

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

ROSEDALE HOLDINGS, LLC,  
H&H DEVELOPMENT, LLC AND  
BROOKESTONE I, LP,

FHFC Case No. 2013-038BP

v. Petitioners,

FLORIDA HOUSING FINANCE CORPORATION,

Respondent

and

PARADISE POINT SENIOR HOUSING, LLC,

Intervenor,

ARBOURS AT TUMBLIN CREEK, LLC,

Intervenor,

ARBOURS AT CENTRAL PARKWAY, LLC,

Intervenor,

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OCDC PALM VILLAGE, LP,  
PRESTWICK DEVELOPMENT  
COMPANY, LLC,  
AND OKALOOSA COMMUNITY  
DEVELOPMENT CORPORATION

FHFC Case No. 2013-042BP

v. Petitioners,

FLORIDA HOUSING FINANCE CORPORATION,

Respondent,

and

KATIE MANOR, LTD.,

Intervenor.

\_\_\_\_\_  
FRENCHTOWN SQUARE, LLC,

Petitioner,  
v.  
FLORIDA HOUSING FINANCE CORPORATION,  
Respondent,  
\_\_\_\_\_ /

JPM WESTBROOK I LIMITED PARTNERSHIP,

v. Petitioners,  
FLORIDA HOUSING FINANCE CORPORATION,  
Respondent,  
and  
KATIE MANOR, LTD.,  
Intervenor.  
\_\_\_\_\_ /

SUMMERSET APARTMENTS LIMITED PARTNERSHIP,

v. Petitioners,  
FLORIDA HOUSING FINANCE CORPORATION,  
Respondent,  
and  
FOREST RIDGE AT BEVERLY HILLS, LTD. and  
ARBOURS AT CENTRAL PARKWAY, LLC,  
Intervenors,  
\_\_\_\_\_ /

**JOINT PREHEARING STIPULATION**

Petitioners, ROSEDALE HOLDINGS, LLC, H&H DEVELOPMENT, LLC and BROOKESTONE I, LP (“Rosedale”), OCDC PALM VILLAGE, LP, PRESTWICK DEVELOPMENT COMPANY, LLC, AND OKALOOSA COMMUNITY DEVELOPMENT

CORPORATION ("Palm Village"), FRENCHTOWN SQUARE, LLC, ("Frenchtown"), JPM WESTBROOK I LIMITED PARTNERSHIP, ("Westbrook"), SUMMERSET APARTMENTS LIMITED PARTNERSHIP, ("Summerset") (collectively, "Petitioners") and Respondent, FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing"), and Intervenors, PARADISE POINT SENIOR HOUSING, LLC, ("Paradise Point"), ARBOURS AT TUMBLIN CREEK, LLC ("Tumblin Creek"), ARBOURS AT CENTRAL PARKWAY, LLC ("Central Parkway"), KATIE MANOR, LTD., ("Katie Manor"), and FOREST RIDGE AT BEVERLY HILLS, LTD., ("Forest Ridge") (collectively, "Intervenors") by and through undersigned counsel, submit this Joint Prehearing Stipulation in connection with expediting the consolidated informal hearing on the captioned matters, scheduled for 9:00 a.m., March 5, 2014, in Tallahassee, Florida, and agree to the following findings of fact and to the admission of the exhibits described below.

I. STIPULATED FACTS

A. FACTS COMMON TO ALL CASES

1. Florida Housing is, under sec. 420.5099, Fla. Stat., and 26 USC sec. 42, the low income housing tax credit allocating agency for the State of Florida and is granted the authority under sec. 420.507(48), Fla. Stat., to issue competitive solicitations for the purpose of providing affordable housing in Florida. Florida Housing's address is 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301.

2. On September 17, 2013, Florida Housing issued RFA 2013-001 (the "RFA") to award an estimated amount of \$11,166,425 of competitive Low Income Housing Tax Credits ("Tax Credits") for proposed developments in medium counties and \$1,308,328 of Tax Credits for proposed developments in small counties. The RFA is Joint Exhibit 2.

3. Through the issuance of the RFA Florida Housing sought to solicit proposals from qualified Applicants that would commit to construct and/or rehabilitate housing in accordance with the terms and conditions of the RFA, applicable laws, rules, and regulations.

4. Section Four of the RFA lists those items which had to be included in a response to the RFA as found in Exhibit A. Exhibit A requires certain information be provided concerning the Applicant and the Developer.

5. The RFA provides for the Applications to be evaluated and scored by a Review Committee. Each Application can receive a maximum of 27 points consisting of two different types of point items: (1) Proximity to Transit and Community Services, worth a maximum of 22 points; and (2) Local Government Contributions, worth a maximum of 5 points. [RFA § 5, p. 41]. These scores play a significant role in Florida Housing's funding decisions. [RFA § 4.B., pp. 38-40].

6. The RFA also provides for a lottery number to be randomly assigned to each Application as a tie-breaker between applications with the same score. Where, as here, all the parties' applications received a perfect score, lottery numbers will determine the Funding order, subject to the Funding and County tests of the RFA.

7. The Funding Selection process as described in the RFA limits the developments eligible for funding to those that meet certain eligibility requirements described throughout the RFA. [RFA § 4.B., p. 38]. The Applications eligible for funding are sorted and ranked in order from highest to lowest based on the following criteria applied in this order, with eligible Small County Applications and eligible Medium County Applications listed separately:

- a. Highest to lowest score (taking into consideration any Development Category Funding Preference);

- b. The Applicant's eligibility for the Per Unit Construction Funding Preference, with Applications that qualify for the preference ranked above those that do not;
- c. The Application's Leveraging Classification, with developments with a Classification of A as the top priority;
- d. The Application's eligibility for the Florida Job Creation Preference, with Applications that qualify for the preference ranked above those that do not; and
- e. Lottery number, with the lowest lottery number receiving the preference.

[RFA § 4.B., p. 38].

8. A Funding Test and County Test are also applied. Under the Funding Test, Small County Applications will be selected for funding only if there is enough Small County funding available to fully fund the Eligible Housing Credit Request Amount, and Medium County Applications will be selected for funding only if there is enough Medium County funding available to fully fund the Eligible Housing Credit Request Amount. [RFA § 4.B., p. 38]. Under the County Test, funding is limited to one Application per county unless the only eligible unfunded Applications that can meet the Funding Test are located in a county where an Application has already been selected for funding. [RFA § 4.B., p. 38].

9. The RFA also establishes certain goals. For the Applications located in Medium Counties, Florida Housing has a goal to fund one development that is eligible for the SunRail Station TOD Funding Preference (as outlined in the RFA for developments located in Seminole County and Volusia County). Within the Medium County Application List, the first Application considered for funding will be the highest scoring eligible Application that qualifies for the SunRail Station TOD Funding Preference and achieved a Transit Services Score of 6 points. [RFA § 4.B., p. 38-39]. Once the goal is met, or if no eligible Applications meet the goal, then

the highest scoring eligible unfunded Applications are considered for funding subject to the County Test and the Funding Test.

10. For Applications located in Small Counties, Florida Housing has a goal to fund one Application located in the Florida Keys Area (as outlined in the RFA for developments located in Monroe County). Within the Small County Application List, the first Application that will be considered for funding will be the highest scoring eligible Application that qualifies for the Florida Keys Area goal. If this goal is met, the next Application that will be considered for funding will be the highest scoring eligible Small County Application located in a county other than Monroe. If no eligible Applications meet this goal, then the highest scoring eligible unfunded Applications will be considered for funding subject to the County Test and the Funding Test. If funding remains and there are no unfunded Applications on the Small County Application List that meet both the County and Funding Test, the remaining funding will be added to the Medium County funding amount. [RFA § 4.B., p. 39].

11. If there is remaining funding available and no unfunded Applications meet both the County Test and the Funding Test, then the highest scoring eligible unfunded Application that meets the Funding Test will be tentatively selected for funding. [RFA § 4.B. pp. 38-39].

12. The deadline for receipt of applications was 2:00 p.m. on October 17, 2013.

13. Florida Housing received 96 applications in response to the RFA. Each Petitioner and each Intervenor timely responded to the RFA, and each is an Applicant within the meaning of R. 67-48.002(9), Fla. Admin. Code.

14. Florida Housing's Executive Director designated five Florida Housing staff members to serve as the Review Committee for the RFA.

15. The RFA at Section Five describes the evaluation process as follows:

SECTION FIVE  
EVALUATION PROCESS

Committee members shall independently evaluate and score their assigned portions of the submitted Applications, consulting with non-committee Corporation staff and legal counsel as necessary and appropriate.

The Corporation will reject any competitive Application submittal and no action will be taken to score the Application if any of the following submission requirements are not met; the Application is not submitted online by the Application Deadline, the required number of hard copies are not submitted by the Application Deadline, the Applicant's hard copy submission is not contained in a sealed package, or the required Application fee is not submitted as the Application Deadline.

An Application will be deemed ineligible to be considered for funding if, as of close of business the day before the Committee meets to make a recommendation to the Board, there are any financial obligations for which an Applicant or Developer or Principal, Affiliate or Financial Beneficiary of the Applicant or Developer is an arrears to the Corporation or any agent or assignee of the Corporation as reflected on the most recently published Past Due Report posted to the Corporation's Website [http://www.floridahousing.org/PropertyOwnersAndManagers/Past DueReports/](http://www.floridahousing.org/PropertyOwnersAndManagers/PastDueReports/), but not more recently than five (5) business days prior to the date the Committee meets to make a recommendation to the Board.

The Committee shall conduct at least one public meeting during which the Committee members may discuss their evaluations, select Applicants to be considered for award, and make any adjustments deemed necessary to best serve the interests of the Corporation's mission. The Committee will list the Applications deemed eligible for funding in order from highest total score to lowest total score, applying the funding selection criteria outlined in Section Four B above, and develop a recommendation or series of recommendations to the Board.

The Board may use the Applications, the Committee's scoring, and any other information or recommendation provided by the Committee or staff, and any other information the Board deems

relevant in its selection of Applicants to whom to award funding. Notwithstanding an award by the Board pursuant to this RFA, funding will be subject to a positive recommendation from the Credit Underwriter based on criteria outlined in the credit underwriting provisions in Rule Chapter 67-48, F.A.C.

16. On November 5, 2013, the designated Review Committee met and considered the Applications submitted in response to the RFA. This first meeting was an organizational meeting where the Review Committee discussed the scoring process. There was no discussion at the Review Committee meetings regarding waiver of minor irregularities and how Florida Housing staff was to determine whether or not something is a minor irregularity that can and should be waived.

17. At its second meeting on November 21, 2013, the Review Committee orally listed and manually input the scores for each section of each RFA Application.

18. At the Board's December 13, 2013, meeting, the Review Committee' funding recommendations were presented to the Board along with an RFA 2013-001 Received Applications chart showing the Applications listed in order from highest to lowest total score, with lottery numbers applied. The Received Applications chart also identified Applications deemed ineligible for funding. The Received Applications chart is Joint Exhibit 3.

19. On December 13, 2013, Florida Housing's Board approved the Review Committee's scoring ranking and funding recommendation ("RFA 2013-001 Medium-Small County Geographic RFA Recommendations") and tentatively selected 11 applications for funding including Hammock Crossings, application #2014-092C, which had submitted a notice of withdrawal of its application prior to the December 13th Board meeting. The Medium-Small County Geographic RFA Recommendations are Joint Exhibit 4.

20. At 11:33 a.m. on December 13, 2013, Florida Housing posted on its website its Notice of Intended Decision, consisting of two documents: (1) a document entitled "RFA 2013-001 Medium-Small RFA Received Applications" (the "Received Applications" showing) the scores awarded to the applications, the preferences for which they qualify, and their lottery number (Joint Exhibit 3), and (2) the RFA 2013-001 Medium-Small County Geographic RFA Recommendations (Joint Exhibit 4).

21. None of the Petitioners were included on the list of projects tentatively selected for funding as a result of the Board's action on December 13, 2013.

22. Each of the Intervenors included on the list of projects tentatively selected for funding as a result of the Boards action on December 13, 2013.

23. Each Petitioner timely filed a notice of intent to protest under sec. 120.57(3)(b), Fla. Stat., and a formal protest of the award as required by sec. 120.57(3)(b), Fla. Stat.

24. The substantial interests of each Petitioner and each Intervenor are subject to the determination in this proceeding and each Petitioner and Intervenor has standing to participate in this proceeding.

#### B. STIPULATED FACTS AS TO FRENCHTOWN

25. On October 17, 2013, Frenchtown submitted its Application, Number 2014-083C in response to the RFA which included information concerning a proposed 72-unit apartment complex in Leon County named Frenchtown Square. Through the Application, Frenchtown requested \$1,510,000 in Tax Credit funding assistance for the project which has an overall development cost of \$16,498,431. The proposed Frenchtown Development would provide one, two and three bedroom apartments for lease at reduced and affordable rents.

26. The Review Committee determined that the Frenchtown Application had a perfect score of 27 points, but that the Application was ineligible for funding due to a threshold failure, described as a failure to identify the Principals of the "Co-Developer," as required in Section Four, Attachment 4 to Exhibit A of the RFA ("Information To Be Provided in Application"). As disclosed in the notes of the Review Committee and as disclosed orally during the Review Committee meeting held November 21, 2013, the Frenchtown Application was specifically found ineligible for the following reason: "Did not provide principals required for co-developer RUDG, LLC."

27. On December 13, 2013, Florida Housing's Board of Directors adopted the Review Committee's scoring ranking and tentative funding recommendation and in so doing found Frenchtown's Application ineligible.

28. The RFA Application at Paragraph 3 directs each Applicant to provide a list at Attachment 4 to Exhibit A which identifies each Developer and Co-Developer. Specifically the language provides:

3.(a) The Applicant must state the name of each Developer, including all co-Developers.

(b) Each Developer entity identified as questions 3.a of Exhibit A of the RFA (that is not a natural person) must be a legally formed entity qualified to do business in the state of Florida as of the Application Deadline. For each stated Developer entity that is not a natural person, provide, as Attachment 4 to Exhibit A, evidence from the Florida Department of State, Division of Corporations, that the Applicant satisfies the foregoing requirements; such evidence may be in the form of a certificate of status or other reasonably reliable information or documentation issues, published or made available by the Florida Department of State, Division of Corporations.

29. The RFA also requires that an Applicant provide a list at Attachment 3 to Exhibit A, identifying the Principals for the Applicant and each Developer. With respect to a Developer that is a limited liability company, the Developer is required to identify the managers and members of each of its managers and members.

30. In its Application at Section 3A Frenchtown listed Frenchtown Square Developer, LLC., Big Bend Community Development Corporation, and RUDG, LLC as Developers.

31. In Attachment 3 to its Application Frenchtown identified Frenchtown Square Developer LLC as the Developer and provided the Principals of Frenchtown Square Developer LLC.

32. In Attachment 4 Frenchtown identified only one developer on its "Prior Development Experience Chart," Frenchtown Square Developer, LLC, while listing RUDG, LLC, as the entity having the required developer experience. Also in Attachment 4, Frenchtown Square also provided Certificates of Status from the Florida Department of State for each entity listed as a Developer in its response to Item 3.a. on its Application: Frenchtown Square Developer, LLC, Big Bend Community Development Corporation, and RUDG, LLC

#### C. STIPULATED FACTS AS TO PALM VILLAGE

33. On October 17, 2013, Palm Village submitted a Response to the RFA which included information concerning a proposed 38-unit apartment complex in Okaloosa County named Palm Village, Application #2014-011C. Through the Response, Palm Village requested \$420,421.00 in Tax Credit funding assistance for the project which has an overall development cost of approximately \$6,168,000.

34. The Review Committee determined the Palm Village Application had a perfect score of 27 points, but the Application but was ineligible for funding due to a funding shortfall identified by a Review Committee member responsible for scoring the financing.

35. As disclosed in the notes of the Review Committee and as disclosed orally during the Review Committee meeting held November 21, 2013, the Palm Village Application was specifically found ineligible for the following reason: "Financing shortfall."

36. The scoring notes indicate that the scoring issue involves the amount of equity to be paid prior to construction completion. Florida Housing decided that an amount listed in the Palm Village equity commitment letter could not be considered as funding thus resulting in a shortfall, as it would not be paid until after construction completion.

37. The RFA at Section Four (A) (9) in relevant part requires all Applicants to provide Information concerning all funding sources. With regard to Non-Corporation Funding Proposals, the RFA requires a Housing Credit equity proposal to include the following criteria.

- Be executed by all parties, including the Applicant;
- Include specific reference to the Applicant as the beneficiary of the equity proceeds;
- State the proposed amount of equity to be paid prior to construction completion;
- State the anticipated Eligible Housing Credit Request Amount;
- State the anticipated dollar amount of Housing Credit allocation to be purchased; and
- State the anticipated total amount of equity to be provided.

38. In response to these RFA requirements, Palm Village provided at Attachment 13 a Term Sheet setting forth the proposed equity investment in the proposed Palm Village Project from SunTrust Community Capital, LLC (Joint Exhibit 12). The Term Sheet responds to the specific items required above including the proposed amount of equity to be paid prior to construction completion. At page 2 the Term Sheet states the "amount of equity to be paid prior

to construction completion is (\$2,137,118)", which combines the first and second capital contribution referenced in the Term Sheet.

39. The second capital contribution provides that the \$966,872 in equity will be paid upon receipt of final certificates of occupancy issued on all units. Page 14 of the RFA defines "Prior to Completion of Construction" as "Prior to Receipt of Final Certificate of Occupancy or in the case of Rehabilitation, prior to placed-in-service date as determined by the Applicant."

D. STIPULATED FACTS AS TO WESTBROOK

40. Westbrook is a Florida partnership in the business of providing affordable housing. Westbrook is located at 4110 Southpoint Blvd, Suite 206, Jacksonville, FL 32216.

41. On October 17, 2013 JPM submitted an Application, number 2014-082C, in Response to the RFA which included information concerning a proposed 72 unit apartment complex in Pasco County named Residences at Fort King. Through the Application, JPM requested \$1,325,000 in Tax Credit funding assistance for the project which has an overall development cost of \$15,044,346.

E. STIPULATED FACTS AS TO SUMMERSET

42. The RFA requires the Applicant to demonstrate site control by providing, as Attachment 8 to Exhibit A of the Application, certain documentation in the form of: (a) an Eligible Contract, (b) a Deed or Certificate of Title or (c) a Lease. [RFA § 4.A.7., p. 24].

43. For the purposes of the RFA, an eligible contract is one that has a term that does not expire before a date that is six (6) months after the Application Deadline or that contains extension options exercisable by the purchaser and conditioned solely upon payment of additional monies which, if exercised, would extend the term to a date that is not earlier than six (6) months after the Application Deadline. [RFA § 4.A.7.a., p.24].

44. The Application Deadline was October 17, 2013, and the date six months thereafter is April 17, 2014.

45. The Summerset Application includes as Attachment 8 to Exhibit A, a "Real Estate Purchase Agreement" executed by the buyer and the sellers, dated August 28, 2013. This agreement provides for a 120-day due diligence period (Paragraph 5.f at p. 4). The Agreement also gives the purchaser the right to extend the closing for three 30-day extension periods (Paragraph 5.g. at p. 4), for a total of 90 days. The agreement (second Paragraph 5.g. at p. 4) states that closing is to occur no later than April 1, 2013.

46. Summerset also included in Attachment 8 to Exhibit A an "Assignment and Assumption Agreement" dated October 15, 2013. This Assignment and Assumption Agreement states that the Real Estate Purchase Agreement has not been modified or amended.

47. Florida Housing decided that the closing date of April 1, 2013 in the Real Estate Purchase Agreement was a typographical error based on the August 28, 2013 date the Real Estate Purchase Agreement was executed, and accepted the "Real Estate Purchase Agreement," as meeting the RFA requirement to demonstrate site control.

#### G. FACTS SPECIFIC TO HAMMOCK CROSSINGS

48. Rule 67-60.004(2), Florida Administrative Code, states: "An applicant may request in writing to withdraw its application at any time prior to a vote by the corporation's Board regarding any application received."

49. At 10:53 a.m. on December 11, 2013, which was prior to a vote by Florida Housing's Board on any application received in response to the RFA, Hammock Crossings emailed a letter to Florida Housing stating that it was withdrawing Application No. 2014-092C. (Joint Exhibit 5)

50. The Board was aware of Hammock Crossings' withdrawal letter when the Board acted on December 13, 2013. Notwithstanding Hammock Crossing's withdrawal of Application No. 2014-092C before the Board took action on any Application, Florida Housing proposes to treat the funds that would have been allocated to Hammock Crossings' withdrawn Application as a returned allocation. The RFA describes a returned allocation as: "Funding that becomes available after the Board takes action on the Committee's recommendation(s), due to an Applicant declining its invitation to enter credit underwriting or the Applicant's inability to satisfy a requirement outlined in this RFA. . . ." [RFA, p. 39].

51. In developing the recommendations for proposed allocations, the review committee passed over higher ranked applicants for which it determined there were inadequate tax credits available to fully fund the amount requested. The allocations approved by the Board included funding for Hammock Crossing.

52. Hammock Crossing was not invited to credit underwriting and has not declined to enter credit underwriting. The Board did not determine that Hammock Crossings was unable to satisfy any requirement in the RFA or Chapter 67-48. Had the Board made such a determination it would not have tentatively awarded funding to Hammock Crossings.

#### H. STIPULATED FACTS AS TO FOREST RIDGE

53. In its formal written Protest and Petition for Administrative Hearing, Summerset alleged "Forest Ridge Application No. 3004-038C does not appear to contain an original signature of the applicant on page 10 as required under the [Request for Applications]. . . . The failure to include the original signature results in the application being ineligible for funding. Consequently, Forest Ridge's application should not have been allocated funding. Summerset

would be eligible for funding if the Forest Ridge allocation is deemed ineligible.” (Paragraph 32 at p. 10).

54. Forest Ridge has filed a Certified Copy of its Application to Florida Housing in this proceeding. (Forest Ridge’s Notice of Filing Certified Copy of its Application). The Certified Copy of the Application shows that the Application submitted by Forest Ridge in response to the RFA was, in fact, signed.

55. As a result of the foregoing, Summerset is no longer pursuing a challenge to the Forest Ridge Application or the allocation of funding to Forest Ridge.

#### E. STIPULATED FACTS AS TO PARADISE POINT

56. The RFA at page 36 at Paragraph (2) states that in order to be counted as a source a Housing Credit equity proposal must meet the following criteria listed in Paragraph (2)(b):

- Be executed by all parties, including the Applicant;
- Include specific reference to the Applicant as the beneficiary of the equity proceeds;
- State the proposed amount of equity to be paid prior to construction completion;
- State the anticipated Eligible Housing Credit Request Amount;
- State the anticipated dollar amount of Housing Credit allocation to be purchased; and
- State the anticipated total amount of equity to be provided.

57. In response to this RFA requirement Paradise Point provided at Attachment 12 an equity proposal from RBC Capital Markets.

58. The proposal includes all the listed criteria required by RFA Section Four (A)(9). The proposal shows an eligible housing request amount as \$11,750,000 (\$1,175,000 annually) and the anticipated amount of credit allocation to be purchased as “\$11,778,825 (\$11,775,000 \* 99.99%)”.

59. The RFA states that “if the Eligible Housing Credit Request Amount is less than the anticipated amount of credit allocation stated in the equity proposal, the equity proposal will not be considered a source of financing.” [RFA § 4.A.9.d.(2)(a), p. 36].

60. Without consideration of the equity proposal as a source of financing, the application would fail to show that the sources equal or exceed uses, as required by the RFA.

61. Florida Housing decided that the credit allocation to be purchased, shown as \$11,778,825, was a typographical error, and determined that the housing credit request amount multiplied by 10 (years) times the ownership interest of the investor (99.99%) would yield \$11,748.825.

#### F. STIPULATED FACTS AS TO TUMBLIN CREEK

62. The RFA at page 36 at Paragraph (2) states that in order to be counted as a source a Housing Credit equity proposal must meet the following criteria listed in Paragraph (2)(b):

- Be executed by all parties, including the Applicant;
- Include specific reference to the Applicant as the beneficiary of the equity proceeds;
- State the proposed amount of equity to be paid prior to construction completion;
- State the anticipated Eligible Housing Credit Request Amount;
- State the anticipated dollar amount of Housing Credit allocation to be purchased; and
- State the anticipated total amount of equity to be provided.

63. The form score sheet provided to the evaluators to complete for each Application includes a section for Finance Scoring-Equity Commitment. Item 4.b.(3) of this section of the form asks: “Is the anticipated dollar amount of HC allocation to be purchased stated?” The bottom of this page of the form score sheet states:

*If the answer to ANY of the above questions that require a response is a “No” or a non-response, the affected commitment/ proposal/letter of intent or closed financing documentation cannot be considered as a source of financing.*

*If the remaining sources of financing do not provide adequate sources to equal or exceed costs, the Applicant is ineligible for funding."*

64. Tumblin Creek's equity proposal is in Attachment 13 to Application 2014-046C.

This equity proposal consists of a letter dated October 7, 2013 from Raymond James.

65. Without consideration of the equity proposal as a source of financing, Application 2014-046C would fail to show that the sources equal or exceed uses, as required by the RFA.

66. In response to the Site Control requirements of the RFA Application #2014-046C provided at Attachment 8 a series of documents including a Contract for Sale and Purchase. An Addendum to the Contract for Sale and Purchase at Paragraph 16 provides the following language:

This Contract is not assignable by Buyer without Seller's written approval, which approval shall not be unreasonably withheld or denied, however this Contract may be assigned to an entity owned or controlled by the same principals as Buyers.

67. An Assignment provided with the Contract for Sale and Purchase at Attachment 8 did not appear to include the written approval of the Seller.

68. The assignment was from the buyer, Arbour Valley Development, LLC, to Arbours at Tumblin Creek, as the assignee. Attachment 3 to the Arbours at Tumblin Creek Application established that the assignee and assignor are owned or controlled by the same principals. Florida Housing accepted the assignment.

#### G. STIPULATED FACTS AS TO CENTRAL PARKWAY

69. The form score sheet provided to the evaluators to complete for each Application includes a section for Finance Scoring-Equity Commitment. Item 4.b.(3) of this section of the

74. The RFA at Section Four Exhibit A(8) allows an Applicant to obtain points for a Local Government Contribution. Specifically to obtain points the appropriate Contribution Form must be filled out and signed by the appropriate designated local government person.

75. In response to this RFA provision Application #2014-009C provided a Local Government Verification of Contribution which is signed by Mr. Eric Davis as "Planning Official" for the City of Crestview. The Certification Form provides as follows:

This certification must be signed by the chief appointed official (staff) responsible for such approvals, Mayor, City Manager, County Manager/Administrator/Coordinator, Chairperson of the City Counsel/Commission or Chairperson of the Board of County Commissioners. Other signatories are not acceptable.

76. Florida Housing accepted Mr. Davis, the "Planning Official" as the chief appointed official responsible for the approval of the water connection fee waiver.

77. The Local Government Verification of Contribution Form further refers to an Annexation Agreement ("Agreement") adopted by the City on September 26, 2013, which was not attached to the form.

#### J. STIPULATED FACTS AS TO ROSEDALE/BROOKESTONE

78. The Received Applications Posting indicates that Rosedale's Brookestone I development (Application 2014-007C) received the maximum 27 points and a lottery number of 17. Other applications for development also received the maximum score of 27 points, and qualify for the same preferences as Brookestone I, but have lower lottery numbers than Brookestone I, including Arbours at Tumblin Creek (Application 2014-046C) and Summerset Apartments (Application 2014-008C). Of these applications, Arbours at Tumblin Creek has been recommended for funding. In addition, Paradise Point Senior Housing (Application 2014-080C) was recommended for funding to meet the Florida Keys Goal. If some or all of these

applications are determined to be ineligible, then Brookestone I instead would be recommended for funding.

## II. EVIDENTIARY STIPULATIONS

The parties stipulate, subject to objections on the grounds of applicability or 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.

The parties offer the following joint exhibits into evidence:

- Exhibit 1: This Prehearing Stipulation.
- Exhibit 2: RFA 2013-001 Medium-Small County Geographic RFA
- Exhibit 3: RFA 2013-001 Medium-Small County Geographic RFA Recommendations
- Exhibit 4: RFA 2013-001 Medium-Small RFA Applications Sorting Order
- Exhibit 5: Email and letter requesting withdrawal of Hammock Crossings Application
- Exhibit 6: Transcript of December 13, 2013, FHFC Board Meeting, (pp. 8-18)
- Exhibit 7: Pages 1 and 2 of, and Attachments 3 and 4 to, Application 2013-083C (Frenchtown Square)
- Exhibit 8: Attachment 13 to Application 2013-046C (Tumblin Creek)
- Exhibit 9: Attachment 13 to Application 2013-089C (Central Parkway)
- Exhibit 10: Attachment 3 and 8 to Application 2013-046C (Tumblin Creek)
- Exhibit 11: Attachment 8 to Application 2013-008C (Summerset)
- Exhibit 12: Attachment 9 to application 2013-009C (Katie Manor)
- Exhibit 13: Attachment 13 to Application 2013-011C (Palm Village)
- Exhibit 14: Attachment 12 to Application 2013-080C (Paradise Point)
- Exhibit 15: Finance Scoring Template for RFA 2013-001
- Exhibit 16: E-mail dated Friday, October 18, 2013 from Kevin Tatreau to Wayne

### Exhibit A to RFA 2013-001 - Affordable Housing Developments located in Medium and Small Counties

#### 1. Demographic Commitment:

The Applicant must select one Demographic Category:

- a.  Family
- b. Elderly - Indicate the type of Elderly Development:
  - Elderly ALF
  - Elderly non-ALF

#### 2. Applicant Information:

- a. The Applicant must state the name of the Applicant: Paradise Point Senior Housing, LLC
- b. The Applicant must provide the required documentation to demonstrate that the Applicant is a legally formed entity qualified to do business in the state of Florida as of the Application Deadline as Attachment 1.
- c. Is the Applicant applying as a Non-Profit organization?

- Yes
- No

If "Yes", in order to be considered to be a Non-Profit entity, the Applicant must answer the following questions and provide the required information.

(1) Provide the following information for each Non-Profit entity as Attachment 2:

- (a) Attorney opinion letter;
- (b) IRS determination letter;
- (c) The description/explanation of the role of the Non-Profit entity;
- (d) The names and addresses of the members of the governing board of the Non-Profit entity; and
- (e) The articles of incorporation demonstrating that one of the purposes of the Non-Profit entity is to foster low-income housing.

(2) Answer the following questions:

(a) Is the Applicant or one of its general partners or managing members incorporated as a Non-Profit entity pursuant to Chapter 617, Florida Statutes, or similar state statute if incorporated outside Florida?

- Yes
- No

If "No", is the Applicant or one of its general partners or managing members a wholly-owned subsidiary of a Non-Profit entity formed pursuant to Chapter 617, Florida Statutes, or similar state statute if incorporated outside Florida?

- Yes
- No

(b) Is the Applicant or one of its general partners or managing members a 501(c)(3) or 501(c)(4) Non-Profit entity or is the Applicant or one of its general partners or managing members a wholly-owned subsidiary of a 501(c)(3) or 501(c)(4) Non-Profit entity?

entity have an ownership interest, either directly or indirectly, in the general partner or general partner's interest in the Applicant or in the managing member or the managing member's interest in the Applicant?

If "Yes", state the percentage owned in the general partnership or managing member interest: %

*Arbours @  
Central Pkwy  
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Last Updated: 10/11/2013 11:06:01 AM | Form Key: 999

**8. Local Government Contributions:**

If the Applicant selected the Development Category of New Construction, Redevelopment, or Acquisition and Redevelopment at question 4.c. above, (i.e., the Application is not eligible for automatic 5 points), has a Local Government committed to provide a contribution to the proposed Development?

Yes

No

If "Yes", in order to be considered for points for this section of the RFA, the Applicant must provide the following Local Government Verification of Contribution form(s) as Attachment 9, as applicable:

- a. Local Government Verification of Contribution – Grant Form;
- b. Local Government Verification of Contribution – Fee Waiver Form;
- c. Local Government Verification of Contribution – Loan Form; and/or
- d. Local Government Verification of Contribution – Fee Deferral Form.

**9. Funding:**

a. State the Applicant's Housing Credit Request Amount (annual amount): \$ 1175000

(1) Difficult Development Area (DDA) and Qualified Census Tract (QCT):

(a) Is the proposed Development located in a DDA, as defined in Section 42(d)(5)(B)(iii), IRC, as amended?

Yes

No

If "Yes", indicate which DDA: Monroe County

(b) If the proposed Development is not located in a DDA (as indicated by the Applicant in question (a) above), is it located in a QCT as defined in Section 42(d)(5)(B)(ii) of the IRC, as amended?

Yes

No

If "Yes", indicate the QCT Number: and provide a copy of a letter from the local planning office or census bureau which verifies that the proposed Development is located in the referenced QCT as Attachment 10.

(2) Multi-Phase Development:

If the answer to question (1)(a) and/or (1)(b) above is "Yes", indicate which of the following applies (question (2)(a), (2)(b) or (2)(d) below):

If the answer to both questions (1)(a) and (1)(b) above is "No", indicate which of the following applies (question (2)(c) or (2)(d) below):

(a)  The proposed Development is located in a HUD-designated DDA and/or QCT and is a phase of a multiphase Development, as defined in Section Four A.9.a.(1) of the RFA, where no phase was funded in the 2011 Universal Application Cycle.

or

(b)  The proposed Development is located in a HUD-designated DDA and/or QCT and is an additional phase of a multi-phase Development where a phase was funded in the 2011 Universal Application Cycle. Provide the required information regarding the previously funded phase(s) as Attachment 10.

or

(c)  The proposed Development is not located in a HUD-designated DDA or QCT, but it is an additional phase of a multi-phase Development where a phase was funded in the 2011 Universal Application Cycle. Provide the required information regarding the previously funded phase(s) as Attachment 10.

or

(d)  Neither (a), (b), nor (c) above applies to the proposed Development.

b. Other Funding:

(1) If a PLP loan has been awarded for this Development, provide the following information:

Corporation File #      Amount of Funding

Conner transmitting Finance Scoring Template.

- Exhibit 17: Page 4 of RFA 2014-103
- Exhibit 18: Deposition transcript of Ken Reecy
- Exhibit 19: Deposition transcript of Amy Garmon
- Exhibit 20: Deposition transcript of Jade Grubbs
- Exhibit 22: Composite Exhibit of Documents Regarding Application 2014-03C (Janie's Garden.)

Petitioner Summerset offers the following exhibit:

Summerset's Exhibit 1: Summerset Affidavit (subject to objection)

### III. STIPULATED ISSUES OF LAW

1. The Hearing Officer has jurisdiction over this matter, pursuant to sec. 120.569, 120.57(2) and (3), Fla. Stat. and Chapter 67-60, Fla. Admin. Code
2. The parties agree that Chapters 67-60 and 67-48, Fla. Admin. Code, govern this matter.

### IV. DISPUTED ISSUES OF LAW

1. Whether Florida Housing acted contrary to the governing statutes, rules, or the terms of RFA 2013-001 when it accepted as a funding source the equity proposal letter submitted by Arbours at Tumblin Creek (Application 2014-046C). (Joint Exhibit 8)
2. Whether Florida Housing acted contrary to the governing statutes, rules, or the terms of RFA 2013-001 when it accepted as evidence of site control an "Assignment of Contract for Purchase and Sale," submitted by Arbours at Tumblin Creek (Application 2014-046C).
3. Whether Florida Housing acted contrary to the governing statutes, rules, or the terms of RFA 2013-001 when it accepted as a funding source the equity proposal letter submitted by Arbours at Central Parkway (Application 2014-089C). (Joint Exhibit 9)

4. Whether Florida Housing acted contrary to the governing statutes, rules, or the terms of RFA 2013-001 when it accepted as a funding source the equity proposal letter submitted by Paradise Point application (Application 2014-080C) the Eligible Housing Credit Request Amount is less than the anticipated amount of credit allocation stated on the face of the equity proposal.

5. Whether Florida Housing acted contrary to the governing statutes, rules, or the terms of RFA 2013-001 when it accepted as required evidence of site control the "Real Estate Purchase Agreement" submitted by Summerset (Application 2014-008C) where the Agreement contains a closing date of April 1, 2013, upon deciding that the April 1, 2013, closing date in the Agreement is a typographical error that is clearly evident on its face.

6. Whether Florida Housing acted contrary to the governing statutes, rules, or the terms of RFA 2013-001 when it accepted a "Verification of Local Government Contribution," signed by Eric Davis as the Planning Official for the City of Crestview, submitted by Katie Manor (Application 2014-009C).

7. Whether Florida Housing acted contrary to the governing statutes, rules, or the terms of RFA 2013-001 when it determined that OCDC Palm Village (Application 2014-011C) was not eligible for funding because a part of its capital contribution would not be paid prior to construction completion.

8. Whether Florida Housing acted contrary to the governing statutes, rules, or the terms of RFA 2013-001 when it determined that the Frenchtown (Application 2014-083C) was not eligible for funding because it failed to provide the principals required for co-developer RUDG, LLC.

9. Whether Florida Housing acted contrary to the governing statutes, rules, or the terms of RFA 2013-001 when it determined that Hammock Crossing's application (Application 2014-C) should be included as ranked for funding ahead of other eligible Applications, where its letter of withdrawal was submitted prior to the Board's vote as allowed by Rule 67-60,004(2).

10. Whether Florida Housing acted contrary to the governing statutes, rules, or the terms of RFA 2013-001 when it included the Arbours at Central Parkway application (Application 2014-089C) as one of the developments to be allocated funding under the RFA after the withdrawal of the Hammock Crossings Application.

11. Whether Florida Housing's Intended Awards are contrary to the governing statutes, Florida Housing's rules, or the RFA ; and

12. Whether Florida Housing's Intended Awards are clearly erroneous, contrary to competition, arbitrary or capricious.

## V. THE PARTIES' POSITION STATEMENTS

### ROSEDALE

Arbours at Tumblin Creek (Application 2014-046C) is not eligible for funding because the submitted equity proposal fails to "state the anticipated dollar amount of Housing Credit allocation to be purchased," as required by the RFA. And without consideration of the equity proposal as a source of financing, the application fails to show that the sources equal or exceed uses, as required by the RFA. According to the RFA, to be counted as a source of financing, an equity proposal must meet certain requirements. Among other things, it must "state the anticipated dollar amount of Housing Credit allocation to be purchased." [RFA § 4, A.9.d.(2)(b)]. The equity proposal submitted with this application (see pages 49-51 of the application) does not include this required information. The equity proposal therefore may not

be considered a source of funding. Without consideration of the equity proposal as a source of financing, the application fails to show that the sources equal or exceed uses, as required by the RFA. Accordingly, Arbours at Tumblin Creek (Application 2014-046C) is not eligible for funding.

Paradise Point Senior Housing (Application 2014-080C) is not eligible for funding because the Housing Credit Request Amount is less than the anticipated amount of credit allocation stated in the equity proposal, and the equity proposal therefore may not be considered a source of funding. And without consideration of the equity proposal as a source of financing, the application fails to show that the sources equal or exceed uses, as required by the RFA. The RFA states that "if the Eligible Housing Credit Request Amount is less than the anticipated amount of credit allocation stated in the equity proposal, the equity proposal will not be considered a source of funding." See RFA § 4.A.9.d.(2)(a) at p. 36. The Equity Proposal attached to the application shows the Eligible Housing Request Amount is \$11,750,000 (\$1,175,000 annually) and the anticipated amount of credit allocation to be purchased as \$11,778,825. Because the Housing Credit Request Amount (\$11,750,000) is less than the anticipated amount of credit allocation stated in the equity proposal (\$11,778,825), the equity proposal therefore may not be considered a source of funding. Without consideration of the equity proposal as a source of financing, the application fails to show that the sources equal or exceed uses, as required by the RFA. Accordingly, Paradise Point Senior Housing (Application 2014-080C) is not eligible for funding.

Summerset Apartments (Application 2014-008C) is not eligible for funding because it fails to include the required evidence of site control. The RFA requires the Applicant to demonstrate site control by providing, as Attachment 8 to Exhibit A of the Application, certain

documentation in the form of: (a) an Eligible Contract, (b) a Deed or Certificate of Title or (c) a Lease. RFA § 4.A.7. For the purposes of the RFA, an eligible contract is one that has a term that does not expire before a date that is six (6) months after the Application Deadline or that contains extension options exercisable by the purchaser and conditioned solely upon payment of additional monies which, if exercised, would extend the term to a date that is not earlier than six (6) months after the Application Deadline. RFA § 4.A.7.a. The Application Deadline was October 17, 2013, and the date six months thereafter is April 17, 2014. The application includes as Attachment 8 to Exhibit A, a "Real Estate Purchase Agreement" dated August 28, 2013. This agreement provides for a 120-day due diligence period (Paragraph 5.f at p. 4), which expires on December 26, 2013. The agreement also gives the purchaser the right to extend the closing for three 30-day extension periods (Paragraph 5.g. at p. 4), for a total of 90 days; however, the agreement states that closing is to occur no later than April 1, 2013 (second Paragraph 5.g. at p. 4). As such, the agreement is not an eligible contract because it does not have a term that does not expire before April 17, 2014. Because it fails to include the required evidence of site control, Summerset Apartments (Application 2014-008C) is not eligible for funding,

Hammock Crossing's application (Application 2014-C) should be treated as withdrawn and not receive any allocation, because its letter of withdrawal was submitted prior to the Board's vote as allowed by Rule 67-60,004(2). It should not be treated as a "returned allocation" pursuant to RFA § 4.B.8 at p. 39, because Hammock Crossings was not invited to credit underwriting and has not declined to enter credit underwriting, and because Hammock Crossings was not determined to be unable to satisfy any requirement in the RFA or Chapter 67-48.

Frenchtown (Application 2014-083C) is not eligible for funding because it failed to provide principals required for co-developer RUDG, LLC.

## WESTBROOK

It is Westbrooks's position that Florida Housing's scoring decision regarding Applications 2014-008C, 2014-009C and 2014-046C was clearly erroneous, contrary to completion, arbitrary or capricious. Specifically Application 2014-008 did not provide sufficient evidence to demonstrate Site Control. Application 2014-046C likewise failed to provide sufficient evidence to demonstrate Site Control. Finally Application 2014-009C failed to provide a properly executed Local Government Verification of Contribution Form. It is Westbrooks' position that all three of these Applications should have been either found ineligible or had their respective scores reduced.

## FRENCHTOWN

It is Frenchtown's position that Florida Housing's decision to find its Application ineligible was clearly erroneous, contrary to competition, arbitrary or capricious. Frenchtown submitted information which disclosed its Developer and the Principals for its Developer. There are no co-developers for the Frenchtown proposed project and accordingly no information was required nor provided.

Likewise Florida Housing's review and scoring of Applications 2014-046C and 2014-089C was clearly erroneous, contrary to competition, arbitrary or capricious in that neither Application provided an equity proposal which included each item required for an equity proposal. Specifically, neither Applications equity proposal included an anticipated dollar amount of Housing Credits to be purchased. As such each Application should have been deemed ineligible.

## PALM VILLAGE

It is Palm Village's position that Florida Housings decision to find its Application ineligible was clearly erroneous contrary to competition, arbitrary or capricious. Palm Village submitted financial information that specifically provides the amount of funding to be paid prior to construction completion. There was no funding shortfall for the Palm Village proposed Development.

## KATIE MANOR

Katie Manor's position is that the Corporation properly scored Palm Village's and Katie Manor's applications. The Corporation's actions were not clearly erroneous, contrary to competition, arbitrary, or capricious. Pursuant to the instructions for the, in order for funding to be considered as a source, an applicant is required to provide documentation of all financing proposals from lenders, equity proposals from the syndicator, and other sources of funding. The RFA further sets forth the necessary requirements for a housing credit equity proposal to be considered valid. Specifically, page 14 of the application provides for construction funding sources:

[Housing Credit] Equity Proceeds Paid Prior to Completion of Construction which is Prior to Receipt of Final Certificate of Occupancy or in the case of Rehabilitation, prior to placed-in-service date as determined by the Applicant.

Palm Village entered \$2,127,118 as the amount of Housing Credits that would be paid prior to receipt of the final certificate of occupancy. Similarly, Palm Village's equity proposal in the form of a term sheet from SunTrust Community Capital, LLC ("Term Sheet") states the "amount of equity to be paid prior to construction completion is \$2,137,118." The above figure is made up of two installment payments identified in the proposal as "Capital Contribution #1" and "Capital Contribution #2." Under the section labeled "Capital Contribution #2," the Term

Sheet states that the \$966,872 in equity will **not** be paid until three criteria are satisfied, including “1) Final Certificates Of Occupancy on all units by the appropriate authority....” By its very terms, none of the \$966,872 capital contribution is to be made “Prior to Completion of Construction” as that term is defined in the RFA. The statement that “[t]he proposed amount of equity to be paid prior to construction completion is \$2,127,118” is clearly incorrect as \$966,872 of that total will not be paid until **after** construction is completed. Therefore, when scoring the Application, Florida Housing properly concluded the equity figure of \$1,160,246 was the proper amount to be considered as the source of financing during construction, thereby resulting in the funding shortfall and the failure to meet a threshold requirement of financing.

With respect to Katie Manor’s application, Florida Housing correctly accepted Katie Manor’s Local Government Verification of Contribution form (“Verification Form”) which is signed by Mr. Eric Davis as “Planning Official” for the City of Crestview. As provided in the Verification Form, the City of Crestview waived the water connection fees for the project in the amount of \$20,000. The waiver was granted pursuant to an action by the City Council on September 26, 2013. The Certification Form allows a signature by the “chief appointed official (staff) responsible for such approvals....” Florida Housing accepted Mr. Davis, the “Planning Official,” as the chief appointed official responsible for approval of the water connection fees waiver.

#### SUMMERSET

Summerset timely filed a response to the RFA that met all of the requirements and achieved a perfect score of 27. Summerset had a lottery number of 13 which, based upon the ranking methodology set forth in the RFA, placed it ahead of the Arbours at Central Parkway and was tentatively selected for funding. The RFA sets forth a multi-level process for allocating

tax credits to eligible developers. After the scoring, county and special set-asides, the RFA provides that funds will be allocated based upon lottery numbers. There is a provision in the RFA which indicates that, if insufficient funds are available to fully fund a developer's request, that application will be passed over and the funds will be awarded to the next ranked development that can be fully funded with the remaining credits. However, that provision does not provide a basis for skipping over Summerset to allocate funding to Arbours at Central Parkway.

Prior to the Florida Housing Board meeting on December 13, 2013, one of the RFA applicants, Hammock Crossings, Application No. 2004-092C, submitted a written notice that it was withdrawing its application. Such a withdrawal is authorized under Florida Housings rules. Rule 68-60.004(2) expressly allows an applicant to withdraw prior to the Board meeting and the Rule provides as follows: "Any Applicant may request in writing to withdraw its Application at any time prior to a vote by the Corporation's Board regarding any Applications received." There is no provision in the statutes or rules that require or direct the Board to approve or take action with respect to a notice of withdrawal.

In the preliminary recommendations developed by Florida Housing's scoring committee, Hammock Crossings was in the funding range with a recommended award of tax credits of \$1,075,000. Even though Hammock Crossings had withdrawn its application prior to the Board meeting, the Florida Housing Board approved an allocation to Hammock Crossings for the entire amount of \$1,075,000. There is no dispute that Hammock Crossings has no intent of going forward with its application in this cycle. Consequently, the \$1,075,000 in tax credits allocated to Hammock Crossings is not going to be utilized for that development. It should have been included in the funds allocated to other applicants in accordance with the methodology set forth

in the RFA. If Hammock Crossings is not included in the list of developments awarded tax credits, there are sufficient credits available to fully fund Summerset based on the RFA methodology. Only by including an allocation of tax credits to Hammock Crossings is Summerset outside of the funding range.

Rosedale and JPM Westbrook, who both have lottery numbers that place them behind Summerset, have challenged the Summerset application alleging that the Real Estate Purchase Agreement included in the Summerset application does not meet the requirements to demonstrate site control. The Purchase Agreement was dated August 28, 2013, and was signed by both the seller and the purchaser. There is a provision in the Purchase Agreement stating that the closing was to occur by April 1, 2013. This was obviously a typographical error since the agreement itself was not signed until August 2013. The contract must be construed as a whole and the April 2013 closing date is obviously a mistake – since it was four months before the contract was signed. Florida Housing correctly recognized that this reference to April 2013 was a typographical error and concluded that Summerset had demonstrated site control. Florida law mandates that contracts should not be construed in a manner that leads to nonsensical results. Florida Housing's rules expressly allow it to disregard typographical errors that do not result in any competitive advantage to an applicant. Florida Housing has made a deliberate decision to get away from hyper-technical scoring and to allocate tax credits based upon the relative merits of the applications rather than superficial issues. There is no doubt here that the intent of the parties was to ensure that the applicant had site control throughout the Florida Housing application process. This intent is confirmed by an affidavit which Summerset will proffer at the hearing. Included within the application, was an assignment of the Purchase Agreement that

took place in October 2013, which would have been superfluous if the Purchase Agreement was not valid.

The contract is enforceable between the parties. To the extent there is an ambiguity created by a closing date that predates the date of the Agreement, parol evidence would be admissible in a civil action. Contrary to the challengers' claims, the Purchase Agreement is an enforceable contract that demonstrates site control for the required period. The challengers' focus on one line of the Agreement to draw conclusions that contravene the parties' intent is contrary to the goal of Florida Housing's allocation process. The Hearing Officer should look at the agreement as a whole and should not construe a contract in a way that makes no sense.

#### ARBOURS AT TUMBLIN CREEK

Arbours at Tumblin Creek's position is that the Corporation properly scored its application, as to (i) its equity commitment letter from Raymond James satisfying the RFA requirements and (ii) its real estate purchase contract meeting the RFA requirements. The Corporation's actions were not clearly erroneous, contrary to competition, arbitrary, or capricious.

Petitioners have alleged that the Raymond James equity letter was deficient because it did not expressly state the anticipated dollar amount of Housing Credit allocation to be purchased. However, such information was clearly determinable from the contents of the equity letter itself. A simple algebraic computation, utilizing the amount of credits received by the applicant, the price being paid for the credits, and the total equity being paid by Raymond James, results in the mathematical conclusion that Raymond James was buying .9999 (99.99%) of the housing credits. Multiplying that 99.99% times the total amount of credits gives rise to the anticipated dollar amount of Housing Credit allocation to be purchased by Raymond James. Additionally,

the percentage of the total housing credits being purchased was easily gleaned from Attachment 3 of the Arbours at Tumblin Creek application, wherein it was clearly indicated that the initial limited member (to withdraw at closing and be replaced by the tax credit investor) owned a 99.99% interest in the applicant entity. Once again, it was clear from this that Raymond James would be purchasing 99.99% of the tax credits, and multiplying 99.99% times the credits applied for and indicated in the Raymond James letter gives rise to the anticipated dollar amount of Housing Credit allocation to be purchased.

Petitioners have alleged that site control as evidenced by Arbours at Tumblin Creek is deficient because the contract seller did not consent to the assignment of the purchase contract from Arbour Valley Development, LLC (the contract purchaser) to the applicant (Arbours at Tumblin Creek, LLC). Section 16 of the addendum to the purchase contract clearly allows the contract to be assigned without the seller's consent, provided the assignment is to an entity controlled by the same principals as the contract purchaser/assignor. Attachment 3 to the application clearly demonstrates that the assignor and the assignee were controlled by the same principals; hence, the consent of the seller to the assignment was not required.

#### ARBOURS AT CENTRAL PARKWAY

Arbours at Central Parkway's position as to its equity commitment letter from Raymond James is identical to the position of Arbours at Tumblin Creek set forth above.

#### FLORIDA HOUSING

Florida Housing's position is that each scoring decision at issue here was made in full compliance with all applicable statutes, rules, and terms of the RFA. These decisions will be explained more specifically at hearing and in Florida Housing's Proposed Recommended Order.

RESPECTFULLY SUBMITTED this 5<sup>TH</sup> day of March, 2014 by:

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