

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

BRICKELL VIEW TERRACE
APARTMENTS, LTD.,

Petitioner,

v.

FHFC CASE NO.: 2012-036UC
Application No. 2011-067C

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 November 2, 2012. Brickell View Terrace Apartments, Ltd. (“Petitioner”), timely submitted its 2011 Universal Cycle Application (“Application”) to Florida Housing Finance Corporation (“Florida Housing”) to compete for an allocation of competitive housing credits under the Housing Credit (HC) Program administered by Florida Housing. Petitioner’s application met all of Florida Housing’s threshold application requirements, received an application score of 79, 36.25 proximity tie-breaker measurement points and six ability to proceed points. However, based on its ranking order relative to other applications under Florida Housing’s ranking

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Debra M. Harrell / DATE: *April 2, 2012*

methodology, Petitioner's application was not among those included in the funding range in the final rankings. Thereafter, Petitioner timely filed a Petition for an Administrative Proceeding pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Rule 67-48.005(5), Florida Administrative Code, in which it challenged Florida Housing's scoring of one or more competing applications ranked above it, alleging in its Petition that but for Florida Housing's erroneous scoring of those applications, Petitioner's application would have received its requested HC allocation.

The Board has before it for consideration a Consent Agreement agreed to by Florida Housing staff and Petitioner, which if adopted, will resolve the matters raised by Petitioner in its Petition. A true and correct copy of the Consent Agreement is attached hereto as "Exhibit A."

RULING ON THE CONSENT AGREEMENT

After due consideration and upon the recommendation of Florida Housing staff, the Board approves and adopts the terms of the Consent Agreement.

ORDER

In accordance with the foregoing, it is hereby **ORDERED:**

1. The facts in the statement of the case set forth in the Consent Agreement 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 set forth in the Consent Agreement are adopted as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Order.

3. The stipulated disposition as set forth in the Consent Agreement is adopted and, accordingly, Florida Housing shall allocate Petitioner's requested HC allocation from the next available allocation as provided in Rule 67-48.005(7), F.A.C.

DONE and ORDERED this 2nd day of November, 2012.



FLORIDA HOUSING FINANCE CORPORATION

By: _____

Chairperson

Copies to:

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General Counsel
Florida Housing Finance Corporation
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Kevin Tatreau
Director of Multifamily Development Programs
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**BRICKELL VIEW TERRACE
APARTMENTS, LTD.,**

Petitioner,

v.

**FHFC CASE NO.: 2012-036UC
Application No. 2011-067C
2011 Universal Cycle**

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

_____ /

CONSENT AGREEMENT

Petitioner, Brickell View Terrace Apartments, Ltd. (“Petitioner”), and Respondent, Florida Housing Finance Corporation (“Respondent” or “Florida Housing”), by and through undersigned counsel, hereby present this Consent Agreement for consideration by the Florida Housing Board of Directors.

STATEMENT OF THE CASE

1. Petitioner applied for \$2,561,000.00 in annual tax credits in the 2011 Universal Application Cycle pursuant to Application No. 2011-067C to help finance the development of its project, a 100-unit apartment complex in Miami-Dade County, Florida. Petitioner’s application met all threshold requirements and

received the maximum application score of 79 points, 36.25 proximity tie-breaker measurement points, and 6 ability to proceed tie-breaker points. However, under Florida Housing's ranking procedures, Petitioner's application was not among those in the funding range in the final rankings adopted by Florida Housing.

2. Rule 67-48.005(5), Florida Administrative Code ("F.A.C."), provides an entry point and a procedure pursuant to which an applicant in the Universal Application Cycle may file an administrative petition contesting the final rank or score of a competing applicant, subject to certain conditions. The rule is designed to provide a means of redress to an otherwise eligible universal cycle applicant whose application was not ranked in the funding range in the final ranking adopted by Florida Housing due to an error made by Florida Housing in its scoring of a competing application. The rule requires that the petitioner allege facts in its petition sufficient to demonstrate that "but for" a specifically identified error(s) made by Florida Housing in scoring or ranking the challenged application, the petitioner's application would have been in the funding range at the time Florida Housing issued its final rankings.

3. Petitioner timely filed its petition (the "Petition") challenging Florida Housing's scoring of the following application submitted during the 2011 Universal Application Cycle: Green Turnkey Plaza, Ltd., (Washington Square Apartments), Application No. 2011-208C ("Washington Square").

4. Specifically, the scoring issue raised by Petitioner is whether Washington Square's development demonstrated site control. Petitioner alleges that Florida Housing incorrectly determined that Washington Square's development site did not demonstrate site control and should have not passed threshold.

5. To the extent Petitioner raises in its Petition issues regarding Washington Square's application other than that identified in Paragraph 4 above and subject to Paragraph 17 below, Petitioner hereby withdraws such allegations and its Petition shall be deemed amended accordingly with the effect that the only scoring decision being challenged by Petitioner in this proceeding is the one described in Paragraph 4.

WASHINGTON SQUARE APPLICATION

6. In the Preliminary Score of Washington Square's application, Florida Housing determined that they had not demonstrated site control as the ground lease submitted stated that the lease and the parties' obligation are contingent upon the final approval of the lease by the Miami-Dade Board of County Commissioners.

7. Part III.C.2.c. of the Universal Cycle Application Instructions requires that leases may be contingent only upon receipt of MMRB, HOME and/or HC funding.

8. As part of its Cure, Washington Square submitted a document entitled “Amendment No.2 to the Ground Lease between Miami-Dade County and Green Turnkey Plaza, Ltd.” This amendment modified the lease by eliminating the language stating that the parties’ obligations are contingent upon the release of the Declaration of Trust encumbering the property by the U.S Department of Housing and Urban Development (“HUD”).

9. Florida Housing accepted Washington Square’s cure and rescinded its threshold failure for site control as part of its Final Score.¹ Subsequently, Petitioner demonstrated through its Petition that this cure does not remove the contingency of approval by HUD.

10. A Declaration of Trust (“DOT”) encumbers a portion of Washington Square’s development site under lease from Miami-Dade County to Washington Square. The DOT prohibits Miami-Dade County from leasing the property without HUD consent or a release by HUD of the DOT. By the Cure deadline, Washington Square had not demonstrated that either of these contingencies had occurred, and these contingencies remained in effect regardless of the amendment to the lease between Washington Square and Miami-Dade County.

¹ Washington Square filed its own petition alleging that Florida Housing erred in not awarding it points for local government contribution and points for proximity to a public park. Florida Housing and Washington Square entered into a Consent Agreement, adopted as a Final Order, Case No. 2011-016UC.

11. The determination made by Florida Housing in the Washington Square Final Order effectively forced Petitioner's application out of the funding range, a position it would have otherwise occupied based on Florida Housing's preliminary scoring of the Washington Square application.

CONCLUSIONS OF LAW

12. Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Florida Administrative Code Chapter 67-48, the Board has jurisdiction over the parties to this proceeding.

13. Petitioner has standing to challenge the scoring of the Washington Square application pursuant to Rule 67-48.005(5), F.A.C.

14. Petitioner's application would have been in the funding range of the 2011 Universal Cycle final ranking but for the determination that Washington Square demonstrated site control.

15. Petitioner's Petition shall be deemed amended to the extent provided in Paragraph 5 above.

STIPULATED DISPOSITION

16. Florida Housing shall allocate Petitioner's requested HC allocation from the next available allocation as provided in Rule 67-48.005(7), F.A.C.

BOARD APPROVAL AND FINAL DISPOSITION

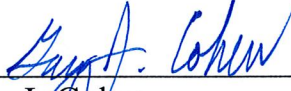
17. This Consent Agreement is conditioned upon approval by Florida Housing's Board of Directors, such approval to be evidenced by the Board's issuance of a Final Order adopting the terms and conditions of this Consent Agreement. If the Board has not issued such Final Order by November 2, 2012, this Consent Agreement shall be deemed automatically null and void without further notice or action by either party, whereupon Petitioner may pursue its Petition unaffected by this Consent Agreement.

18. The adoption of this Consent Agreement by Final Order of the Board shall represent final disposition of all claims made by Petitioner with respect to the matters raised in its Petition. Upon issuance of a Final Order adopting the terms of this Consent Agreement, Petitioner agrees to dismiss its Petition with prejudice. The parties waive all right to appeal this Consent Agreement and the Final Order adopting same, and each party shall bear its own costs and attorney's fees in connection with the matters addressed in this Consent Agreement and the Petition.

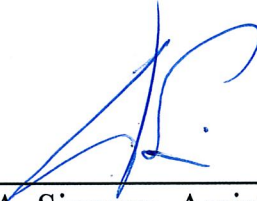
[SIGNATURES FOLLOW]

Respectfully submitted, this 30th day of AUGUST 13, 2012.

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FLORIDA HOUSING
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