chapter 517, Florida Statutes.

### **SUMMARY OF FACTS**

Your Affiant Espinosa has learned through his investigation that:

TROPICAL VILLAGE, INC. (TROPICAL) and CLARITY DEVELOPMENT CORPORATION (CLARITY) and SENIOR ADULT LIVING CORPORATION (SENIOR ADULT) are Florida corporations doing business in Florida.

TROPICAL, CLARITY and SENIOR ADULT have a last known principal place of business at 4700 Millenia Boulevard, Suite 340, Orlando, FL.

PATRICK B. KIRKLAND (KIRKLAND) resides at 6131 Louise Court Drive, Windermere, Fl. and conducts business at his office at 4700 Millenia Boulevard, Suite 340, Orlando, Fl.

LAURA M. WADE (WADE) resides at 40107 Oakridge Drive, Lady Lake, Fl. and conducts business at her office at 4700 Millenia Boulevard, Suite 340, Orlando, Fl.

KIRKLAND is presently the Director and President of TROPICAL VILLAGE, INC.

KIRKLAND is presently the Director and President of CLARITY DEVELOPMENT CORPORATION.

KIRKLAND is presently the Director and only officer of SENIOR ADULT LIVING CORPORATION.

TROPICAL was formed by KIRKLAND and others as a corporation in early 1999 with the principal purpose of developing and building housing projects for senior citizens. In Florida, these housing projects operated under the names Harbor Bay, Sunset Bay, Pelican Bay and Turtle Cove. In Houston, Texas, the project is known as Isleworth and in Marietta, Georgia, it is known as Summerhill.

In November 2004, the State of California, Department of Corporations issued a Desist and Refrain Order against TROPICAL and KIRKLAND for violations of California Corporate Code section 25110. The California Corporations Commissioner is of the opinion that the senior triplex investments offered by TROPICAL and KIRKLAND

constitute securities in the form of investment contracts subject to qualification under California Corporation Securities Law of 1968, which have been and are being offered without being qualified. Pursuant to section 25532 of the California Securities Law of 1968, TROPICAL and KIRKLAND were hereby ordered to desist and refrain from further offer or sale in the state of California, securities in the form of senior triplex investments unless and until qualification has been made pursuant to the Corporate Securities Law of 1968 or unless exempt.

In December 2004, KIRKLAND formed CLARITY as a Florida corporation with the principal purpose of advertising and to continue selling the triplexes in Florida, Texas and Georgia to potential investors in California. In June 2005, the State of California, Department of Corporations issued another Desist and Refrain Order against KIRKLAND, WADE, TROPICAL and CLARITY. KIRKLAND, WADE and CLARITY from December, 2004 to May 2005 continued to advertise in Smart Money Magazine. In October 2005, KIRKLAND incorporated SENIOR ADULT and from May to present, it began to advertise in the Wall Street Journal, offering and sell triplexes under the new company SENIOR ADULT, soliciting California investors and investors through out the US for its projects in Georgia, Texas and Florida.

TROPICAL purchased the land on which the triplexes were constructed, designed, developed, obtained the necessary construction permits, and oversaw the construction and purchase the furniture and appliances for the triplexes. The buildings have three stories containing three triplexes, each floor with five private bedroom/bathrooms sharing a common living, dining, and kitchen area.

TROPICAL hired the management companies, such as Premier Management Group, Inc. and Senior Living Management Corporation to manage the operations of the triplexes and solicit tenants for the triplexes. Subsequently TROPICAL created the local newspaper advertisement for tenants, hired and supervised employees from the previous management company, in an effort to solicit tenants for its Florida projects.

TROPICAL sold the triplexes to investors, who, in most cases, made a ten percent (10%) down payment and obtained loans secured by mortgages for the remainder of the purchase price. Depending on the date of sale each Harbor Bay triplex (Unit) was sold for a purchase price between \$595,000 and \$670,000; each Sunset Bay triplex (Unit) was sold between \$595,000 and \$733,000; and each Pelican Bay triplex (Unit) and Turtle Cove triplex were sold for \$733,000. The investors were led to believe that they would make a significant profit from TROPICAL's, CLARITY's and presently SENIOR ADULT's management of their triplexes.

TROPICAL under the control of KIRKLAND has advertised and continues to advertise 35%, 40-45%, 48% and 29% projected returns for their investments in a variety of local and national newspapers, including the Wall Street Journal, New York Times, L.A. Times, San Francisco Chronicle and Money Magazines and through its website address, [www.tropicalvillage.com](http://www.tropicalvillage.com). In the February 2005, TROPICAL advertised in Smart Money magazine, and in later editions, CLARITY, [www.claritydevelopment.net](http://www.claritydevelopment.net), began to

advertise the investments an increase sales price of \$825,000 for each triplex in the projects located in Florida, Atlanta and Houston. TROPICAL and CLARITY has advertised a one (1) year lease back and cash flow statements for each project representing that each investor would make a significant profit derived from the triplex rental income; after operating expenses, debt service, property taxes and mortgage payment. Recently the advertisement appears in the Wall Street Journal, Business Real Estate, Investment Properties, and a new web site created for the new corporation, SENIOR ADULT, [www.senioraduliving.net](http://www.senioraduliving.net).

TROPICAL, CLARITY and KIRKLAND made oral and written representations to some of the investors that a “pooling” arrangement would be established to distribute the costs and profits from the triplexes, and thereby reduce the risk to individual investors. TROPICAL’s and CLARITY Internet website and information sent to potential investors represented that there was a high demand from the local senior citizens for this type of senior housing. The information states, “We get approximately 200 phone calls per day when running very small ads. We have no problems keeping the triplexes full.” Contrary to prospective investors that there is a waiting list of persons wanting to lease and become tenants of either Harbor Bay or Sunset Bay, no such list existed.

Contrary to the investments being a “proven and profitable” investment, the triplexes have always been and are currently operating at a loss. The net income derived from the triplex units is insufficient to pay the operating expenses, much less the debt service. The end result is that investors have had to make payments in order to keep the triplexes operational, and then also make their monthly mortgage payments.

TROPICAL records reflect that the marketing and sales representatives were to receive commissions. They received \$3,000 in commission when the real estate sales contract was returned with the down payment and \$3,000 at closing of each sale. TROPICAL records reflect that from February 2002 to August 2004, TROPICAL paid \$514,981 in commissions.

TROPICAL records reflect that the investor’s earnest deposits were commingled with other deposits and KIRKLAND used the funds for personal and business expenses. From January 2001 to September 2004, TROPICAL paid KIRKLAND \$8,151,861 in personal expenses for KIRKLAND from the same account and \$788,962 for expenses related to an airplane that had limited business use, \$1,352,464 for stock purchases made by KIRKLAND in a brokerage account which was in TROPICAL VILLAGE’s and KIRKLAND’s name for a grand total of ten million, two hundred ninety three thousand, two hundred eighty eight dollars, (\$10,293,288).

Based on the investigation to date (which includes interviews of investors, employees and sales force members), TROPICAL made agreements with most of the previous investors to pay their 6-month mortgage payments as an incentive to investment. Recently TROPICAL and CLARITY has advertised that TROPICAL and /or CLARITY will lease one triplex floor for 12-months and the rental paid each month will equal the

mortgage principal and interest.

Based on the investigation to date (which includes interviews of investors, employees and sales force members), KIRKLAND instructed employees not to purchase furniture for some of the sold units. KIRKLAND and WADE also instructed employees to create fraudulent tenant leases upon closure on some of the triplexes.

Based on the investigation to date (which includes interviews of investors, employees and sales force members), TROPICAL and KIRKLAND sold the same triplexes to several investors and depending upon which investor first qualified, the closing was completed and the other investor was switched to another triplex.

Based on the investigation to date (which includes interviews of investors, employees and sales force members), KIRKLAND inflated the triplex sales price upon closing and made arrangement with the investors that TROPICAL or CLARITY would take a second mortgage and that second mortgage would not be reflected in any of the HUD closing statements.

Based on the investigation to date (which includes interviews of investors, employees and sales force members), KIRKLAND would not return the earnest deposits to those investors who wanted to cancel their contract and to several investors KIRKLAND insisted that the only method to have their deposits return was to close on one of the two sales agreements that the had. TROPICAL records reflect numerous investors' law suits against TROPICAL and KIRKLAND to try to recover their deposits.

TROPICAL records reflect that between January 1, 2001, and February 2005, TROPICAL, CLARITY and SENIOR ADULT LIVING through KIRKLAND, from offices in Florida, offered and sold investment contracts and received approximately \$9 million in earnest deposits from investors.

TROPICAL records reflect that between January 1, 2002, and September 30, 2004, TROPICAL through KIRKLAND, and from offices in Florida, paid \$504,822 to investors as mortgage payments or guaranteed rentals when such rentals did not exist.

Based on the investigation to date (which includes interviews of investors, employees and sales force members), KIRKLAND created the offer and sale of the investment, TROPICAL and CLARITY developed the marketing materials for, "Harbor Bay", "Sunset Bay", "Pelican Bay", "Turtle Cove", "Isleworth", "Summerhill" and various other documents including the sale contracts that were to be signed by each investor at the time of the purchase of the investment.

TROPICAL records, interviews of employees and sales force members, disclosed that TROPICAL, CLARITY and KIRKLAND provided various marketing materials to the marketing and sales agents, which in turn were utilized to offer and sell the investment to the investors.

Based on the investigation to date (which includes interviews of investors, employees and sales force members, as well as through the collection of documents maintained by Tropical, individual investors and sales persons), the marketing materials contained fraudulent misrepresentations and omissions.

The marketing materials misrepresented that TOPICAL was experienced and successful in other senior housing development investments, including similar triplex projects but omitted, based on the total investigation to date (which includes interviews of employees and sales force members, as well as through the collection of documents maintained by TROPICAL), that Harbor Bay in Kissimmee, Florida was KIRKLAND's and TROPICAL's first senior housing development investment.

The Website stated TROPICAL is a privately owned company with a net worth of over \$10 million and that KIRKLAND is the owner and President and has had over thirty years experience in developing and finance in Texas, Georgia and Florida...but omitted the fact that Harbor Bay in Florida was the first TROPICAL project to be advertised and leased to senior citizens.

The marketing materials misrepresented the demand for the type of senior citizen conjugal living offered by TROPICAL by providing demographic trends favoring low-income housing for the elderly, when in fact based on the total investigation to date (which includes interviews of employees and sales force members, as well as through the collection of documents maintained by TROPICAL), Harbor Bay and Sunset Bay noted a reduced demand and general downturn in the number of leases in the projects. KIRKLAND, unknown to the investors, took control of several management companies and allowed short term leasing contracts and reduced leasing prices to try to increase occupancy of the vacant apartments in the projects. Whenever investors contacted the sales person and asked about the unit occupancy rate, they were told to speak to KIRKLAND. The fact is that as of September 30, 2004, the unit occupancy rate at Harbor Bay was 25% and the occupancy rate at Sunset Bay was 21%, both of which were the highest rates since opening. The triplexes for Pelican Bay, Turtle Cove and Isleworth have not been built.

The marketing materials misrepresented the risk associated with the start-up nature of TROPICAL's projects and instead attempted to create a sense of financial stability by focusing on the number of investors who purchased triplexes in Harbor Bay and Sunset Bay and that these triplexes were selling faster than they actually did and/or that the triplexes in the projects have been sold out before they actually did.

The marketing materials misrepresented TROPICAL's pooling arrangement in reducing the investor's losses. In Sunset Bay there were two pools created: one for investors who closed in 2003 and another for those who closed in 2004...the fact is that this pooling arrangement was not disclosed or was misrepresented to the 2004 Sunset Bay investors.

Based on the investigation to date, the investors have sustained damage to their credit ratings, and will likely sustain further damage to their credit ratings in the future if this situation is not adequately resolved. Some investors are unable to continue making mortgage payments due to the triplexes' ongoing financial problems; the delinquent payments and/or pending foreclosure actions will significantly and adversely impact their credit for years to come.

Based on the total investigation to date (which includes interviews of employees and sales force members, as well as through the collection of documents maintained by TROPICAL), KIRKLAND continues to solicit investors through TROPICAL, CLARITY and/or SENIOR ADULT for Sunset Bay, Pelican Bay, Turtle Cove, Isleworth and Summerhill projects and advertises the triplex at a selling price of \$825,000.

### **REGISTRATION STATUS UNDER CHAPTER 517**

At all times material to this action, TROPICAL, CLARITY, SENIOR ADULT, KIRKLAND and WADE were not registered as an "issuer," "dealer" or in any other capacity pursuant to the registration provisions of Chapter 517, Florida Statutes.

At all times material to this action, the investment contracts were not registered as a "security" pursuant to the registration provisions of Chapter 517, Florida Statutes.

Florida Securities and Investor Protection Act, Chapter 517, Florida Statutes (F.S.). Section 517.07, (17) (q) defines an investment contract as a security. Section 517.07, F.S., provides that it is unlawful for any person to offer or sell any security unless said securities are registered under the Act or the security or transaction is exempt under Sections 517.051 or 517.061, F.S.

Section 517.12(1) states that "No dealer or issuer of securities shall sell or offer for sale any securities in or from offices in this State...unless the person has been registered with the Office of Financial Regulation, Department of Financial Services pursuant to the provision of this Section."

### **FRAUD UNDER CHAPTER 517**

Section 517.301, Florida Statutes, entitled **Fraudulent transactions; falsification or concealment of facts**, provides at subsection (2) a definition of the term "investment" for purposes of Sections 517.301, 517.311 and 517.312.

Section 517.301, Florida Statutes, provides at section (1)(a)2 the following:

- (1) It is unlawful and a violation of the provisions of this chapter:
  - (a) In connection with the rendering of any investment advice or in connection with the offer, sale, or purchase of any investment or security, including any security exempted under the provisions

of s. 517.051 and including any security sold in a transaction exempted under the provisions of s. 517.061, directly or indirectly:

1. ...
2. To obtain money or property by means of any untrue statement of a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; ....

Section 517.07, Florida Statutes, entitled **Registration of securities**, provides at subsection (1) the following:

(1) It is unlawful and a violation of this chapter for any person to sell or offer to sell a security within this state unless the security is exempt under s. 517.051, is sold in a transaction exempt under s. 517.061, is a federally covered security, or is registered pursuant to this chapter.

Section 517.12, Florida Statutes, entitled **Registration of dealers, associated persons, investment advisers, and branch offices**, provides at subsection (1) the following:

(1) No dealer, associated person, or issuer of securities shall sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with the office pursuant to the provisions of this section. The office shall not register any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully registered with the office pursuant to this chapter.

Section 517.021, Florida Statutes, entitled **Definitions**, provides at subsections, (6)(a), (14), and (18) the following definitions:

(6)(a) "Dealer" includes any of the following:

1. Any person, other than an associated person registered under this chapter, who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
2. Any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by the issuer.

\* \* \*

(14) "Issuer" means any person who proposes to issue, has issued, or shall hereafter issue any security. Any person who acts as a promoter for and on behalf of a corporation, trust, or unincorporated association or partnership of any kind to be formed shall be deemed an issuer.

On 86 occasions, Tropical offered and sold securities, from offices within the state of Florida or to persons within the state of Florida without being registered by the Office of Financial Regulation.

**CONCLUSION:**

Based on the information provided herein PATRICK BOYD KIRKLAND and LAURA M. WADE are in violation of Chapter 517, Florida Statutes for the fraudulent sale of unregistered securities, sale of securities by an unregistered dealer, sale of unregistered securities, scheme to defraud pursuant to FS 817.034 and theft, F.S. 812.014.

**RECOMMENDATIONS**

Your Affiant requests this Honorable Court to find probable cause for violation of Chapter 817, Organized Scheme to Defraud, Chapter 517, Sale of Unregistered Securities, and Sale of a Security by an Unregistered Dealer, Florida Statutes and issue a capias.

\_\_\_\_\_  
Anthony Espinosa,  
Financial Investigator/Criminal Enforcement  
Department of Financial Services

State of Florida  
County of Orange

Sworn to and subscribed before me this \_\_\_th day of, February 2006 by Anthony Espinosa.

\_\_\_\_\_  
Notary Public

Personally known to me.