

**STATE OF FLORIDA**

**FLORIDA HOUSING FINANCE CORPORATION**

FOUNTAIN TERRACE APARTMENTS  
LIMITED PARTNERSHIP

Petitioner,

v.

Florida Housing Case No.: 2008-102UC  
Application No.: 2008-018CS

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

\_\_\_\_\_ /

**FINAL ORDER**

This cause came before the Board of Directors of the Florida Housing Finance Corporation (“Board”) for consideration and final agency action on June 5, 2009. After a review of the record and hearing oral presentations by counsel for the parties, and otherwise being fully advised in these proceedings,

On or before April 7, 2008, Fountain Terrace Apartments Limited Partnership, (“Petitioner”), submitted its 2008 Universal Cycle Application (“Application”) to Florida Housing Finance Corporation (“Florida Housing”) to compete for State Apartment Incentive Loan (“SAIL”) funding, Supplemental Extremely Low Income (“ELI”) funding and an

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*Della M. Nassif* / DATE: 7/24/09

allocation of the competitive 9% Low Income Housing Tax Credit Program. Petitioner timely filed its “Petition for Informal Administrative Proceedings,” (the “Petition”) challenging Florida Housing’s scoring on parts of the Application submitted by SP Winter Haven Gardens LP, Application No. 2008-109S (“Winter Haven”). The parties stipulated to the facts at issue. Accordingly, an informal hearing was held before Florida Housing Finance Corporation’s appointed Hearing Officer Diane D. Tremor, pursuant to Sections 120.569 and 120.57(2), Florida Statutes, on February 16, 2009. A Recommended Order was filed on March 20, 2009.

A true and correct copy of the Recommended Order is attached hereto as “Exhibit A.” The Recommended Order recommends that Florida Housing enter a Final Order finding that:

Florida Housing erred in scoring the Winter Haven Application as providing evidence of a firm funding commitment, and that Fountain Terrace should be awarded funding from the next available allocation.

#### **RULING ON THE RECOMMENDED ORDER**

The Board finds that the findings of fact and the conclusions of law of the Recommended Order are supported by competent substantial evidence.

**ORDER**

1. The Findings of Fact of the Recommended Order are adopted as Florida Housing's Findings of Fact and incorporated by reference as though fully set forth in this Order.

2. The conclusions of law of the Recommended Order are adopted as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Order.

IT IS HEREBY **ORDERED** that Petitioner be awarded its requested State Apartment Incentive Loan and Low Income Housing Tax Credits from the next available funding or allocation, as provided in R. 67-48.005(7), Fla. Admin. Code.

DONE and ORDERED this 24<sup>th</sup> day of July, 2009.

FLORIDA HOUSING FINANCE  
CORPORATION

By:   
Chair



Copies to:

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STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FOUNTAIN TERRACE APARTMENTS  
LIMITED PARTNERSHIP,

Petitioner,

vs.

FHFC CASE NO. 2008-102UC  
(Application No. 2008-018CS

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**RECOMMENDED ORDER**

Pursuant to notice and Sections 120.569 and 120.57(2), Florida Statutes, the Florida Housing Finance Corporation, by its duly designated Hearing Officer, Diane D. Tremor, held an informal hearing in Tallahassee, Florida, in the above captioned proceeding on February 16, 2009.

**APPEARANCES**

For Petitioner:

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For Respondent:

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### **STATEMENT OF THE ISSUE**

There are no disputed issues of material fact. The issue for determination in this proceeding is whether SP Winter Haven Gardens LP (“Winter Haven”), as the applicant for Gardens at Winter Haven (FHFC Application No. 2008-109S), documented in its application a firm commitment for bond financing from the Polk County Housing Finance Authority (“Polk County HFA”) in compliance with the applicable rules of the Florida Housing Finance Corporation (“Florida Housing”).

### **PRELIMINARY STATEMENT**

At the commencement of the informal hearing, the parties stipulated to the admission into evidence of Joint Exhibits 1 through 8. Petitioner’s Exhibits 1 through 7 and Respondent’s Exhibit 1 were also received into evidence.

Joint Exhibit 1 is a Prehearing Statement and is attached to this Recommended Order as Attachment A, and the facts recited therein are incorporated into this Recommended Order. The Stipulated Facts in the Prehearing Statement basically describe the application process and the circumstances regarding the scoring of Winter Haven’s application. The Stipulated Facts within the Prehearing Statement establish that Petitioner

herein has standing to bring this action. (Joint Exhibit 1, Paragraphs 18 and 19)

Subsequent to the final hearing, the parties timely submitted their Proposed Recommended Orders, which have been fully considered.

### **FINDINGS OF FACT**

Based upon the undisputed facts and documents received into evidence at the hearing, the following relevant facts are found:

1. Along with other competing applicants, Petitioner Fountain Terrace Apartments Limited Partnership (FHFC Application No. 2008-018CS), as well as SP Winter Haven Gardens LP (“Winter Haven”) (FHFC Application No. 109S), filed applications with Florida Housing for funding in the 2008 Universal Application Cycle. Had Winter Haven not received an award of SAIL funds, Petitioner Fountain Terrace would have been ranked sufficiently high enough to receive its requested SAIL funding and Tax Credits. (Joint Exhibit 1, ¶18)

2. Part V of the Application Form requests information regarding financing, and such information is deemed a threshold requirement. In its preliminary scoring of Winter Haven’s application, Florida Housing

determined that Winter Haven failed threshold for several reasons, including the following with respect to Item 5T of the application:

Although the Applicant listed Bonds from Polk County HFA in the amount of \$4,250,120 for construction and permanent financing (with evidence to be provided at Exhibit 56), no commitment for this has been provided. Therefore, the Bond amount cannot be counted as a source of financing.

(Joint Exhibit 4, Item 5T)

3. The applicable requirements regarding the issuance of bonds from a local government are set forth in Florida Housing's Universal Cycle Application Instructions, as revised in March of 2008. These Instructions provide, in relevant part, that "evidence of the following items must be included to receive a firm commitment:"

1. Local Government Issuance of Bonds: Letter signed by Chairperson of the local County Housing Finance Authority (HFA) . . . , which is Development-specific and includes the following:
  - a. Affirmation that the Local HFA has passed an Inducement Resolution for the proposed Development;
  - b. Affirmation that a TEFRA hearing has been held by the Local HFA or designated hearing officer;
  - c. Affirmation that the TEFRA hearing has been approved by the local Board of County Commissioners; and
  - d. Affirmation that the Tax-exempt Bond allocation has been reserved or that the HFA has agreed to award the necessary allocation when available.

(Joint Exhibit 8, page 71)



4. In response to Florida Housing's preliminary scoring of its application, Winter Haven submitted its cure materials, which included a letter from the Polk County HFA. This letter provided, in relevant part, as follows:

. . . The SAIL loan is to be made in conjunction with the issuance of bonds (the "Bonds") by the Housing Finance Authority of Polk County, Florida (the "Issuer"); the proceeds of which will be loaned to the Owner to finance the Project.

Please be advised of the following:

1. The Housing Finance Authority of Polk County has passed an Inducement Resolution for the proposed Gardens at Winter Haven.
2. A TEFRA hearing has been held by the Housing Finance Authority of Polk County.
3. The TEFRA hearing has been approved by the Polk County Board of County Commissioners.
4. The issuer intends to prioritize Gardens at Winter Haven in its request for not to exceed \$4,500,000 in 2009 volume cap allocation.

(Joint Exhibit 7)

5. In response to Winter Haven's "cure," Florida Housing received two Notices of Alleged Deficiencies from other applicants, including Petitioner Fountain Terrace. (Petitioner's Exhibits 1 and 2)

6. In its final scoring summary dated July 16, 2008, Florida Housing determined that the Polk County HFA letter submitted as a “cure” by Winter Haven did not satisfy threshold requirements, stating in part:

. . . the letter does not contain affirmation that the tax-exempt bond allocation has been reserved or that the HFA has agreed to award the necessary allocation when available as required by the 2008 Universal Application Instructions. Therefore, the bond amount cannot be counted as a firm source of financing.

(Joint Exhibit 4, Item 7T) Florida Housing determined that the absence of a firm commitment resulted in a shortfall in construction and permanent financing, and a failure to meet threshold requirements. (Joint Exhibit 4, Items 8T and 9T)

7. Winter Haven filed an informal hearing request contesting the scoring of its application with regard to its demonstration of a firm funding commitment. The hearing was scheduled for August 27, 2008. At the commencement of the hearing, it was announced that a resolution of the issues had been reached, and the parties submitted a Joint Proposed Recommended Order. (Joint Exhibit 6) Thereafter, on September 5, 2008, the Informal Hearing Officer entered a Recommended Order with no Findings of Fact or Conclusions of Law, acknowledging and attaching the parties’ Joint Proposed Recommended Order, and recommending that a Final Order be entered concluding that Winter Haven met the threshold

requirement for a firm funding commitment, as stipulated by the parties. (Joint Exhibit 6) On September 26, 2008, Florida Housing entered its Final Order which “adopted” the “Findings of Fact” and the “Conclusions of Law” of the Recommended Order (though there were no Findings of Fact or Conclusions Law in the Recommended Order), concluded that Winter Haven met the threshold requirement for a firm funding commitment, and ordered that its application receive a score of 66 points and 7.50 proximity tie-breaker points. (Joint Exhibit 6)

8. In accordance with Rule 67-48.005(5), Florida Administrative Code, Petitioner Fountain Terrace challenged Florida Housing’s final scoring and ranking of the competing application filed on behalf of Winter Haven, and requested an informal hearing.

### **CONCLUSIONS OF LAW**

Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Chapter 67-48, Florida Administrative Code, specifically Rule 67-48.005(5), the Informal Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding. Because Florida Housing determined that Petitioner Fountain Terrace was ineligible for funding based upon an award of funding to Winter Haven, and because Petitioner would have been in the

eligible funding range but for Florida Housing's determination regarding Winter Haven, the Petitioner's substantial interests are affected by Florida Housing's Final Order determining competing applicant Winter Haven's eligibility for funding. Accordingly, Petitioner has standing to bring this proceeding.

The issue for determination in this proceeding is whether Winter Haven's application met the threshold requirement for a firm funding commitment with regard to bond financing from the Housing Finance Authority of Polk County, Florida. More specifically, the issue is whether Polk County's letter dated June 16, 2008, submitted as a "cure" document, satisfied the requirements of the Universal Cycle Application Instructions (Rev. 3-08).

A comparison of the Application Instructions regarding local government financing (see Finding of Fact 3 above) with the letter submitted by Winter Haven (see Finding of Fact 4 above) reveals that the letter was signed by the Chairman of the Housing Finance Authority of Polk County, and that it contains affirmations showing that the first three requirements of the Instructions have been met; to wit: that an inducement resolution was passed, that a TEFRA hearing was held and that the TEFRA hearing was approved by the Polk County Board of County Commissioners.

The problem lies with the fourth requirement contained within the Application Instructions. The Instructions require an “affirmation that the tax-exempt Bond allocation **has been reserved** or that the HFA **has agreed to award** the necessary allocation when available.” (Emphasis supplied) While the Polk County Housing Finance Authority tracked the language of the first three requirements almost verbatim, it chose to respond to the fourth requirement as follows: “The Issuer **intends to prioritize** Gardens at Winter Haven in its request for not to exceed \$4,500,000 in 2009 volume cap allocation.” This choice of words, particularly when compared with Polk County’s almost verbatim recitation of the first three affirmations required by the Application Instructions, constitutes a clear departure from the affirmations required by Florida Housing and its Application Instructions, which are adopted as a rule.

Polk County simply did not affirm that the bond allocation “has been reserved” or that the County Housing Finance Authority “has agreed to award” the bond allocation. The statement that the Authority intended to “prioritize” Winter Haven’s funding request is simply not a statement that the allocation “has been reserved” or that the Authority “has agreed to award” the allocation. Instead, it suggests that the reservation and the award will come at some future date and that it will be dependent upon other

applications for funding. It simply does not constitute a firm, binding commitment to provide funding as of the date appearing on the letter. See *Nautilus Development Partners, LLLP v. Florida Housing Finance Corporation*, (FHFC Case No. 2006-023UC, Final Order July 31, 2006)(holding that the words “shall be reserved upon application” do not meet the requirement of an affirmation that the allocation “has been reserved.”) It must be concluded that if the Polk County Housing Finance Authority had intended to convey that the allocation was reserved or that it had firmly agreed to award the bond funding to Winter Haven as of the date of its letter, it would have used those words, rather providing a statement that it merely intended to prioritize Winter Haven’s request for funding.

Counsel for Florida Housing argues that the 2008 Application Instructions liberalized or relaxed the standards for a funding commitment by local government from previous years’ Instructions which required an affirmation only that an allocation “has been reserved.” The undersigned does not concur that the additional words “or . . . has agreed to award the necessary allocation when available” in the 2008 Instructions sufficiently relaxes the affirmation requirement so as to allow the words “intends to prioritize” to meet the 2008 Application Instructions.

It is next contended that the letter from Polk County, when read as a whole, evidences a firm funding commitment. Counsel for Florida Housing points to the opening paragraph of Polk County HFA's letter stating that: "The SAIL loan is be made in conjunction with the issuance of bonds (the "Bonds") by the Housing Finance Authority of Polk County, Florida (the "Issuer"); **the proceeds of which will be loaned** to the Owner to finance the Project." (Emphasis supplied) It is acknowledged that this language, standing by itself, is stronger than the affirmation that Polk County "intends to prioritize," Winter Haven in its request for funding. However, the opening paragraph language can also be read as a simple explanation of the project's proposed financing structure. Moreover, when the letter is read as a whole, as counsel for Florida Housing requests, the fourth affirmation detracts from counsel's interpretation of the introductory paragraph. The "prioritization" language used the Polk County HFA in the fourth affirmation conveys something less than a then-existing firm reservation or agreement to award bond funding to Winter Haven.

While acknowledging that the appeal process set forth in Rule 67-48.005, Florida Administrative Code, allows competing applicants to seek reversal of Florida Housing's prior Final Orders, counsel for Florida Housing urges that its Final Orders have precedential value, demonstrate its

interpretation of the Application Instructions and can only be changed through the rule adoption process. The cases relied upon for this proposition are *Cleveland Clinic Florida Hospital v. Agency for Health Care Administration*, 679 So.2d 1237 (Fla. 1<sup>st</sup> DCA 1996), and *Courts v. Agency for Health Care Administration*, 965 So.2d 154 (Fla. 1<sup>st</sup> DCA 2007).

In the *Cleveland Clinic* case , the agency failed to follow its own rule and applied an interpretation of the statute which was contrary to its rule. In the *Courts* case, the agency changed its non-rule policy without explaining the basis for the change under Chapter 120, either through rule-making or adjudication. The agency action in both cases was reversed.

The instant case is distinguishable on several bases. First, by allowing applicants the opportunity to challenge the “final” scores of competing applicants, the “finality” of which may or may not have been derived as a result of an administrative challenge, Florida Housing has acknowledged that its “final” orders rendered in the same Universal Cycle may be revisited and the results changed through a successful challenge in the second go-around of the administrative process. While this result may appear, at first blush, to be inequitable to the initial successful applicant, Florida Housing’s rules provide that funding for that applicant is not taken away and given to the challenger. Instead, the initial successful applicant keeps its funding, and the challenger,



if successful, receives its requested funding from the next available funding allocated to Florida Housing. See Rule 67-48.005(7), Florida Administrative Code.

This case does not fall within the constraints of the *Cleveland Clinic* case. While the Final Order in the Winter Haven case resulted in an interpretation of the firm commitment rule with respect to local government funding which is different than the interpretation reached in this Recommended Order, the Winter Haven decision did not follow an evidentiary or informal administrative hearing, nor does it reflect a substantive review of the facts and law by the hearing officer or the agency head. It was the result of a settlement agreement without the presentation of evidence or argument to the hearing officer or the agency head. Although the Final Order in the Winter Haven case (FHFC Case No. 2008-057UC) purports to adopt the “Findings of Fact” and the “Conclusions of Law” in the Recommended Order submitted by the hearing officer, in fact, there were no Findings of Fact or Conclusions of Law in that Recommended Order. The Informal Hearing Officer simply incorporated the stipulation of the parties (which was presented in the form of a Joint Proposed Recommended Order) into the Recommended Order. (Joint Exhibit 6) The parties’ Joint Proposed Recommended Order simply set forth the factual circumstances of the

scoring of Winter Haven's application, and concluded, without discussion, that the letter from the Polk County Housing Finance Authority adequately evidenced a firm commitment. Thus, in reality, the Recommended Order in the instant case does not represent a disregard of an agency "rule" or prior interpretation or the implementation of a "rule" which is contrary to an existing rule, as occurred in the *Cleveland Clinic* case.

In the instant challenge by Petitioner Fountain Terrace, the Hearing Officer heard argument from the parties at the informal hearing, reviewed the exhibits received into evidence and considered the written argument and cases cited in support thereof in the parties' Proposed Recommended Orders. This Recommended Order explains the basis for the determination that the Polk County letter at issue does not represent a firm commitment in accordance with the applicable rules set forth in the Application Instructions. Thus, if Florida Housing is considered to have "changed its mind" since the entry of its Final Order in the Winter Haven case, the reasons and basis for that change are explicated on the record and are explained herein, as required by *Courts v. Agency for Health Care Administration, Id.* 965 So.2d at 159-60. Indeed, it has long been recognized that the Florida Administrative Procedure Act's hearing requirements are designed to give affected parties an

opportunity to change the agency's mind. See *McDonald v. Department of Banking and Finance*, 346 So.2d 569 (Fla. 1<sup>st</sup> DCA 1977).

**RECOMMENDATION**

Based upon the Findings of Fact and Conclusions of Law stated above, it is RECOMMENDED that Florida Housing enter a Final Order holding that the Winter Haven Application was scored in error with regard to evidence of a firm funding commitment and awarding Petitioner Fountain Terrace its requested funding from the next available allocation.

Respectfully submitted this 20<sup>th</sup> day of March, 2009.



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Florida Housing Case No.: 2008-102UC  
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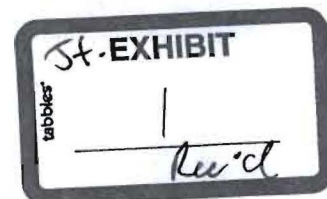
**PREHEARING STIPULATION**

Petitioner, Fountain Terrace Apartments Limited Partnership (“Petitioner”), and Respondent, Florida Housing Finance Corporation (“Florida Housing”), by and through undersigned counsel, submit this Prehearing Stipulation for purposes of expediting the informal hearing scheduled for 10 a.m., February <sup>16</sup>~~8~~, 2009, in Tallahassee, Florida, and agree to the following findings of fact and to the admission of the exhibits described below:

**STIPULATED FACTS**

1. Petitioner is a Florida limited partnership with its address at 2206 Jo-An Drive, Sarasota, Florida 34231, and is in the business of providing affordable rental housing units.

**ATTACHMENT A**



2. Florida Housing is a public corporation, organized to provide and promote the public welfare by administering the governmental function of financing and refinancing housing and related facilities in the State of Florida. (Section 420.504, Fla. Stat.; Rule Chapter 67-48, Fla. Admin. Code).

3. The Low Income Housing Tax Credit (“Tax Credit”) program is created within the Internal Revenue Code, and awards a dollar for dollar credit against federal income tax liability in exchange for the acquisition and substantial rehabilitation or new construction of rental housing units targeted at low and very low income population groups. Developers sell, or syndicate, the Tax Credits to generate a substantial portion of the funding necessary for construction of affordable housing development.

4. Florida Housing is the designated “housing credit agency” responsible for the allocation and distribution of Florida’s Tax Credits to applicants for the development of rental housing for low income and very low income families.

5. Florida Housing uses a scoring process for the award of Tax Credits as outlined in Rule 67-48.004, Florida Administrative Code, and a Qualified Allocation Plan (QAP). The provisions of the QAP are adopted and incorporated by reference in Rule 67-48.002(88), Fla. Admin. Code. Pursuant to the QAP, Tax Credits are apportioned among the most populated counties, medium populated counties, and least populated counties. The QAP also establishes various set-asides and special targeting goals.

6. The State of Florida provides financing through its State Apartment Incentive Loan (“SAIL”) program to encourage private developers to build and operate affordable rental housing for low-income Florida residents. Pursuant to section 420.5087, Florida Statutes, the SAIL program is administered by Florida Housing.

7. The source of funds for loans made through the SAIL program is an annual allocation of documentary stamp tax revenue. These funds are the source of below-market-rate loans to applicants that reduce the amount of income required for debt service on the development, making it possible to operate the project at rents that are affordable to low-income tenants.

8. Awards for funding are included in a single application process (the “Universal Cycle”), in which applicants submit a single application (the “Universal Cycle Application”). The Universal Cycle Application is a single-application process for the Tax Credit program, the SAIL program, the Multifamily Mortgage Revenue Bond (MMRB) program, and the Home Investment Partnership (HOME Rental) program.

9. The 2008 Universal Cycle Application, adopted as Form UA1016 (Rev. 3-08) is incorporated by reference as a rule in 67-48.004(1)(a), Fla. Admin. Code (“Application”). It consists of Parts I through V and instructions, some of which are not applicable to every Applicant. Some of the parts include “threshold” items. Failure to properly include a threshold item or satisfy a threshold requirement results in rejection of the application. Other parts allow applicants to earn points, including “tie-breaker” points; however, the failure to provide complete, consistent and accurate information as prescribed by the instructions may reduce the Applicant’s overall score. The Universal Cycle Application is comprised of the application itself, exhibits, forms and the Universal Cycle Application Instructions (“Instructions”).

10. Rules 67-48.002 - .005, Fla. Admin. Code (2008), prescribe the process by which Universal Cycle Applicants may comment on other Applicants and challenge scores issued by Florida Housing and include:

- a. the publication and adoption by rule of the Application;
- b. the completion and submission of Applications by developers;
- c. Florida Housing's preliminary scoring of Applications;
- d. an initial round of administrative challenges in which an applicant may take issue with Florida Housing's scoring of another Application by filing a Notice of Possible Scoring Error ("NOPSE");
- e. Florida Housing'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 Florida Housing 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. Florida Housing'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, Florida Housing's evaluation of any item for which the applicant received less than the maximum score;
- j. final scores, ranking, and allocation of tax credit funding to applicants through the adoption of final orders; and
- k. an opportunity for applicants to challenge, via informal or formal administrative proceedings, Florida Housing's final scores and ranking of competing Applications where such scoring and ranking resulted in a denial of Florida Housing funding to the challenger.

11. The 2008 Universal Cycle Application offers a maximum score of 66 points. In the event of the tie between competing applications, the Universal Cycle Application Instructions provide for a series of tie-breaking procedures to rank such applications for funding priority including the use of lottery numbers (randomly assigned during the application process).



12. For the 2008 Universal Cycle, Florida Housing established the Application Funding order, with those Applicants applying only for SAIL funding in the SAIL Farmworker/Commercial Fishing Worker Special Set Aside receiving priority over those requesting SAIL and Tax Credits for Farmworker/Commercial Fishing Worker deals.

13. Florida Housing also committed to a goal of allocating Tax Credits to two Farmworker/Commercial Fishing Worker developments in addition to those that were funded in a Special Set-Aside category.

10. On or about April 7, 2008, all applicants, including Petitioner, submitted applications to Florida Housing seeking funding. Petitioner submitted its application (FHFC Applic. #2008-018CS) in an attempt to obtain Tax Credit in the amount of \$1,070,000, SAIL funding in the amount of \$3,378,004 and a SAIL Extremely Low Income Supplemental Loan of \$595,000, to assist in the construction of a 72-unit garden style apartment complex in Sebring, Florida, named "Fountain Terrace." Petitioner selected the Farmworker/Commercial Fishing Worker Demographic Commitment for the development.

11. Petitioner's Application was scored by Florida Housing in accordance with the provisions of §420.5099, Fla. Stat., and Rule Chapter 67-48, Fla. Admin. Code. By letter and Scoring Summary dated July 16, 2008, Florida Housing advised Petitioner that its final post-appeal score was 66 points, that its application had met all threshold requirements, and that its application had received 7.5 "proximity tie-breaker points."

12. The application that is the subject of these proceedings, No. 2008-109S, Gardens at Winter Haven ("Gardens Application") was submitted by SP Winter Haven Gardens, LP ("Gardens"). The Gardens Application only requested SAIL funding in the

amount of \$2,600,000. The Gardens Application also selected the Farmworker/Commercial Fishing Worker Demographic Commitment for its development, a 50-unit, garden style apartment complex to be located in Winter Haven, Florida.

13. On or about April 7, 2008, Gardens indicated in its Application, that it would receive \$4,250,120 in tax exempt bonds from the Polk County Housing Finance Authority (“HFA”), at Part V.A.4.c. of its Application. It did not provide the requisite letter evidencing a firm commitment for these funds behind tab 56. Florida Housing’s preliminary Scoring Summary dated, May 7, 2008, advised Gardens of the omission and that it failed the threshold requirement of a firm Funding Commitment.

14. Per Rule 67-48.004(6), Fla. Admin. Code, on or about June 16, 2008, Gardens submitted as its cure for its Application a letter from the Housing Finance Authority of Polk County, dated June 16, 2008.

15. Per Rule 67-48.004(7), Fla. Admin. Code, on or about June 24, 2008, Florida Housing received two NOAD’s concerning the letter from the Polk County HFA advising that, under Florida Housing’s Instructions and rules, the letter did not demonstrate a firm Funding Commitment by the Polk County HFA.

16. The Gardens Application was scored by Florida Housing, receiving a pre-appeal score of 61 points, and 7.5 “proximity tie-breaker points.” Florida Housing determined that the Gardens Application failed the threshold requirement for a firm Funding Commitment, and provided reasons for the determination as well as comments in the Final Scoring Summary for its application, dated July 16, 2008. The Final Scoring Summary stated in pertinent part:

“As a cure for Item 5T, the Applicant provided a letter from the Polk County Housing Finance Authority showing a firm commitment for bond financing. However, the letter does not contain affirmation that the tax-exempt bond allocation has been reserved or that the HFA has agreed to award the necessary allocation when available as required by the 2008 Universal Application Instructions. Therefore, the bond amount cannot be counted as a firm source of financing.”

17. Gardens subsequently appealed the scoring of the Gardens Application pursuant to Rule 67-48.005(2), Fla. Admin. Code, and contested Florida Housing’s determination that the Gardens Application failed threshold for failing to demonstrate a firm Funding Commitment. On August 27, 2008, the Hearing Officer, Diane Tremor, entered her Recommended Order, accepting a Joint Proposed Recommended Order entered into by Florida Housing and Gardens, dated August 27, 2008. In this Joint Proposed Recommended Order, Florida Housing determined that the Gardens Application had satisfied the threshold requirement regarding a firm Funding Commitment. Florida Housing adopted the Recommended Order as a Final Order at the meeting of its Board of Directors on September 26, 2008. As a result, Florida Housing awarded SAIL funding for the Gardens Application.

18. For the 2008 Universal Cycle, there was \$3,250,000 in SAIL funds for Farmworker/Commercial Fishing Worker developments. The Gardens Application received funding priority over Petitioner’s Application and after Florida Housing awarded SAIL funds to Gardens, there was not enough SAIL funds remaining to award Petitioner any SAIL funding. As a result, Petitioner was also passed over for an award of Tax Credits. Had Gardens not received an award of SAIL funds, Petitioner would have been ranked sufficiently high enough to receive its requested SAIL funding and Tax Credits.

19. Under Rule 67-48.005, Fla. Admin. Code, Petitioner has standing to initiate the instant proceedings.

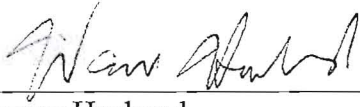
### EVIDENTIARY STIPULATIONS

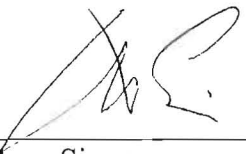
The parties stipulate, subject to arguments on the grounds of relevance, to the official recognition of any Final Orders of the Florida Housing Finance Corporation and to any Rules promulgated by the Florida Housing Finance Corporation, including past and present versions of the Universal Cycle Application, Instructions, and any forms and exhibits attached thereto or incorporated by reference therein.

The parties offer the following joint exhibits into evidence:

- Exhibit 1: This Prehearing Stipulation.
- Exhibit 2: Final Scoring Summary for Application No. 2008-018CS (Fountain Terrace Apartments), dated July 16, 2008.
- Exhibit 3: NOAD Scoring Summary for Application No. 200~~8~~-109S (Winter Haven Gardens), dated June 16, 2008.
- Exhibit 4: Final Scoring Summary for Application No. 2008-109S (Winter Haven Gardens), dated July 16, 2008.
- Exhibit 5: 2008 Universal Cycle Rankings (final), dated September 26, 2008.
- Exhibit 6: Final Order in the matter of *SP Winter Haven Gardens LP. v. Florida Housing Finance Corporation*, Florida Housing Case No. 2008-057UC, dated September 26, 2008 (includes Recommended Order).
- Exhibit 7: "Cure" documentation submitted by Winter Haven Gardens regarding its application, No. 2008-109S.
- Exhibit 8: Excerpts from the 2008 Universal Cycle Application Instructions.

Respectfully submitted this 16th day of February, 2009.

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## **NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT**

In accordance with Rule 67-48.005(6), Florida Administrative Code, all parties have the right to submit written arguments in response to a Recommended Order for consideration by the Board. Any written argument should be typed, double-spaced with margins no less than one (1) inch, in either Times New Roman 14-point or Courier New 12-point font, and may not exceed five (5) pages, excluding the caption and certificate of service. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301-1329, no later than 5:00 p.m. on March 25, 2009. Submission by facsimile will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to Recommended Orders.