

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

EAGLE RIDGE SEBRING LIMITED
PARTNERSHIP,

Petitioner,

vs.

FHFC Case No: 2003-034
Application No. 2003-136C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**AMENDED PETITION FOR
INFORMAL ADMINISTRATIVE HEARING**

Petitioner, EAGLE RIDGE SEBRING LIMITED PARTNERSHIP (“Eagle Ridge”), pursuant to sections 120.569 and 120.57(2), Florida Statutes, and Rules 67-48.005 and 28-106.301, Florida Administrative Code (“F.A.C.”), hereby requests an informal administrative hearing to challenge the rejection of its Application for 2003 tax credit financing by Respondent, the FLORIDA HOUSING FINANCE CORPORATION (“FHFC”), and states:

1. The name and address of the agency affected by this action are:

Florida Housing Finance Corporation
City Center Building, Suite 5000
227 N. Bronough Street
Tallahassee, Florida 32301-1329

2. The address and telephone number of the Petitioner are:

Eagle Ridge Sebring Limited Partnership
247 N. Westmonte Drive
Altamonte Springs, FL 32714
Telephone No. (407) 772-0200

3. The name, address, telephone number, and fax number of the Petitioner's representative, which shall be the Petitioner's address for service purposes during the course of this proceeding, are:

Warren H. Husband
Metz, Hauser & Husband, P.A.
P.O. Box 10909
Tallahassee, Florida 32302-2909
Telephone No. (850) 205-9000
Facsimile No. (850) 205-9001

The Low-Income Housing Tax Credit Program

4. The United States Congress has created a program, governed by Section 42 of the Internal Revenue Code ("IRC"), by which federal income tax credits are allotted annually to each state on a per capita basis to encourage private developers to build and operate affordable low-income housing for families. These tax credits entitle the holder to a dollar-for-dollar reduction in the holder's federal tax liability, which can be taken for up to ten years if the project continues to satisfy all IRC requirements.

5. The tax credits allocated annually to each state are awarded by state "housing credit agencies" to single-purpose applicant entities created by real estate developers to develop specific multi-family housing projects. An applicant entity will then sell this ten-year stream of tax credits, typically to a "syndicator," with the sale

proceeds generating much of the funding necessary for development and construction of the project. The equity produced by this sale of tax credits in turn reduces the amount of long-term debt required for the project, making it possible to operate the project at rents that are affordable to low-income and very-low-income tenants.

6. Pursuant to section 420.5099, Florida Statutes, FHFC is the designated “housing credit agency” for the State of Florida and administers Florida’s low-income housing tax credit program. Through this program, FHFC allocates Florida’s annual fixed pool of federal tax credits to developers of affordable housing.

7. Because FHFC’s available pool of federal tax credits each year is limited, qualified projects must compete for this funding. To assess the relative merits of proposed projects, FHFC has established a competitive application process pursuant to Chapter 67-48, F.A.C. Specifically, FHFC’s application process for 2003, as set forth in Rules 67-48.002-.005, F.A.C., involves:

- a. the publication and adoption by rule of an application package;
- b. the completion and submission of applications by developers;
- c. FHFC’s preliminary scoring of applications;
- d. an initial round of administrative challenges in which an applicant may take issue with FHFC’s scoring of another application by filing a Notice of Possible Scoring Error (“NOPSE”);
- e. FHFC’s consideration of the NOPSE’s submitted, with notice to applicants of any resulting change in their preliminary scores;
- f. an opportunity for the applicant to submit additional materials to FHFC to “cure” any items for which the applicant received less than the maximum score;

- g. a second round of administrative challenges whereby an applicant may raise scoring issues arising from another applicant's cure materials by filing a Notice of Alleged Deficiency ("NOAD");
 - h. FHFC's consideration of the NOAD's submitted, with notice to applicants of any resulting change in their scores;
 - i. an opportunity for applicants to challenge, via informal or formal administrative hearings, FHFC's evaluation of any item for which the applicant received less than the maximum score; and
 - j. final scores, ranking, and allocation of tax credit funding to applicants through the adoption of final orders.
8. The substantive criteria FHFC must use in evaluating a project competing

for tax credit funding are set forth in FHFC's governing statute as follows:

The corporation shall adopt allocation procedures that will ensure the maximum use of available tax credits in order to encourage development of low-income housing in the state, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.

§420.5099(2), Fla. Stat. (2002) (emphasis added).

9. In addition, as required by the IRC provisions that govern the tax credit program, the substantive criteria that FHFC must use in selecting projects for funding are also set forth in a Qualified Allocation Plan ("QAP"). A new QAP is promulgated each year by FHFC and adopted by rule. See Rules 67-48.002(91) and 67-48.025, F.A.C. Among the selection criteria established in the QAP for the 2003 tax credit funding cycle are the following:

C. Development Characteristics:

- * Developments which offer the most efficiency in development and thereby the best and most efficient use of the housing credits will be targeted in the following categories:
 - Experience of Development Team
 - Development Funding, Feasibility and Economic Viability
 - Ability to Proceed
 - Construction Features and Amenities
 - Leveraging
 - Equity Realized from Sale of Credits
 - Energy Conservation

FHFC 2003 Qualified Allocation Plan, p. 7 (emphasis added).

10. As the underlined statutory and QAP provisions dictate, the economic viability and readiness of a project are important substantive criteria that must be evaluated in assessing the relative merit of an application for tax credit funding. FHFC obviously makes more efficient use of the state's tax credits when it allocates them to an applicant that has: (a) prepared a complete and detailed budget contemplating all of the costs of developing the project; and (b) worked with financially responsible lenders and tax credit syndicators to obtain their commitments to provide all of the financing the applicant needs to cover these costs.

11. To insure that the lender or syndicator involved has done its due diligence on a project and is solidly committed to making specific financing for the project available to the applicant, FHFC asks applicants to include in their applications binding, or "firm," commitment letters from their lenders and syndicators. These "firm"

commitments differ from commitments that might be labeled as merely “tentative” or “conditional,” in which the lender’s or syndicator’s commitment is conditioned upon a more detailed review of the project at some future date.

12. Demonstrating the economic viability and readiness of a project via binding funding commitments covering the entire cost of the project is a threshold item, the failure of which results in rejection of the application and its ineligibility to compete for funding. See FHFC 2003 Application Instructions, pp. 61-62 (¶13) and p. 64 (¶5, ¶5.a.).¹

13. In keeping with the above distinction drawn between “firm” and “conditional” commitments, page 57 of FHFC’s 2003 Application Instructions provides that a “firm” commitment letter must state “[a]ll conditions that are required to be met prior to funding,” and the letter must not be subject to any further “committee approval” or the like.

14. In addition, pages 57-58 of FHFC’s Application Instructions state as follows:

A firm commitment must contain:

- terms
- interest rate
- signature of all parties, including acceptance by the Applicant
Note: In order to be considered ‘firm’, Local Government financial commitments are not required to be signed by the

¹ Effective April 6, 2003, FHFC adopted by reference in its rules the Universal Application Package for FHFC’s 2003 tax credit funding cycle, which includes the referenced Application Instructions. See Rule 67-48.002(111), F.A.C.

Applicant if the Applicant provides the properly completed Local Government Verification of Contribution Form along with, where applicable, the required supporting documentation.

- a statement that states the commitment does not expire before December 31, 2003, with the exception of Local Government-issued tax-exempt bonds.

Eagle Ridge's 2003 Tax Credit Application

15. On or about April 8, 2003, Eagle Ridge and others submitted applications for financing in FHFC's 2003 funding cycle. Eagle Ridge (FHFC Applic. No. 2003-136C) applied for \$700,000 in annual tax credits to help finance its project, a 100-unit garden-style apartment complex in Sebring, Florida. All of these units are dedicated to housing families earning 30-60% or less of the area median income.

16. In its original application, Eagle Ridge included a syndication commitment letter from Columbia Housing Partners Limited Partnership ("Columbia"), as well as a loan commitment letter from Columbia's parent company, PNC Bank.² See Exhibit A and Exhibit B.³

17. Both the loan and syndication commitment letters are dated March 28, 2003, and both bear the authorized signature of Mr. Robert G. Courtney, who is a Vice President of PNC Bank and also a Vice President of the general partner of Columbia. On

² Columbia is a wholly owned subsidiary of PNC Bank. See Exhibit J (Affidavit of Robert G. Courtney).

³ All referenced Exhibits are attached to this Petition and incorporated herein by reference.

page 5, paragraph 8.D., the Columbia syndication commitment letter specifically cross-references the PNC Bank loan commitment letter as follows:

Construction and term financing shall be provided by Columbia Housing, through its parent company, PNC Bank N.A. in accordance with the terms and conditions of the firm commitment issued by PNC Bank, N.A. March 28, 2003

18. In fact, during March and April 2003, PNC Bank and Columbia provided, through Mr. Courtney's office, loan commitment letters and syndication commitment letters, respectively, to 17 different applicants for 2003 tax credit or tax credit/SAIL funding. These commitment letters were included in the following applications, as identified by FHFC's application reference numbers: 2003-009C; 2003-104CS; 2003-105C; 2003-106C; 2003-107CS; 2003-119C; 2003-120C; 2003-132C; 2003-134CS; 2003-135C; 2003-136C (Eagle Ridge); 2003-137CS; 2003-138C; 2003-139CS; 2003-140CS; 2003-142C; and 2003-143C.

19. All of the loan commitment letters issued to these 17 applicants were materially identical to each other, except for project-specific variables, e.g., name of project, location, number of units, loan amount, etc., and all of these letters bore Mr. Courtney's authorized signature. See Exhibit B (original loan commitment letter for Eagle Ridge) and Exhibit C (composite of original loan commitment letters from the 16 other applications listed in ¶18).

20. Likewise, all of the syndication commitment letters issued to these 17 applicants were materially identical to each other, except for similar project specific variables, and all of these letters bore Mr. Courtney's authorized signature. See Exhibit A

(original syndication commitment letter for Eagle Ridge) and Exhibit D (composite of original syndication commitment letters from the 16 other applications listed in ¶18).

21. In its initial scoring, notice of which was received by applicants on June 10, 2003, FHFC scored all of these loan and syndication commitment letters issued by PNC Bank and Columbia as conditional commitments rather than firm commitments. FHFC deemed the loan commitment letters conditional because FHFC determined that the letters did not sufficiently state an interest rate for the loans in accordance with FHFC requirements. Of course, the interest rate is a key term in any loan, and leaving the interest rate undefined for later determination might suggest that the loan commitment is something less than fully binding, e.g., the lender might ultimately arrive at an interest rate that the borrower believes is unacceptable, thus preventing the closing of the loan.

22. In addition, because the syndication commitment letters specifically referenced the loan commitment letters, which FHFC had now determined to be conditional, FHFC also deemed the syndication commitment letters conditional. See Exhibit E (FHFC Scoring Summary for Eagle Ridge) and FHFC Scoring Summaries for the 16 other applications listed in ¶18.

23. As a result, in the seven business days from June 10 to June 19, 2003, Mr. Courtney's office was asked to issue revised loan commitment letters to the following 15 applicants: 2003-009C; 2003-104CS; 2003-105C; 2003-106C; 2003-107CS; 2003-119C; 2003-132C; 2003-134CS; 2003-136C (Eagle Ridge); 2003-137CS; 2003-138C; 2003-139CS; 2003-140CS; 2003-142C; and 2003-143C. These revised letters were included in

the “cure” materials provided by the respective applicants to FHFC on June 19, 2003.⁴

24. All of the revised loan commitment letters issued to these 15 applicants were materially identical to each other, except for project-specific variables, e.g., name of project, location, number of units, loan amount, etc. Moreover, all of these revised loan commitment letters were materially identical to the original loan commitment letters issued to these 15 applicants in March and April 2003 for inclusion in their original applications, except for changes in the interest rate section of the letters necessitated by FHFC’s initial scoring. See Exhibit F (revised loan commitment letter for Eagle Ridge) and Exhibit G (composite of revised loan commitment letters from the 14 other applications listed in ¶23).

25. In addition, because the syndication commitment letters contained in the original applications referenced the original loan commitment letters by date, Mr. Courtney’s office also issued, during this same seven-business-day period from June 10 to June 19, 2003, revised syndication commitment letters to the following 14 applicants: 2003-009C; 2003-104CS; 2003-105C; 2003-106C; 2003-107CS; 2003-119C; 2003-134CS; 2003-136C (Eagle Ridge); 2003-137CS; 2003-138C; 2003-139CS; 2003-140CS; 2003-142C; and 2003-143C. These revised letters were included in the “cure” materials provided by the respective applicants to FHFC on June 19, 2003.⁵

⁴ Two of the original 17 applicants (Applic. #2003-120C and #2003-135C) did not seek to cure their loan and syndication commitment letters.

⁵ For Application #2003-132C, the revised loan commitment letter was issued with the same date as the original loan commitment letter, so no revision to the syndication commitment letter was deemed necessary.

26. All of the revised syndication commitment letters issued to these 14 applicants were materially identical to each other, except for project-specific variables. Moreover, all of these revised syndication commitment letters were materially identical to the original syndication commitment letters issued to these 14 applicants in March and April 2003 for inclusion in their original applications, except to update a cross-reference to the date of the revised loan commitment letters. See Exhibit H (revised syndication commitment letter for Eagle Ridge) and Exhibit I (composite of revised syndication commitment letters from the 13 other applications listed in ¶25).

27. Through a clerical oversight in Mr. Courtney's office, however, one of the 29 revised loan and syndication commitment letters that his office issued inadvertently omitted Mr. Courtney's authorized signature – the revised loan commitment letter for Eagle Ridge (Applic. #2003-136C). See Exhibit F.

28. Nonetheless, both the revised loan and revised syndication commitment letters for Eagle Ridge were from Mr. Courtney and dated June 13, 2003. Moreover, the revised syndication commitment letter signed by Mr. Courtney specifically references the revised loan commitment letter by date and treats it as a solid financing commitment:

Construction and term financing shall be provided by Columbia Housing, through its parent company, PNC Bank N.A. in accordance with the terms and conditions of the firm commitment issued by PNC Bank, N.A. June 13, 2003

See Exhibit H, p.5 (¶8.D.) (emphasis added).

29. Despite the above facts, Eagle Ridge received notice from FHFC on July 22, 2003, that FHFC deemed the revised loan commitment letter conditional, i.e., not

“firm,” because Mr. Courtney’s signature did not appear on the letter. In addition, FHFC also deemed the revised syndication commitment letter conditional because it specifically referenced and was premised upon the revised loan commitment letter, which FHFC had now determined to be conditional for lack of a signature. See Exhibit E.⁶

30. Thus, because the revised loan commitment letter did not satisfy FHFC’s specific signature requirement, FHFC determined that Eagle Ridge did not have binding funding commitments in place to cover the entire cost of the project. Based upon this determination, FHFC concluded that Eagle Ridge failed this threshold item and that Eagle Ridge had failed to substantively demonstrate the economic viability and readiness of its project. This action effected a rejection of the Eagle Ridge application and rendered it ineligible to compete for 2003 tax credit funding, significantly impairing Eagle Ridge’s substantial interests. See Exhibit E.

31. Based on all of the above circumstances, however, the omission of Mr. Courtney’s signature from the revised June 13 loan commitment letter is plainly nothing more than a clerical error, which does not convert this otherwise legally binding commitment to one that is conditional. This clerical error does not diminish PNC Bank’s continuing commitment to loan funds to Eagle Ridge and to have its subsidiary, Columbia, purchase the project’s tax credits. As evidenced in both the original and revised commitment letters, PNC Bank and Columbia have performed their due diligence

⁶ In scoring the revised letters provided by Mr. Courtney to the 14 other applicants listed in paragraph 23, FHFC determined that all of these letters were “firm” commitments. See FHFC Scoring Summaries for the 14 other applications listed in ¶23.

on this project and are solidly committed to providing funds to Eagle Ridge. This clerical error certainly cannot be construed to indicate that PNC Bank is retreating from its original loan commitment, or that PNC Bank is refusing to make the loan specified in the revised loan commitment letter.

32. The fact that this omission is nothing more than a clerical error is made clear by the following:

- a. For purposes of the original applications, Mr. Courtney's office issued materially identical loan and syndication commitment letters to 17 applicants, including Eagle Ridge;
- b. In the seven-business-day period for preparation of cure materials, Mr. Courtney's office issued a total of 29 revised loan commitment letters and syndication commitment letters, which were materially identical to each other, respectively, and to the corresponding original loan and syndication commitment letters, except for changes necessitated by FHFC's initial scoring;
- c. Of these 29 revised loan and syndication commitment letters, only one omitted Mr. Courtney's signature – the revised loan commitment letter for Eagle Ridge;
- d. At the same time Mr. Courtney's office issued this revised June 13 loan commitment letter for Eagle Ridge, Mr. Courtney's office contemporaneously issued a revised June 13 syndication commitment letter for Eagle Ridge;
- e. The revised June 13 syndication commitment letter specifically references by date the revised June 13 loan commitment letter and treats it as firm;
- f. All of the original and revised loan letters are from the offices of the same individual, Mr. Robert G. Courtney, who is both a Vice President of PNC Bank and a Vice President of the general partner of Columbia, a wholly owned subsidiary of PNC Bank; and
- g. As requested by the lender, Eagle Ridge lawfully accepted the revised loan commitment letter, as indicated by its signature.

33. Notably, while PNC Bank's obligations under the revised loan commitment letter are expressly made contingent upon Eagle Ridge's execution and return of the letter within 30 days, PNC Bank's obligations are not expressly made contingent upon specific execution of the letter by PNC Bank. See Exhibit F, p.4 (second closing paragraph).

34. Moreover, "[e]ven if parties do not sign a contract, they may be bound by the provision of the contract, if . . . they acted as if the provisions of the contract were in force." Sosa v. Shearform Manufacturing, 784 So. 2d 609, 610 (Fla. 5th DCA 2001); James Register Constr. Co. v. Bobby Hancock Acoustics, Inc., 535 So. 2d 339 (Fla. 1st DCA 1988). Where parties contemporaneously execute an agreement that is referenced in, and plainly premised upon the validity of, a separate unsigned agreement, they are certainly acting as if that unsigned agreement is valid and binding. Integrated Health Servs. of Green Briar, Inc. v. Lopez-Silvero, 827 So. 2d 338, 339 (Fla. 3d DCA 2002) (holding nursing home admission contract binding on nursing home despite its failure to sign where nursing home and resident signed several other documents on same day that were referenced in unsigned admission contract). Here, where Mr. Courtney and Eagle Ridge contemporaneously signed the revised syndication commitment letter, which specifically referenced the revised loan commitment letter, both parties were clearly acting as if the revised loan commitment letter was a valid and binding commitment.

35. Finally, while the circumstances alone make clear that the omission of Mr. Courtney's signature was a simple clerical error, this conclusion is further confirmed by

the attached affidavit of Mr. Courtney. See Exhibit J (Affidavit of Robert G. Courtney).⁷

36. Thus, as a matter of both fact and law, FHFC cannot reasonably conclude that the omission of Mr. Courtney's signature on the revised loan commitment letter was anything other than a clerical error. This clerical error does not materially detract from PNC Bank's continuing and binding commitment to loan funds to Eagle Ridge and to have PNC Bank's subsidiary, Columbia, purchase the project's tax credits. As such, the commitment letters included in Eagle Ridge's application demonstrate that this project meets the substantive criteria of being both economically viable and ready to proceed.

37. As such, just as in last year's case of Tuscany Village Associates, Ltd. v. FHFC, FHFC Case No. 2002-0048 (Applic. #2002-006C) (Final Order Oct. 10, 2002), FHFC's rejection of the Eagle Ridge application should be reversed. In 2002, just as in

⁷ Consideration of such an affidavit by FHFC and by its designated hearing officer is permissible with regard to a cure document that FHFC has initially determined does not meet FHFC requirements. See The Meridian Housing Limited Partnership v. FHFC, FHFC Case No. 2002-0027 (Applic. #2002-110S), Final Order (Oct. 10, 2002) & Petition for Informal Administrative Hearing (Aug. 9, 2002) (applicant claimed in its cure materials a "Just 99 Cents" store as a grocery store for proximity points; FHFC initially refused to award points, but later reversed its position based upon an affidavit attached to applicant's petition that store met all FHFC requirements); TWC Sixty-Seven, Ltd. v. FHFC, FHFC Case No. 2002-0040 (Applic. #2002-113BS) Final Order (Oct. 10, 2002) & Petition for Formal Administrative Hearing (Aug. 13, 2002) (applicant offered proof in its cure materials that the "Quality Meat Market" claimed as a grocery store in its application met all FHFC requirements; FHFC initially refused to award points, but later reversed its position based upon photos attached to applicant's petition of the products carried by the store; Hatton House Senior Housing Partners, Ltd. v. FHFC, FHFC Case No. 2002-0034 (Applic. #2002-164S) (Final Order Oct. 10, 2002) (FHFC rejected a road verification form because the signatory was a city councilman rather than the local government's road department head; FHFC's designated hearing officer reversed FHFC and found signatory sufficient based in part upon minutes of city council meeting at which appointment as department head was made).

2003, one of the threshold items an applicant had to demonstrate in its application in order to satisfy the substantive criterion of “readiness to proceed” was the availability of various elements of infrastructure to service the proposed project, e.g., electricity, water, sewer, roads.

38. To satisfy this threshold item, FHFC’s Application required that the applicant supply a letter from each service provider containing specific representations about the availability of service. Moreover, the letter was expressly required to be “dated within 12 months of the Application Deadline.” FHFC 2002 Application Instructions, pp. 17-18 (emphasis added). This time requirement helped insure that a provider’s evaluation of its capacity to serve the proposed project would be relatively recent and thus more binding, since the continuing validity of an older assessment of capacity might be diminished by subsequent development in the area or other events.

39. In 2002, the Application Deadline was April 15, 2002, requiring all infrastructure verification letters to be dated no earlier than April 15, 2001. Because the initial road verification letter contained in its original application was deemed deficient by FHFC, the applicant in Tuscany Village provided in its cure materials a revised letter. The service provider executing the revised letter dated it April 12, 2001. Since the letter was plainly dated three days outside the permissible time frame expressly required in FHFC’s Application Instructions, FHFC found that the application failed this threshold item and rejected it.

40. The applicant challenged FHFC's action, arguing that the service provider had mistakenly dated the letter April 12, 2001, instead of the actual date of execution, April 12, 2002, which would have made the letter recent enough to satisfy FHFC's specific date requirement. The applicant argued that, examining the application as a whole, FHFC should have concluded that the service provider had merely committed a clerical error in dating the road verification letter, as evidenced by the fact that all of the other documents in the application were dated well after April 12, 2001, including all of the other infrastructure verification letters, which were dated in March and April 2002.

41. Despite FHFC's express requirement that the letter be dated no earlier than April 15, 2001, FHFC's designated hearing officer reversed FHFC's rejection of the Tuscany Village application. Based upon a "reading of the complete application," the hearing officer concluded that the April 12, 2001 date on the letter was "a typographical, clerical or scrivener's error." Tuscany Village, FHFC Case No. 2002-0048 (Applic. #2002-006C), Recommended Order, p.6, ¶15 (Final Order Oct. 10, 2002). Thus, despite the letter's express failure to satisfy FHFC's formalistic requirement that it be "dated within 12 months of the Application Deadline," the hearing officer concluded that the applicant had supplied a road verification letter that was sufficiently recent to reliably demonstrate the substantive issue of the availability of road infrastructure to the project.

42. Thus, the application in Tuscany Village was permitted to compete for funding based upon its substantive merits, which ultimately served FHFC's statutory mandate to select projects that are truly "ready to proceed." By contrast, if the Tuscany

Village application had been denied the opportunity to compete for funding due to this technical error in documentation, FHFC would have been in a position to award funds to projects that were actually inferior to Tuscany Village with regard to some or all of the substantive criteria set forth in statute and in the QAP, thwarting the most efficient use of the state's available pool of funding.

43. Similarly, FHFC's grounds for rejecting the Eagle Ridge application are based upon an obvious clerical error in documentation that has run afoul of an FHFC technical requirement regarding signatures. Substantively, however, the circumstances make clear that Eagle Ridge has demonstrated the economic viability and readiness of its project by providing binding financing commitments from its lender and syndicator, thus evidencing the lender's and syndicator's substantive review of the project. Under the circumstances presented, it is not reasonable for FHFC to conclude that the absence of Mr. Courtney's signature indicates that such review has not been completed and that PNC Bank is not ready and committed to lend funds to the project. On the contrary, it is reasonable to conclude that the omission of Mr. Courtney's signature was nothing more than a clerical error stemming from the volume of letters and time constraints involved. As such, this technical omission does not warrant the rejection of the Eagle Ridge application.

44. Indeed, rejection of the Eagle Ridge application would be contrary to FHFC's mandate to make the most efficient use of the state's available tax credits, because it would deny Eagle Ridge the opportunity to compete for funding based upon

the substantive merits of its application as measured against the statutory and QAP criteria. Rejection for this obvious clerical error, instead of evaluating Eagle Ridge's true economic viability and readiness to proceed, would result in funding being awarded to applicants that are actually inferior to Eagle Ridge with regard to some or all of the substantive criteria set forth in statute and in the QAP.

45. In sum, the inadvertent omission of Mr. Courtney's signature from one of the 29 revised commitment letters his office had to prepare does not materially detract from PNC Bank's continuing commitment to lend funds to Eagle Ridge, nor does it demonstrate that Eagle Ridge has failed to secure the necessary funding to finance the project. Eagle Ridge has demonstrated that it has binding financing commitments from its lender and syndicator in place, and Eagle Ridge has demonstrated the economic viability and readiness of its project as required by section 420.5099 and by the 2003 QAP.

Eagle Ridge's Original Loan Commitment Letter Is a Firm Commitment That Demonstrates the Economic Viability and Readiness of Its Project

46. In the alternative, even if the revised loan commitment letter is deemed non-binding and therefore not "firm," the original loan commitment letter submitted in Eagle Ridge's application, dated March 28, 2003, did comply with FHFC's application requirements regarding the statement of an interest rate. As such, contrary to FHFC's initial scoring, the original loan and syndication commitment letters supplied by Eagle Ridge are "firm" funding commitments that cover the total project cost, demonstrating the economic viability and readiness of its project.

47. The original loan commitment letter supplied in Eagle Ridge's application contained the following information in the "Interest Rates" section:

The Construction/Term loan shall have a pre-committed fixed rate of interest per annum . . . as established at the Construction Loan closing by Lender. The underwritten construction./term debt interest rate is 7.50%, subject to adjustment in the event market conditions change prior to closing.

See Exhibit B, p.2. FHFC deemed this loan commitment "conditional" rather than "firm," because it "does not clearly or absolutely state the interest rate." See Exhibit E, p.2. This alleged defect is based upon language from page 57 of FHFC's 2003 Application Instructions, which states that a "firm commitment must contain . . . [an] interest rate." See Exhibit K (Excerpt from 2003 Application Instructions)

48. In 2002, however, FHFC did not apply this exact same interest rate requirement in the same manner, and deemed 2002 loan commitment letters from PNC Bank with materially identical interest rate language as "firm" funding commitments.

49. As stated, the above-quoted interest rate requirement from FHFC's 2003 Application Instructions is identical to the interest rate requirement set forth in FHFC's 2002 Application Instructions. Compare Exhibit K with Exhibit L (Excerpt from 2002 Application Instructions). In 2002, the same developer that prepared the Eagle Ridge application, Picerne Affordable Development, LLC, submitted applications for two other projects, each with loan commitment letters from PNC Bank. These loan commitment letters stated the interest rate on the loans as follows:

Interest during construction for the Construction Loan shall be Prime floating as determined by Lender. The Term Loan shall have a pre-committed fixed rate of interest per annum . . . as established at the Construction Loan closing by Lender. The underwritten term debt interest rate is 8.15%, subject to adjustment in the event market conditions change prior to closing.

See Exhibit M, p.2 (Loan Commitment Letter for Woodland Point (#2002-147C)) and Exhibit N (Loan Commitment Letters (original and revised, both underwritten at 8.00%) for Covington Point (#2002-142CS)).

50. Despite the fact that the interest rate language for the term loans in these 2002 loan commitment letters is identical to the interest rate language for the construction and term loans in Eagle Ridge's original loan commitment letter, FHFC did not reject these 2002 loan commitment letters as conditional for failing to state an interest rate for the term loans. See Exhibit O and Exhibit P. In fact, both applications met all threshold requirements and one (Woodland Point) was actually funded with tax credits in the 2002 cycle.

51. FHFC is not free to simply "change its mind" as to what does or does not constitute an "interest rate" pursuant to its application requirements. Absent a change in the language of the application's interest rate requirements, e.g., "a firm commitment must state an absolute interest rate, established as of the date of the letter, expressed either as a fixed rate or as a point spread above a defined benchmark interest rate," FHFC cannot alter its interpretation of those requirements from year to year, leaving applicants to guess at what each term in the application may or may not mean. See Cleveland Clinic

Florida Hospital v. AHCA, 679 So. 2d 1237, 1241-42 (Fla. 1st DCA 1996) (agency may implement its changed policy only by adopting subsequent rule changes), rev. denied, 695 So. 2d 701 (Fla. 1997); Brookwood-Walton County Convalescent Center v. AHCA, 845 So. 2d 223, 228-229 (Fla. 1st DCA 2003).

52. Eagle Ridge and its developer naturally relied upon FHFC's application of its 2002 requirements for a "firm" funding commitment in securing commitment letters for the 2003 Eagle Ridge application. Eagle Ridge, like all applicants in FHFC's 2003 funding cycle, was entitled to rely upon FHFC's application in 2002 of identical interest rate requirements, and FHFC is estopped from adopting a contrary interpretation of these same requirements in 2003.

53. Interest rate language that was deemed acceptable in 2002, absent a change in FHFC's application requirements, must also be deemed acceptable in 2003. As such, the original loan commitment letter submitted in Eagle Ridge's application, dated March 28, 2003, complied with FHFC's application requirements regarding the statement of an interest rate. The original loan and syndication commitment letters supplied by Eagle Ridge are "firm" funding commitments that cover the total project cost, demonstrating the economic viability and readiness of its project.

WHEREFORE, Petitioner, Eagle Ridge Sebring Limited Partnership, requests that:

a. FHFC score the original and/or revised loan and syndication commitment letters as firm commitments, reinstate Eagle Ridge's Application, and allow Eagle Ridge to compete for 2003 tax credit funding from FHFC;

b. FHFC conduct an informal hearing on the matters presented in this Petition if there are no disputed issues of material fact to be resolved;

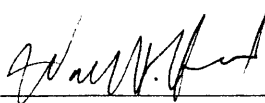
c. FHFC forward this Petition to DOAH for a formal administrative hearing pursuant to section 120.57(1), Florida Statutes, if there are disputed issues of material to be resolved, or if non-rule policy forms the basis of any FHFC actions complained of herein;

d. FHFC's designated hearing officer or an Administrative Law Judge, as appropriate, enter a Recommended Order directing FHFC to score the original and/or revised loan and syndication commitment letters as firm commitments, to reinstate Eagle Ridge's Application, and to allow Eagle Ridge to compete for 2003 tax credit funding from FHFC;

e. FHFC enter a Final Order scoring the original and/or revised loan and syndication commitment letters as firm commitments, reinstating Eagle Ridge's Application, and allowing Eagle Ridge to compete for 2003 tax credit funding from FHFC; and

f. Eagle Ridge be granted such other and further relief as may be deemed just and proper.

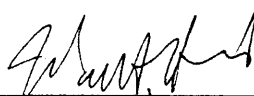
Respectfully submitted on this 18th day of August, 2003.



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850/205-9000
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a true and correct copy of the foregoing document were served via hand delivery to the **CORPORATION CLERK**, Florida Housing Finance Corporation, 227 N. Bronough Street, City Center Building, Suite 5000, Tallahassee, Florida, 32301-1329, on this 18th day of August, 2003.



Attorney