

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**RTD PHASE I, LTD.**

**Petitioner,**

vs.

**Application No. 2003-089S  
2003 Universal Cycle**

*FHFC # - 2003 - 0038*

**FLORIDA HOUSING FINANCE  
CORPORATION,**

**Respondent.**

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**PETITION FOR REVIEW OF 2003 UNIVERSAL SCORING SUMMARY FOR  
RTD PHASE I, LTD.**

Petitioner RTD Phase I, Ltd. ("RTD"), pursuant to sections 120.569 and 120.57(2), Florida Statutes, and rules 28-106.301 and 67-48.005, Florida Administrative Code, files this petition for informal administrative hearing concerning the 2003 Universal Scoring Summary for RTD's proposed development, The Oaks at Riverview, and states:

1. The sole issue raised by this petition is the determination by Florida Housing Finance Corporation ("Florida Housing") that RTD did not meet threshold requirements for minimum set-aside commitments because the Applicant selected as a minimum set-aside 40% of its units at 60% of area median income (AMI) or less, but the Applicant failed to demonstrate that it "received an allocation of Housing Credits or is 'scheduled' to be assisted with Housing Credits." See Item # 1T.III.E.1.a., 2003 MMRB, SAIL & HC Scoring Summary for The Oaks at Riverview, July 18, 2003 ("Universal Scoring Summary") (attached as Exhibit 1). As explained below, the Applicant will be

funded by tax-exempt private activity bonds from the Housing Finance Authority of Hillsborough County and satisfies every applicable test of Florida Housing and the Internal Revenue Service to receive non-competitive, “automatic” 4% Housing Credits. Thus, the Applicant is “scheduled” to receive Housing Credits as a matter of law, is authorized by the SAIL statute to select the set-aside percentage that it chose in the application, and Florida Housing should have scored the Applicant as meeting threshold requirements for set-aside commitments.

2. The agency affected in this proceeding is Florida Housing, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The agency’s file number is 2003-089S.

3. The petitioner is RTD, 8403 Colesville Road, Suite 400, Silver Spring, Maryland 20910. The petitioner’s telephone numbers are 301-562-1686 (phone) and 301-562-1660 (facsimile).

4. The petitioner’s attorney is Donna E. Blanton, Radey Thomas Yon & Clark, P.A., 313 N. Monroe Street, Suite 200, Tallahassee, Florida, 32301. The attorney’s telephone numbers are 850-425-6654 (phone) and 850-425-6694 (facsimile).

5. RTD received notice of the Universal Scoring Summary on July 21, 2003, when Florida Housing Deputy Development Officer Kerey Carpenter sent a memorandum to all applicants including final scores and a notice of rights.

6. RTD’s substantial interests are affected by the Universal Scoring Summary because RTD timely filed an application with Florida Housing for a SAIL loan in the 2003 Universal Cycle in connection with the development of an apartment complex called The

Oaks at Riverview in Tampa, Florida, which is part of the Tampa Housing Authority's HOPE VI revitalization efforts.

7. Ultimate facts alleged, including those that warrant reversal of the proposed agency action, are as follows:

- a. When preliminary scores were released by Florida Housing on May 12, 2003, RTD was determined not to have met threshold requirements relating to minimum set-aside commitments. *See* Exhibit 2 (Preliminary Scoring Summary) at Item # 1T.III.E.1.a. As its reason for the failure to meet threshold requirements, Florida Housing stated:

Page 26 of the Universal Application Instructions states that in order for a SAIL Applicant to select as a minimum set-aside 40% of its units at 60% AMI or less, it must have "received an allocation of Housing Credits or is 'scheduled' to be assisted with Housing Credits." The Applicant failed to provide documentation that it met any of the previous criteria for qualifying for the minimum set-aside of 40% of its units at 60% AMI or less.

- b. In response, RTD submitted two cures. One cure revised page 22 of RTD's Application and included a letter from the executive director of the Housing Finance Authority of Hillsborough County, both demonstrating that a tax-exempt private activity bond allocation has been reserved for The Oaks at Riverview in an amount up to \$10,500,000. A copy of this cure is attached as Exhibit 3.<sup>1</sup> As shown on Exhibit 1, there is no remaining question from Florida Housing that RTD has demonstrated a firm commitment for the bond financing.

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<sup>1</sup> The cure also revised the Development Cost Pro Forma showing the HFA financing fees as \$442,556. This revision was made for consistency purposes.

- c. The second cure included a detailed discussion and an explanation from Reznick, Fedder & Silverman, the Housing Credit Certified Public Accountants for RTD, that the Oaks at Riverview satisfies the applicable federal tests to receive the Housing Credits. This cure explained why the development is “scheduled” to receive housing credits and why, therefore, RTD could select as a minimum set-aside 40% of its units at 60% of AMI. A copy of this cure is attached as Exhibit 4.
- d. The SAIL loan for which RTD applied to Florida Housing is authorized by section 420.5087, Florida Statutes (the “SAIL Statute”). The SAIL Statute establishes the minimum set-aside requirements for SAIL-financed affordable housing properties. Those set-aside requirements vary, depending on what other financing the development uses. When a proposed development uses low-income housing tax credits (“Housing Credits”) as part of its financing, the statutory SAIL set-aside requirements are the same as those required by Congress under the Housing Credit program. *See* § 420.5087(2)(c), Florida Statutes, which provides:
  - (2) The corporation shall have the power to underwrite and make state apartment incentive loans or loan guarantees to sponsors, provided:
    - ...
    - (c) The sponsor uses the federal low-income housing tax credit, and the project meets the tenant income eligibility requirements of s. 42 of the Internal Revenue Code of 1986, as amended . . .
- e. Section 42 of the Internal Revenue Code of 1986, as amended (“Section 42”), permits an affordable housing development that uses Housing Credits

to set aside 40% of its units for those at or below 60% AMI. *See* 26 U.S.C. § 42(g)(1)(B).

- f. Section 42 states that when 50% or more of the aggregate basis of a building and its land is financed with tax-exempt private activity bonds, the building may receive non-competitive Housing Credits that do not count against the state's allocation. *See* 26 U.S.C. § 42(h)(4)(B); *see also* r. 67-48.027(2)(a), Fla. Admin. Code Ann. (Florida Housing rule establishing that a development may receive non-competitive Housing Credits when financed with local private activity bonds if it has "50% or more of the aggregate basis of any building and the land on which the building is located financed by tax-exempt bonds"). This is commonly referred to as the "50% test."
- g. Put simply, if a property passes the 50% test, it will receive Housing Credits,<sup>2</sup> be eligible to set aside 40% of its units for those at or below 60% AMI pursuant to federal law, and be eligible to select that same set-aside pursuant to the SAIL Statute.
- h. The Oaks at Riverview passes the 50% test, as illustrated in the attachment to Exhibit 4 (letter from Reznick Fedder & Silverman, CPAs). The letter concludes: "Using the projected aggregate building and land and tax-exempt bond proceeds above [provided by Housing Finance Authority of

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<sup>2</sup> The development also must pass Florida Housing's other application threshold criteria, but none of those are at issue here. *See* r. 67-48.027(2)(c) and the Qualified Allocation Plan adopted by rule 67-48.002(91), Florida Administrative Code.

Hillsborough County], the project has a fraction of 50.28% and meets the 50 percent test in §42(h)(4)(B).”

- i. The Universal Application Instructions (“Instructions”), which have been adopted and incorporated by reference into Florida Housing’s rules,<sup>3</sup> restate the minimum set-aside requirements for SAIL applicants. The Instructions provide in relevant part on page 26:

Pursuant to Rule 67-48, F.A.C., the SAIL minimum set-aside requirements shall be:

- 20% of the units set-aside at 50% of area median income; or
- 40% of the units set-aside at 60% of area median income only if the Development received an allocation of Housing Credits or is “scheduled” to be assisted with Housing Credits;

....

For purposes of meeting threshold requirements of this Application only, “scheduled” shall mean:

The Application is one for both SAIL and HC; or

The Applicant includes evidence within its Application that the Development has a firm commitment, as determined by Florida Housing after scoring the Financing portion of this Application, for 50% or more of its financing from tax-exempt private activity bonds.

(Emphasis supplied). A copy of pages 26 and 27 of the Instructions are attached as Exhibit 5.

- j. Although the wording of the Instructions differs slightly from Section 42, the guidance that the IRS has issued regarding that section, and Florida Housing’s rule 67-48.027(2)(a), none of the terms in the applicable Instructions section is defined to mean anything different from the statutes the section implements. If Florida Housing were to apply a meaning to the Instructions that deviates from the mandates of the SAIL Statute or the

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<sup>3</sup> See r. 67-48.002(111), Fla. Admin. Code Ann.

Internal Revenue Code, such an interpretation would be an invalid exercise of delegated legislative authority. *See, e.g., Willette v. Air Products*, 700 So. 2d 397 (Fla. 1<sup>st</sup> DCA 1997), which states:

Executive branch rulemaking is authorized in furtherance of, not in opposition to, legislative policy. . . . [A] duly promulgated administrative rule, although ‘presumptively valid until invalidated in a section 120.56 rule challenge,’ must give way in judicial proceedings to any contradictory statute that applies.

(Internal citations omitted); *see also Carver v. State Division of Retirement*, 2003 WL 21510795, \*3 (Fla. 1<sup>st</sup> DCA July 3, 2003) (following *Willette*).

- k. Accordingly, the language in the Instructions must be read to have the same meaning as the SAIL Statute and Section 42. By reading the Instructions to have the same meaning as the statutes they are implementing, Florida Housing also would keep the Instructions consistent with rule 67-48.027(2)(a).
- l. When the final scores were released by Florida Housing in the Universal Scoring Summary, the Application still was identified as failing threshold requirements relating to minimum set-aside commitments. The stated reason was identical to the reason given in the Preliminary Scoring Summary. *Compare* Item # 1T.III.E.1.a. in Exhibit 1 *with* Item # 1T.III.E.1.a. in Exhibit 2. In the “Additional Application Comments” section, Florida Housing stated:

The Applicant attempted to cure Item 1T by stating that the Application passed what the Applicant called the real world 50% test established by the Internal Revenue Service and as such, it

should be concluded that the Development is “scheduled” to be assisted by Housing Credits. Page 26 of the Universal Application Instructions though states: “. . . ‘scheduled’ shall mean: The Application is one for both SAIL and HC; or The Applicant includes evidence within its Application that the Development has a firm commitment, as determined by Florida Housing after scoring the Financing portion of this Application, for 50% or more of its financing from tax-exempt private activity bonds.” The Application fails to meet this definition of “scheduled” and therefore, the Applicant must select the minimum set-aside of 20% of the units at 50% AMI. The Applicant having failed to do so, has failed to cure Item 1T.

*See Exhibit 1 at Item # 2C.III.E.1.a.*

- m. Florida Housing has caused The Oaks at Riverview to fail threshold because it improperly determined that the development would not use enough bond proceeds to satisfy the 50% test. That is because Florida Housing applied a meaning to the Instructions that is neither mandated by the plain language of the Instructions, consistent with the statute that the rule is implementing, nor consistent with rule 67-48.027(2)(a).
- n. When Florida Housing applies the correct standard, the Oaks at Riverview satisfies the statutory 50% test and must be found to be “scheduled” to be assisted by Housing Credits.
- o. Because RTD’s development will be assisted by Housing Credits as contemplated by the SAIL Statute, by rule 67-48.027(2)(a), and by the Instructions when read properly, RTD is entitled to select the 40% at 60% AMI as its minimum set-aside and has not failed threshold requirements for this item.

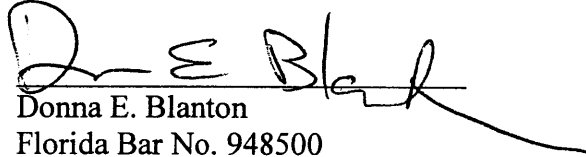


8. Rules and statutes that require reversal of the proposed agency action are the Florida Housing Finance Corporation Act (sections 420.501 - .530, Florida Statutes); sections 120.569 and 120.57(2), Florida Statutes; and rules 67-48.002, 67-48.004, 67-48.005, and 67-48.027, Florida Administrative Code.

Based on the foregoing, Florida Housing erred in determining that RTD did not meet threshold requirements for minimum set-aside commitments. RTD respectfully requests that an informal administrative hearing be held and that the Hearing Officer enter a Recommended Order finding that RTD's application meets all threshold requirements.

Dated: 8-8-03

Respectfully submitted,



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Attorney for RTD, Ltd.



### 2003 MMRB, SAIL & HC Scoring Summary

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit	SAIL Request Amount as Percentage of Development Cost	Is SAIL Request Amount Equal to or Greater than 10% of Total Development Cost?
07 - 18 - 2003	66	N	7.5	\$44,991.5	4.11%	N
Preliminary	66	N	7.5	\$44,991.5	4.11%	N
NOPSE	66	N	7.5	\$44,991.5	4.11%	N
Final	66	N	7.5	\$44,991.5	4.11%	N
Post-Appeal	0	N	0		0	

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
<b>Optional Features &amp; Amenities</b>									
1S	III	B	2.a.	New Construction	9	9	9	9	0
1S	III	B	2.b.	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
2S	III	B	2.c.	All Developments Except SRO	12	12	12	12	0
2S	III	B	2.d.	SRO Developments	12	0	0	0	0
3S	III	B	2.e.	Energy Conservation Features	9	9	9	9	0
<b>Set-Aside Commitments</b>									
4S	III	E	1.b.	Commitment to Serve Lower AMI	5	5	5	5	0
5S	III	E	1.c.	Total Set-Aside Commitment	3	3	3	3	0
6S	III	E	3.	Affordability Period	5	5	5	5	0
<b>Resident Programs</b>									
7S	III	F	1.	Programs for Non-Elderly & Non-Homeless	6	6	6	6	0
7S	III	F	2.	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
7S	III	F	3.	Programs for Elderly	6	0	0	0	0
8S	III	F	4.	Programs for All Applicants	8	8	8	8	0
<b>Local Government Support</b>									
9S	IV		a.	Contributions	5	5	5	5	0
10S	IV		b.	Incentives	4	4	4	4	0

As of: 07/18/2003

File # 2003-089S

Development Name: The Oaks at Riverview

### 2003 MMRB, SAIL & HC Scoring Summary

**Threshold(s) Failed:**

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	E	1.a.	Minimum set-asides	Page 26 of the Universal Application Instructions states that in order for a SAIL Applicant to select as a minimum set-aside 40% of its units at 60% AMI or less, it must have "received an allocation of Housing Credits or is 'scheduled' to be assisted with Housing Credits". The Applicant failed to provide documentation that it met any of the previous criteria for qualifying for the minimum set-aside of 40% of its units at 60% AMI or less.	Preliminary	
2T	III	C	1	Status of Site Plan Approval or Plat Approval	Proposed Development will consist of both multifamily and single-family units. Applicant provided a properly completed and executed Local Government Verification of Status of Site Plan Approval for Multifamily Developments form, but failed to provide a properly completed and executed Local Government Verification of Status of Plat Approval for Single-Family Developments form.	Preliminary	Final
3T	III	C	2	Site Control	The lease provided to evidence site control is incomplete. Exhibit C, Permitted Encumbrances, and Exhibit D, Memorandum of Ground Lease, were not provided.	Preliminary	Final
4T	V	E		Equity commitment	Page 60 of the Universal Application Instructions states as one of the criteria for a firm equity commitment is that it expressly state the amount of equity to be paid prior to or simultaneously with the closing of construction financing. The provided Related Capital Company equity commitment does not have this statement. Therefore, the equity commitment is not firm and is not a source of financing.	Preliminary	Final
5T	V	E		Developer Note	The Applicant provided at Exhibit 60 a sheet of paper which has as a heading "DEVELOPER NOTE". The statement on the paper reads: "RTD Phase I GP, LLC hereby commits to loan \$1,326,056 to RTD Phase I, Ltd. for ...". The Applicant has stated at Part B of the Application that the name of the Developer is Riverview-Dyer Redevelopment, LLC, not RTD Phase I GP, LLC. Therefore, the commitment is not firm and is not a source of financing.	Preliminary	Final
6T	V	E		Loan commitment	Munithae Midland is a non-regulated Financial Institution. Page 58 of the Universal Application Instructions states that evidence of ability to fund must be provided for non-regulated Financial Institutions. This evidence must be in the form of audited financial statements no more than 15 months old. The Applicant may provide within the Application a copy of the financials or a copy of the Corporation's Letter of Receipt and Acceptance stating the Corporation was already in receipt of the financials. The Applicant failed to do either. Therefore, the Munithae Midland's loan commitment is not firm and not a source of financing.	Preliminary	Final
7T	V	E		Loan commitment	Sources must equal or exceed uses. In order to make this determination Florida Housing must have loan commitments that state specific amounts. Munithae Midland's loan commitment provides for an adjusted permanent loan amount based	Preliminary	Final

### 2003 MMRB, SAIL & HC Scoring Summary

Development Name: The Oaks at Riverview

**Threshold(s) Failed:**

Item #	Part Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
8T	V	E	Construction financing	Application has a construction financing shortfall of \$5,114,929.	Preliminary	Final
9T	V	E	Permanent financing	Application has a permanent financing shortfall of \$7,583,873.	Preliminary	Final
10T	V	E	Developer Note	The Applicant provided at Exhibit 60 a sheet of paper which has as a heading "DEVELOPER NOTE". As previously stated above at item 5T, it was not counted as a source of financing because it was not in the Developer's name. In addition, it is not being counted as firm because the Applicant failed to provide any evidence of ability to fund as required for non-regulated Financial Institutions on page 58 of the Universal Application Instructions.	Preliminary	Final

**Proximity Tie-Breaker Points:**

Item #	Part Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Post-Appeal
1P	III	A	Grocery Store	1.25	1.25	1.25	1.25	0
2P	III	A	Public School	1.25	1.25	1.25	1.25	0
3P	III	A	Medical Facility	1.25	0	0	0	0
4P	III	A	Pharmacy	1.25	0	0	0	0
5P	III	A	Public Bus Stop or Metro-Rail Stop	1.25	1.25	1.25	1.25	0
6P	III	A	Proximity to Developments on FHFG Development Proximity List	3.75	3.75	3.75	3.75	0

**Additional Application Comments:**

Item #	Part Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
1C	III	3	b	Development	Preliminary	
2C	III	E	1.a.	Set-Aside Commitments	Final	

Applicant did not submit copy of a letter from the local planning office or census bureau verifying that the development is located in the referenced QCT.

The Applicant attempted to cure Item 1T by stating that the Application passed what the Applicant called the real word 50% test established by the Internal Revenue Service and as such, it should be concluded that the Development is "scheduled" to be assisted by Housing Credits. Page 26 of the Universal Application Instructions through states: "... 'scheduled' shall mean: The Application is one for both SAIL and HC, or The Applicant includes evidence within its Application that the Development

As of: 07/19/2003

### 2003 MMRB, SAIL & HC Scoring Summary

File # 2003-089S

Development Name: The Oaks at Riverview

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
					has a firm commitment, as determined by Florida Housing after scoring the Financing portion of this Application, for 50% or more of its financing from tax-exempt private activity bonds." The Application fails to meet this definition of "scheduled" and therefore, the Applicant must select the minimum set-aside of 20% of the units at 50% AMI. The Applicant having failed to do so, has failed to cure Item 11.		



### 2003 MMRB, SAIL & HC Scoring Summary

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit	SAIL Request Amount as Percentage of Development Cost	Is SAIL Request Amount Equal to or Greater than 10% of Total Development Cost?
05 - 12 - 2003	66	N	7.5	\$44,991.5	4.11%	N
Preliminary	66	N	7.5	\$44,991.5	4.11%	N
NOPSE	0	N	0		0	
Final	0	N	0		0	
Post-Appeal	0	N	0		0	

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
<b>Optional Features &amp; Amenities</b>									
1S	III	B	2.a.	New Construction	9	9	0	0	0
1S	III	B	2.b.	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
2S	III	B	2.c.	All Developments Except SRO	12	12	0	0	0
2S	III	B	2.d.	SRO Developments	12	0	0	0	0
3S	III	B	2.e.	Energy Conservation Features	9	9	0	0	0
<b>Set-Aside Commitments</b>									
4S	III	E	1.b.	Commitment to Serve Lower AMI	5	5	0	0	0
5S	III	E	1.c.	Total Set-Aside Commitment	3	3	0	0	0
6S	III	E	3.	Affordability Period	5	5	0	0	0
<b>Resident Programs</b>									
7S	III	F	1.	Programs for Non-Elderly & Non-Homeless	6	6	0	0	0
7S	III	F	2.	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
7S	III	F	3.	Programs for Elderly	6	0	0	0	0
8S	III	F	4.	Programs for All Applicants	8	8	0	0	0
<b>Local Government Support</b>									
9S	IV		a.	Contributions	5	5	0	0	0
10S	IV		b.	Incentives	4	4	0	0	0



As of: 05/12/2003

### 2003 MMRR, SAIL & HC Scoring Summary

File # 2003-089S

Development Name: The Oaks at Riverview

**Threshold(s) Failed:**

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	E	1. a.	Minimum set-asides	Page 26 of the Universal Application Instructions states that in order for a SAIL Applicant to select as a minimum set-aside 40% of its units at 60% AMI or less, it must have "received an allocation of Housing Credits or is 'scheduled' to be assisted with Housing Credits". The Applicant failed to provide documentation that it met any of the previous criteria for qualifying for the minimum set-aside of 40% of its units at 60% AMI or less.	Preliminary	
2T	III	C	1	Status of Site Plan Approval or Plat Approval	Proposed Development will consist of both multifamily and single-family units. Applicant provided a properly completed and executed Local Government Verification of Status of Site Plan Approval for Multifamily Developments form, but failed to provide a properly completed and executed Local Government Verification of Status of Plat Approval for Single-Family Developments form.	Preliminary	
3T	III	C	2	Site Control	The lease provided to evidence site control is incomplete. Exhibit C, Permitted Encumbrances, and Exhibit D, Memorandum of Ground Lease, were not provided.	Preliminary	
4T	V	E		Equity commitment	Page 60 of the Universal Application Instructions states as one of the criteria for a firm equity commitment is that it expressly state the amount of equity to be paid prior to or simultaneously with the closing of construction financing. The provided Related Capital Company equity commitment does not have this statement. Therefore, the equity commitment is not firm and is not a source of financing.	Preliminary	
5T	V	E		Developer Note	The Applicant provided at Exhibit 60 a sheet of paper which has as a heading "DEVELOPER NOTE". The statement on the paper reads: "RTD Phase I GP, LLC hereby commits to loan \$1,326,056 to RTD Phase I, Ltd. for ...." The Applicant has stated at Part B of the Application that the name of the Developer is Riverview-Dyer Redevelopment, LLC, not RTD Phase I GP, LLC. Therefore, the commitment is not firm and is not a source of financing.	Preliminary	
6T	V	E		Loan commitment	Munilmae Midland is a non-regulated Financial Institution. Page 58 of the Universal Application Instructions states that evidence of ability to fund must be provided for non-regulated Financial Institutions. This evidence must be in the form of audited financial statements no more than 15 months old. The Applicant may provide within the Application a copy of the financials or a copy of the Corporation's Letter of Receipt and Acceptance stating the Corporation was already in receipt of the financials. The Applicant failed to do either. Therefore, the Munilmae Midland's loan commitment is not firm and not a source of financing.	Preliminary	
7T	V	E		Loan commitment	Sources must equal or exceed uses. In order to make this determination Florida Housing must have loan commitments that state specific amounts. Munilmae Midland's loan commitment provides for an adjusted permanent loan amount based	Preliminary	

### 2003 MMRB, SAIL & HC Scoring Summary

**Threshold(s) Failed:**

Item #	Part Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
8T	V	E	Construction financing	Application has a construction financing shortfall of \$5,114,929.	Preliminary	
9T	V	E	Permanent financing	Application has a permanent financing shortfall of \$7,583,873.	Preliminary	
10T	V	E	Developer Note	The Applicant provided at Exhibit 60 a sheet of paper which has as a heading "DEVELOPER NOTE". As previously stated above at item 5T, it was not counted as a source of financing because it was not in the Developer's name. In addition, it is not being counted as firm because the Applicant failed to provide any evidence of ability to fund as required for non-regulated Financial Institutions on page 58 of the Universal Application Instructions.	Preliminary	

**Proximity Tie-Breaker Points:**

Item #	Part Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Post-Appeal
1P	III	A	11.b.(1) Grocery Store	1.25	1.25	0	0	0
2P	III	A	11.b.(2) Public School	1.25	1.25	0	0	0
3P	III	A	11.b.(3) Medical Facility	1.25	0	0	0	0
4P	III	A	11.b.(4) Pharmacy	1.25	0	0	0	0
5P	III	A	11.b.(5) Public Bus Stop or Metro-Rail Stop	1.25	1.25	0	0	0
6P	III	A	11.c. Proximity to Developments on FHFC Development Proximity List	3.75	3.75	0	0	0

**Additional Application Comments:**

Item #	Part Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1C	III	3	b Development	Applicant did not submit copy of a letter from the local planning office or census bureau verifying that the development is located in the referenced QCT.	Preliminary	



## 2003 CURE FORM

(Submit a SEPARATE form for EACH reason  
relative to EACH Application Part, Section, Subsection and Exhibit)

This Cure Form is being submitted with regard to Application No. 2003-089S and pertains to:

Part \_\_\_\_\_ Section \_\_\_\_\_ Subsection \_\_\_\_\_ Exhibit No \_\_\_\_\_ (if applicable)

The attached information is submitted in response to the 2003 Universal Scoring Summary because:

- I. Preliminary Scoring and/or NOPSE scoring resulted in the imposition of a failure to achieve maximum points, a failure to achieve proximity tie-breaker points selected, and/or failure to achieve threshold relative to this form. Check applicable item(s) below:

	2003 Universal Scoring Summary	Created by:	
		Preliminary Scoring	NOPSE Scoring
<input type="checkbox"/> Reason Score Not Maxed	Item No. _____ S	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason Threshold Failed	Item No. _____ T	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (MMRB/SAIL/HC Applications Only)	Item No. _____ P	<input type="checkbox"/>	<input type="checkbox"/>

**OR**

- II. Other changes are necessary to keep the Application consistent:

This revision or additional documentation is submitted to address an issue resulting from a Cure to **Part III Section E Subsection 1.a Exhibit \_\_\_\_\_** (if applicable).

**Brief Statement of Explanation for Cure  
For Application 2003- 089S**

**Provide a separate brief statement for each Cure.**

RE: Preliminary Scoring  
Consistency

For the purpose of consistency in reference to cure item #IT, page 22 of the Application has been revised showing that the amount of Tax-Exempt bond allocation is \$10,500,000. The commitment from the Tampa Housing Finance Authority has also been provided to demonstrate this.

Also for the purpose of consistency Applicant has revised the Development Cost Pro Forma showing the HFA Financing Fees (Construction Loan Origination Fee) as \$442,556 just as it is referenced in the 50% test explanation from Reznick.

**"REVISED"**

2. HOME Applicants - Total maximum HOME subsidy allowed: \$ \_\_\_\_\_

Provide a chart behind a tab labeled "Exhibit 50" showing the calculation of the total maximum HOME subsidy the Applicant may request based on the FHFC limits.

3. SAIL Applicants - Is Applicant applying for a loan in excess of 25% of Total Development Cost?

- Yes
- No

If "Yes" Indicate below the eligibility requirement that has been satisfied to enable the Applicant to make such request:

a. Non-Profit and public Sponsors which are able to secure grants, donations of land, or contributions from other sources collectively totaling at least 10% of Total Development Cost;

OR

b. Sponsors that maintain an 80% occupancy of residents qualifying as Farmworkers/Commercial Fishing Workers or Homeless as defined in 420.503(18), F.S., over the life of the loan.

If applicable, provide evidence of SAIL Applicant's eligibility to request a loan in excess of 25% of Total Development Cost behind a tab labeled "Exhibit 51".

4. Designation

- a. Florida Keys Area
- b. Elderly
- c. Farmworker/Commercial Fishing Worker
- d. Homeless
- e. HOPE VI - Applicant must provide evidence of eligibility behind a tab labeled "Exhibit 52"
- f. Rural Development
  - RD 515      or       RD 514/516
- g. Urban In-Fill - Applicant must provide evidence of eligibility behind a tab labeled "Exhibit 52"
- h. Front Porch Florida Community - Applicant must provide evidence of eligibility behind a tab labeled "Exhibit 52"
- i. Applicant elects not to select one of the above designations

5. a. Other Corporation funds that will be used as a source of financing for this construction project:

FHFC Program	FHFC File Number	Amount of Funding
NA	NA	\$ _____
NA	NA	\$ _____
NA	NA	\$ _____
NA	NA	\$ _____

b. If Local Government-issued Tax-Exempt Bond proceeds, excluding 501(c)(3) bonds, will be used to finance this construction, provide the following information:

Tax-Exempt Bond source	Tax-Exempt Bond amount:
Hillsborough County Housing Finance Authority	\$ 10500000

**B. Finance Documents:**

All Applicants must complete the Development Cost Pro-Forma, the Detail/Explanation Sheet, if applicable, the Construction or Rehab Analysis, and the Permanent Analysis. In addition, all Applicants must complete and attach the Commitment to Defer Developer Fee, if applicable, behind a tab labeled "Exhibit 53".

**DEVELOPMENT COST PRO FORMA NOTES:**

(1) For HC, these fees must be included but may be included as an eligible cost only at the Applicant's discretion.

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*Opening Doors to Affordable Housing*

# Housing Finance Authority

of Hillsborough County  
Tampa, Florida

Board Members:  
Hon. J. B. Bess, Chairman  
Hon. P. W. Smith, Vice Chairman  
Hon. J. P. ...  
Hon. ...  
Hon. ...  
Hon. ...  
Hon. ...

Executive Director  
J. Dan ...  
dan@hfa.hillsboroughcounty.gov

March 26, 2003

Florida Housing Finance Corporation  
State Apartment Incentive Loan (SAIL) Program  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329

Re: **The Oaks at Riverview  
Tampa, Florida**

Ladies and Gentlemen:

In reference to the above-captioned matter at the request of Riverview-Dyer Redevelopment, LLC, this letter is provided to you as part of the partnership's application to the Florida Housing Finance Corporation for a State Apartment Incentive Loan (SAIL) Program for the development of a 250-unit senior and multi-family housing project in Tampa, Florida. The SAIL loan is to be made in conjunction with the issuance of bonds (the "Bonds") by the Housing Finance Authority of Hillsborough County (the "Authority").

Pursuant to the rules which govern the SAIL Program, please be advised of the following:

1. Tax-Exempt Private activity bond allocation in the amount of \$10,361,272 (and up to \$10,500,000) has been reserved for the Project.
2. Approvals by the Authority precedent to the issuance of the Bonds by the Authority have been obtained and a TEFRA hearing was held on October 30, 2002.
3. All Fees currently due to the Authority from the Partnership in connection with the Project have been paid.
4. A commitment has been executed by the Authority and Partnership allowing for the issuance of Bonds by the Authority to finance the Project.


1000 Bay Plaza Blvd., Suite 500, Tampa, FL 33609 TEL: 813 741 5569 FAX: 813 635 7467 www.hillsboroughcounty.gov

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Page 2  
March 26, 2003

If you need any further information, please do not hesitate to contact J. Don Shea,  
Executive Director, Housing Finance Authority of Hillsborough County at  
(813) 635-8254.

Sincerely,



Frank DeBose  
Chairman



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Applicant should rely on the advice of a tax professional. (See Fees section in Universal Application Package.)

(2) Developer fee may not exceed the limits established in Rule Chapters 67-21 and 67-48, F.A.C. Any portion of the fee that has been deferred must be included in Total Development Cost.

(3) Developer fee on Existing Buildings to be Acquired/Owned may not exceed 4% of the cost of the building ONLY (exclusive of land).

(4) If Housing Credit equity is being used as a source of financing, complete columns 1, 2 and 3. Otherwise, complete columns 2 and 3.

(5) General Contractor's fee is limited to 14% of actual construction cost. General Contractor's fee must be disclosed.

(6) In reference to impact fees, a tax professional's advice should be sought regarding eligibility of these fees.

(7) Hard and soft cost contingency amounts cannot exceed the limits stated in Rule Chapters 67-21 and 67-48, F.A.C.

(8) For HOME Rental loans, the credit underwriting fee, servicing fees and compliance monitoring fees are paid by FHFC.

USE THE DETAIL/EXPLANATION SHEET FOR EXPLANATION OF \* ITEMS. ATTACH ADDITIONAL SHEETS IF NECESSARY.

	1	2	3
	ELIGIBLE (HC ONLY)	HC INELIGIBLE; OR MMRB/SAIL/HOME	Total (MMRB, SAIL, HOME and HC)
<b>PROJECT COST</b>			
<i>Actual Construction Cost</i>			
Demolition			0
*Off-site (explain in detail)			0
New Rental Units		12883184	12883184
Rehab of Existing Rental Units			0
Accessory Buildings			0
Recreational Amenities			0
Rehab of Existing Common Areas			0
*Other (explain in detail)		1130000	1130000
<b>A1. Actual Construction Cost</b>	\$ 0	\$ 14013184	\$ 14013184
*Contingency (explain in detail)		702375	702375
<b>A1.1 Sub-Total</b>	\$ 0	\$ 14715559	\$ 14715559
<b>A1.2 General Contractor Fee (5) (Max. 14% of A1, Column 3)</b>	\$	\$ 1944120	\$ 1944120
<b>A1.3 Total Actual Construction Cost</b>	\$ 0	\$ 16659679	\$ 16659679
<i>Financial Cost</i>			
Construction Loan Credit Enhancement			0
Construction Loan Interest		464000	464000
Construction Loan Origination Fee		442556	442556
Bridge Loan Interest			0
Bridge Loan Origination Fee			0
Permanent Loan Credit Enhancement			0
Permanent Loan Origination Fee			0
Reserves Required by Lender		1700000	1700000
<b>A2. Total Financial Cost</b>	\$ 0	\$ 2606556	\$ 2606556

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*General Development Costs*

Accounting Fees	35000	35000
Appraisal	15000	15000
Architect's Fee - Design	62500	62500
Architect's Fee - Supervision	187500	187500
Builder's Risk Insurance		0
Building Permit	140475	140475
Brokerage Fees - Land		0
Brokerage Fees - Buildings		0
Closing Costs - Construction Loan	57750	57750
Closing Costs - Permanent Loan	96250	96250
Engineering Fee	203000	203000
Environmental Report	10000	10000
FHFC Administrative Fee (1) and (8)	72758	72758
FHFC Application Fee (1)	2000	2000
FHFC Compliance Fee (8)	101045	101045
FHFC Credit Underwriting Fee (1) and (8)	10000	10000
<b>*Impact Fees (list in detail)</b>		0
Inspection Fees		0
Insurance	107000	107000
Legal Fees	180000	180000
Market Study		0
Marketing/Advertising	616000	616000
Property Taxes	15000	15000
Soil Test Report		0
Survey		0
Title Insurance	168570	168570
Utility Connection Fee		0
<b>*Other (explain in detail)</b>		0
<b>*Contingency (7) (explain in detail)</b>	200000	200000
<b>A3. TOTAL GENERAL DEVELOPMENT COST</b>	\$ 0	\$ 2280848
<b>B. DEVELOPMENT COST (A1.3+A2+A3)</b>	\$ 0	\$ 21547083
<b>C. DEVELOPER'S FEE (2)</b>	\$	\$ 2468944
<b>AQUISITION COST OF EXISTING DEVELOPMENTS (EXCLUDING LAND)</b>		
Existing Buildings		0
Developer Fee on Existing Buildings (3)		0

"REVISED"

*Other (explain in detail)			0
<b>D. TOTAL ACQUISITION COST</b>	\$	\$ 0	\$ 0
LAND COST			
Land	\$		\$ 0
<b>E. TOTAL LAND COST</b>		\$ 0	\$ 0
<b>F. TOTAL DEVELOPMENT COST (B+C+D+E)</b>	\$ 0	\$ 24016027	\$ 24016027

Detail/Explanation Sheet

Totals must agree with Pro Forma. Provide description and amount for each item that has been completed on the Pro Forma.

Development Cost

Acquisition Cost of Existing Developments

Other:

Actual Construction Cost

Off-site:

Other: **This includes site infrastructure work (\$600,000), other site infrastructure work (\$280,000), non-dwelling equipment (\$250,000).**

Contingency: **\$702,375 for unanticipated cost overruns**

General Development Costs

Impact Fees:

Other:

Contingency: **\$200,000 for unanticipated soft cost overruns.**

**NOTE:** Neither brokerage fees nor syndication fees can be included in eligible basis. Consulting fees, if any, and the cost of an independent HC market study must be paid out of the Developer fee. Consulting fees include, but are not limited to, payments for Application consultants, construction management or supervision consultants, or local government consultants.

**CONSTRUCTION or REHAB ANALYSIS**

	AMOUNT	LOCATION OF DOCUMENTATION
Total Development Cost	\$ 24016027	
<b>MINUS</b>		
SAIL Loan Requested	\$ 886603	
MMRB Requested	\$ 0	
HOME Loan Requested	\$ 0	
HC 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.	\$ 3795000	Exhibit 56



## 2003 CURE FORM

(Submit a SEPARATE form for EACH reason  
relative to EACH Application Part, Section, Subsection and Exhibit)

This Cure Form is being submitted with regard to Application No. 2003- 089S and pertains to:

Part III Section E Subsection 1.a Exhibit No \_\_\_\_\_ (if applicable)

The attached information is submitted in response to the 2003 Universal Scoring Summary because:

- I. Preliminary Scoring and/or NOPSE scoring resulted in the imposition of a failure to achieve maximum points, a failure to achieve proximity tie-breaker points selected, and/or failure to achieve threshold relative to this form. Check applicable item(s) below:

	2003 Universal Scoring Summary	Created by:	
		Preliminary Scoring	NOPSE Scoring
<input type="checkbox"/> Reason Score Not Maxed	Item No. _____ S	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Reason Threshold Failed	Item No. <u>1</u> T	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (MMRB/SAIL/HC Applications Only)	Item No. _____ P	<input type="checkbox"/>	<input type="checkbox"/>

**OR**

- II. Other changes are necessary to keep the Application consistent:

This revision or additional documentation is submitted to address an issue resulting from a Cure to Part \_\_\_\_\_ Section \_\_\_\_\_ Subsection \_\_\_\_\_ Exhibit \_\_\_\_\_ (if applicable).

## Brief Statement of Explanation for Cure For Application 2003- 089S

Provide a separate brief statement for each Cure.

RE: Preliminary Scoring  
Item # 2T

The SAIL minimum set-aside must be 20% @ 50% AMI unless a proposed Development is "scheduled" to be assisted with Housing Credits. If a proposed Development is "scheduled" to be assisted with Housing Credits, then the Applicant may select 40% @ 60% AMI as its minimum set-aside.

One of the ways that a proposed development can be "scheduled" to receive Housing Credits is to demonstrate that the Development will be funded by tax-exempt private activity bonds and is, therefore, entitled to non-competitive, "automatic" 4% Housing Credits.

In order to qualify to receive the non-competitive 4% Housing Credits on 100% of the Development's eligible basis, more than 50% of the Development's aggregate basis must be financed by tax-exempt private activity bonds. This is commonly referred to as the "50% test".

Florida Housing's preliminary scoring summary said that the Applicant failed to demonstrate that it met any criteria for qualifying to choose the 40% @ 60% AMI. Florida Housing uses informal scoring worksheets to help guide the scorer through the intricacies of an Application. A review of the worksheet for Part III, E, 1, a (1), Minimum Set-aside, for this Application shows that the scorer carefully followed the worksheet and answered the questions accurately on that sheet. However, this led the scorer to the erroneous conclusion, that this Application was not scheduled to be assisted with Housing Credits and therefore was not entitled to select the 40% @ 60% AMI as its minimum set-aside and thus failed threshold.

The confusion arises because pages 26 and 27 of the Universal Application Instructions establish two different tests to determine whether a Development satisfies the 50% test. If an Application seeks only SAIL, as does this one, then the Instructions employ a "real world" 50% test that essentially tracks the test established by the Internal Revenue Code. If an Application seeks MMRB, then Florida Housing has established a more rigorous standard. For those Applications, the Instructions require that at least 50% of the Total Development Cost be financed by tax-exempt bonds. Because this Application is using local bonds, and not Florida Housing MMRB, then this SAIL-only Application must only satisfy the real world 50% test. The scoring worksheet forced the scorer to review the Application as though it was requesting MMRB financing, which is not the case and not what the Instructions contemplate.

Part III, Section E, Subsection. 1.a, Item IT

Presumably, the scoring worksheets ask the scorers to use the MMRB test because it is easier to apply and an Application that meets the MMRB test will necessarily meet the SAIL test. If an Application does not satisfy the MMRB test, it can still satisfy the real world 50% test and therefore be "scheduled" to be assisted with HC, but that requires a deeper analysis and financial review than can reasonably be accomplished during Florida Housing's preliminary scoring. That review may be best made through brief statements such as this.

Attached is an opinion letter from Beth Mullen, Principal, Reznick Fedder & Silverman which demonstrates that the Oaks at Riverview clearly passes the 50% test.

Therefore, this Development is "scheduled" to be assisted by Housing Credits as contemplated for SAIL-only Applications on page 26 of the Instructions, is entitled to select the 40% @60% AMI as its minimum set-aside, and has not failed threshold for this item.



# Reznick Fedder & Silverman

Certified Public Accountants • A Professional Corporation

7700 Old Georgetown Road, Suite 400  
Bethesda, MD 20814-6224  
301-652-9100 Phone  
301-652-1848 Fax  
www.rfs.com

"Revised"

June 17, 2003

Ms. Lois Fried  
Mid-City Urban LLC  
8403 Colesville Road  
Suite 400  
Silver Spring, MD 20910

Dear Lois,

You have asked me to clarify the way that the 50 percent test outlined in Internal Revenue Code Section 42(h)(4)(B) will be calculated on your Oaks at Riverview transaction. The Code provides that "if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by an obligation described in subparagraph (A), paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building". This can be simplified to state that if 50 percent of the aggregate building and land are financed by tax-exempt bonds, the building does not need an allocation from the state agency to receive low-income tax credits. Private Letter Ruling 199917046 further clarifies that "the basis of the partnership's building for purposes of §42(h)(4)(B) is determined by using the building's cost basis under §1012." The key to the calculation is that they are looking at the cost of the building and land. The cost of items that are part of total development cost but not building or land are excluded from the 50 percent test.

The calculation of the aggregate basis of the building and land for Oaks at Riverview is as follows:

Total Development Cost	24,016,027
Less:	
Syndication Legal	90,000
HFA Financing Fees	442,556
Marketing/Lease Up	616,000
Permanent Financing Fees	96,250
Soft Cost Contingency	200,000
Affordability Reserve	1,350,000
Operating Deficit Reserve	350,000
Equals:	
Aggregate Basis of Building & Land	20,871,221
Tax-exempt bond proceeds	10,493,873



"Revised"

Syndication legal and the finance fees have been excluded because the costs are intangible assets that are either amortized or non-deductible. Marketing/lease up is excluded because the costs are expensed and not capitalized into the building. The soft cost contingency is assumed to be spent on either deductible items or not spent so it is not a building cost. The affordability reserve and operating deficit reserves are cash and thus are not building. These numbers are projected based on your current budget. The determination of the final 50 percent calculation can only be done at construction completion based on actual land and building costs incurred. Using the projected aggregate building and land and tax-exempt bond proceeds above, the project has a fraction of 50.28% and meets the 50 percent test in §42(h)(4)(B).

Please call me at (301)961-5538 if you need additional information.

Very truly yours,



Beth Mullen



a. **MMRB, SAIL and/or HC Minimum Set-Aside (Threshold)**

All Applicants must select a minimum set-aside for each Program applied for.

HC Applicants Note: Choosing the 20% at 50% AMI or less minimum set-aside will restrict ALL set-aside units at 50% or less of the AMI pursuant to IRS regulations. Applicants may choose the 40% at 60% AMI or less minimum set-aside without committing to setting aside any of the units at the 60% AMI level. For example, an Applicant may commit to setting aside 40% at 50% AMI and this would also be considered 40% at 60% AMI or less.

Pursuant to Rule 67-48, F.A.C., the SAIL minimum set-aside requirement shall be:

- 20% of the units set-aside at 50% of area median income;
- or
- 40% of the units set-aside at 60% of area median income only if the Development received an allocation of Housing Credits or is “scheduled” to be assisted with Housing Credits;
- or
- 100% of the units set-aside below 120% of area median income only if the Development will be located in the Florida Keys Area.

For purposes of meeting threshold requirements of this Application only, “scheduled” shall mean:

The Application is one for both SAIL and HC; or

The Applicant includes evidence within its Application that the Development has a firm commitment, as determined by Florida Housing after scoring the Financing portion of this Application, for 50% or more of its financing from tax-exempt private activity bonds.

SAIL Applicants that are not “scheduled” to be assisted with federal Housing Credits must select the “20% at 50%” minimum set-aside or, if applicable, the 100% below 120% minimum set-aside to meet threshold requirements or the Application will be automatically rejected.

Applicants will not be given an opportunity during credit underwriting to change the SAIL Minimum Set-Aside Requirement to “20% at 50%” or, if applicable, “100% below 120%” to meet threshold requirements.

MMRB Applicants will be required to meet the following minimum set-aside:

- If less than 50% of the Total Development Cost is being financed by Tax-Exempt Bonds, the Applicant must commit to set aside either 20% of the units at 50% AMI or lower or 40% of the units at 60% AMI or lower; or
- If 50% or more of the Total Development Cost is being financed by Tax-Exempt Bonds, the Applicant must commit to set aside either 40% of the units at 50% AMI or lower or 50% of the units at 60% AMI or lower

All Applicants Note: The deep rent skewing option is permitted for HC Developments only.

b. Commitment to Serve Lower Area Median Income (5 Points)

Where reasonably possible, Applicants should keep the unit mix consistent to each AMI level committed to.

Points will be awarded for a commitment to set aside units beyond the minimum set-aside, with the following exceptions:

- Applications for Developments that will be funded with Local Government-issued Tax-Exempt Bonds that are only requesting non-competitive HC will automatically receive 5 points; and
- Applications for Developments located in Locations B, C, D or E which are requesting FHFC-issued MMRB without SAIL and with/without non-competitive HC will automatically receive 5 points.

Applicant should indicate the percentage of units to be set aside at the selected AMI level. To determine what an Applicant must commit to set aside at a specific AMI in order to earn the maximum 5 points please refer to the following paragraphs.

If funding for the proposed Development was received in a previous application cycle, the column “Program(s) applying for” must reflect both the current Application and the previously received funding. For example, if HC was awarded for the proposed Development in a previous cycle and the Applicant is applying for SAIL funds in the current cycle, in order to be eligible for points, the Applicant must commit to the percentage listed in the “Competitive HC with SAIL” row of the applicable location chart.

Refer to the following tables to determine whether the county or location within a county in which the Development is to be located is listed under Location A, B, C, D or E and indicate the applicable location.

If any portion of the proposed Development site is located in a Location A area, the Applicant must meet the Location A Set-Aside Commitment requirements for the entire Development.