

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TIGER BAY OF GAINESVILLE, LTD.,

Petitioner,

v.

FHFC Case No.: 2004-051UC

Application No.: 2004-109C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

GOODBREAD HILLS, LTD.,

Petitioner,

v.

FHFC Case No.: 2004-052UC

Application No.: 2004-144C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

ORDER ADOPTING
SETTLEMENT AGREEMENT AND RELEASE

This cause came before the Board of Directors of the Florida Housing Finance Corporation ("Board") for consideration and final agency action on June

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

M. Dyson

DATE: 6/14/05

10, 2005. After review and being fully apprised of this matter, the Board finds and orders as follows:

1. Florida Housing, Tiger Bay, and Goodbread have negotiated a Settlement Agreement (the "Agreement"), attached as Exhibit "A," which will resolve all issues in this litigation.
2. The Stipulated Facts of the Settlement Agreement are hereby adopted as the Board's Findings of Fact.
3. The Stipulated Conclusions of the Settlement Agreement are hereby adopted as the Board's Conclusions of Law.
4. The Stipulated Resolution of the Settlement Agreement is hereby adopted as the Board's resolution of these matters.

ORDER

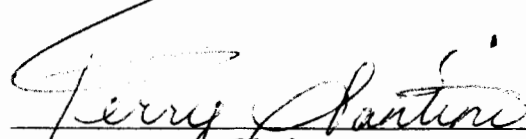
In accordance with the foregoing, it is hereby **ORDERED:**

1. The Settlement Agreement is hereby adopted and incorporated by reference as though fully set forth in this Order.
2. Tiger Bay of Gainesville, Ltd., and Goodbread Hills, Ltd., shall receive their respective requested allocations from the next available tax credits, as provided in R. 67-48.005(7), Fla. Admin. Code.

DONE and ORDERED this 10TH day of June, 2005.

FLORIDA HOUSING FINANCE CORPORATION

By:


Chairperson

Copies to:

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**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

TIGER BAY OF GAINESVILLE, LTD.,

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FHFC Case No.: 2004-051UC

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GOODBREAD HILLS, LTD.,

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FLORIDA HOUSING FINANCE
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_____ /

SETTLEMENT AGREEMENT

Petitioner, FLORIDA HOUSING FINANCE CORPORATION
("Florida Housing"), and Respondent, TIGER BAY OF GAINESVILLE,
LTD. ("Tiger Bay"), and Respondent, GOODBREAD HILLS, LTD.

EXHIBIT

A

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

M. D. [Signature]

/DATE:

6/12/05

(“Goodbread”), file this Settlement Agreement as a resolution to all issues raised in the above-referenced matters, and say:

STIPULATED FACTS

1. Tiger Bay is a Florida limited partnership with its address at 20725 S.W. 46th Avenue, Newberry, Florida 32669, and is in the business of providing affordable rental housing units.

2. Goodbread Hills is a Florida limited partnership with its address at 9400 South Dadeland Boulevard, Suite 100, Miami, Florida 33156, and is in the business of providing affordable rental housing units.

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

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

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

6. Awards for the Low Income Housing Tax Credit and other programs are included in a single application process (the “Universal Cycle”), in which applicants submit a single application (the “Universal Cycle Application”). The Universal Cycle Application is a single-application process for the Tax Credit program, the State Apartment Incentive Loan (“SAIL”) program, the Multifamily Mortgage Revenue Bond (MMRB) program, and the Home Investment Partnership (HOME Rental) program.

7. The 2004 Universal Cycle Application, adopted as Form UA1016 (Rev. 3-04) by rule 67-48.002(111), Fla. Admin. Code, consists of Parts I through V and instructions, some of which are not applicable to every Applicant. Some of the parts include “threshold” items. Failure to properly include a threshold item or satisfy a threshold requirement results in rejection of the application. One of the threshold requirements is demonstration by an applicant of “site control” by providing, *inter alia*, a “qualified contract” (a real estate contract containing certain prescribed

provisions). Other parts allow applicants to earn points, including “tie-breaker” points; however, the failure to provide complete, consistent and accurate information as prescribed by the instructions may reduce the Applicant’s overall score. The Universal Cycle Application is comprised of the application itself, exhibits, forms and the Universal Cycle Application Instructions (“Instructions”), adopted by reference in Rule 67-48.002(9), Fla. Admin. Code.

8. Florida Housing uses a scoring process for the award of Tax Credits as outlined in Rule 67-48.004, Florida Administrative Code, and a Qualified Allocation Plan (QAP). The provisions of the QAP are adopted and incorporated by reference in Rule 67-48.025, Fla. Admin. Code. Pursuant to the QAP, Tax Credits are apportioned among the most populated counties, medium populated counties, and least populated counties. The QAP also establishes various set-asides and special targeting goals. One of the set-asides in the QAP is for Front Porch Florida Community developments.

9. The 2004 Universal Cycle Application offers a maximum score of 66 points. In the event of the tie between competing applications, the Universal Cycle Application Instructions provide for a series of tie-breaking procedures to rank such applications for funding priority. Generally (in

descending order), an application in “Group A” prevails over an application in “Group B”; an application with a greater amount of “proximity tie-breaker points (7.5 being the maximum) prevails over an application with fewer such points; and finally, an application with a lower lottery number (randomly assigned during the application process) prevails over an application with a higher lottery number.

10. Following the adopting of tentative rankings based upon the final scores and the application of tie-breaking procedures, Florida Housing applies the “set-aside unit limitation” (“SAUL”) rules in order to achieve the final ranking of funding applications. Under the SAUL rules, when an application is tentatively selected for funding, the total number of affordable housing units to which the applicant has committed in its application are credited towards meeting the designated SAUL for the county in which the proposed development is to be located. Generally, once a county’s SAUL is met (by virtue of applications being selected for funding containing a total number of set-aside units equal to or exceeding the SAUL for the county in which those developments are located), no further applications for developments in that county will be selected for funding until applications in other counties (where the SAUL has not yet been met) are first selected for funding.

11. On March 31, 2004, all applicants, including Tiger Bay and Goodbread, submitted applications to Florida Housing for review.

12. Tiger Bay submitted its Application, No. 2004-109C, in an attempt to obtain funding to assist in the construction of a 96-unit affordable housing garden apartment development in Gainesville, Alachua County, Florida, named “Tiger Bay Court”.

13. Tiger Bay’s application was scored by Florida Housing in accordance with the provisions of §420.5099, Fla. Stat., and Rule 67-48, Fla. Admin. Code. By letter and Scoring Summary dated July 9, 2004, Florida Housing advised Tiger Bay that its final post-appeal score was 66 points, that its application had met all threshold requirements, was classified into “Group A”, and that its application had received 7.5 “proximity tie-breaker points”.

14. Goodbread submitted its Application, No. 2004-144C, in an attempt to obtain funding to assist in the construction of an 86-unit affordable housing apartment complex in Tallahassee, Leon County, Florida, named “Goodbread Hills”.

15. Goodbread’s application was scored by Florida Housing in accordance with the provisions of §420.5099, Fla. Stat., and Rule 67-48, Fla. Admin. Code. By letter and Scoring Summary dated July 9, 2004, Florida

Housing advised Goodbread that its final post-appeal score was 66 points, that its application had met all threshold requirements, was classified into “Group B”, and that its application had received 7.5 “proximity tie-breaker points”.

16. The application that is the subject of these proceedings, No. 2004-107C “Blitchton Station” (hereinafter “Blitchton Application”) was submitted by Blitchton Station, Ltd. (“Blitchton”) and was also scored by Florida Housing, receiving a pre-appeal score of 66 points, a “Group A” classification, and 6.25 “proximity tie-breaker points”. Florida Housing also found that the Blitchton Application failed the threshold requirement for “site control”, and provided reasons for the determination as well as comments in the Final Scoring Summary for the Blitchton Application, dated July 8, 2004.

17. Blitchton subsequently appealed the scoring of the Blitchton Application pursuant to Rule 67-48.005(2), Fla. Admin. Code and contested Florida Housing’s scoring regarding their “proximity tie-breaker points” as well as Florida Housing’s determination that the Blitchton Application failed threshold for failing to demonstrate site control. At the meeting of its Board of Directors on October 14, 2004, Florida Housing adopted a Final Order finding that the Blitchton Application had satisfied the threshold requirement

regarding site control, had earned full proximity points, and awarding Blitchton an allocation of Tax Credits.

18. In the 2004 Universal Application Cycle, Tax Credits totaling \$3,000,000.00 were set aside for applicants competing in the “Front Porch Florida Community” set-aside. Seven applicants (including Tiger Bay and Blitchton) submitted applications in the “Front Porch” set-aside competition (Tiger Bay’s application No. 2004-109C; Goodbread’s application No. 2004-144C; Blitchton’s application No. 2004-107C; and application Nos. 2004-104C, 2004-141C, 2004-142C, and 2004-143C.

19. Applications Nos. 2004-104C, 2005-143C and 2004-107C (Blitchton Station) were selected for an allocation of Tax Credits within the Front Porch Florida Communities set-aside. Florida Housing did not award an allocation of Tax Credits to any of the remaining four applicants within this set-aside, including Tiger Bay and Goodbread, as there was insufficient Tax Credit allocation remaining to fund the developments. Tiger Bay and Goodbread were ranked beneath Blitchton by virtue of their higher lottery numbers.

20. But for the Final Order issued on the scoring of the Blitchton Application, Tiger Bay and Goodbread would have been awarded an allocation of Tax Credits in the 2004 Universal Application Cycle. Under

Rule 67-48.005, Fla. Admin. Code, Tiger Bay and Goodbread have standing to initiate the instant proceedings.

21. Rule 67-48.004(4), Fla. Admin. Code permits competing applicants to notify Florida Housing of possible scoring errors relative to another applicant's application by submitting a written Notice of Possible Scoring Error ("NOPSE"). Tiger Bay and Goodbread filed NOPSEs against the Blitchton Application on May 6, 2004, alleging that Florida Housing erred in determining that the Blitchton Application satisfied the threshold requirement regarding "site control". The NOPSEs noted that Blitchton should not be awarded full points for its "local government contribution", stating "[Blitchton] failed to provide the required explanation of how the fee waiver of \$62,454.00 was calculated. Therefore, the fee waiver does not qualify as a local government contribution."

22. Rule 67-48.004(6), Fla. Admin. Code permits applicants (such as Blitchton) to "cure" their applications to correct deficiencies in their initial applications, whether such deficiencies are identified by Florida Housing or alleged in a NOPSE (if the allegations are accepted by Florida Housing).

23. Blitchton timely submitted "cure" documentation on or about June 10, 2004. This documentation included additional documentation

detailing the manner in which \$62,454.00 of building permit fees were waived by the City of Ocala, in response to Florida Housing's finding on that issue that Blitchton had failed to provide the required explanation of how the fee waiver of \$62,454.00 was calculated.

24. Rule 67-48.004(7), Fla. Admin. Code permits applicants to submit a Notice of Alleged Deficiency ("NOAD") identifying possible issues created by document revisions, additions, or both, by applicants submitting "cure" documentation pursuant to Rule 67-48.004(6), Fla. Admin. Code.

25. On or about June 18, 2004, Tiger Bay and Goodbread filed NOADs against the "cure" documentation submitted by Blitchton, alleging that the "cure" documentation submitted by Blitchton explaining the \$62,454.00 of waived building permit fees, when compared to the amount of such fees owed under the applicable City of Ocala ordinance, overstated the amount of the total building permit fees initially chargeable and subsequently waived.

26. Following the submission of the Tiger Bay/Goodbread Hills NOAD, Florida Housing found that Blitchton had successfully "cured" the defect regarding the calculation of building permit fees.

27. After final rankings, Tiger Bay and Goodbread filed challenges to Florida Housing's scoring decisions regarding Blichton Station, pursuant to R. 67-48.005(5), Fla. Admin. Code.

28. Tiger Bay and Goodbread had standing to challenge such scoring, as both would have been funded, but for the decision to fund Blichton.

29. In their challenges, which were consolidated for hearing, Tiger Bay and Goodbread, *inter alia*, challenged Florida Housing's decision (a) to award Blichton full points for local government contribution, and (b) finding all threshold requirements satisfied.

30. The Blichton Development is located in Marion County. The Universal Application Instructions provide that for a development located in Marion County the development must achieve at least \$100,000 in local government contribution in order to achieve the maximum five (5) points.

31. In its original Application, Blichton did not include, as required by the Universal Application Instructions and the form for Exhibit 43, the computation by which the total amount of each waiver was determined. In its cure documents, it did include such a computation, detailing how the waiver of fees was computed states that \$49,307.00 in "building permit" fees were waived. This computation or explanation

detailing how the amount of fees waived was arrived at is not verified by by the Mayor, City Manager or Chairperson of the City Council/Commission (or anyone else). Rather, it is contained on an agenda item from the Supervisor of Housing and Grants from the City of Ocala to the City Manager and dated March 17, 2004.

32. Ordinance 5203, an Ordinance of the City of Ocala, Florida, adopted on September 9, 2003, creates, in part, Section 82-42 Permit Fees, Building, Code of Ordinances, City of Ocala, Florida. Subsection 82-42(b), Code of Ordinances, City of Ocala, Florida, which is entitled "Building Permits," sets forth the fee requirements for building permits. See Hearing Officer Exhibit 2 and Joint Exhibit 10. The Ordinance requires that a building permit fee be paid equal to \$25.00 for each building permit issued, plus an additional fee of \$0.45 for each \$100.00 or major fractional part thereof of the cost of construction.

33. In its Application, Blitchton indicated that its project consisted of 14 buildings with a total cost of construction of \$7,182,003. Pursuant to the City's Ordinance for building permit fees, this would require a \$25.00 building permit fee for each of the 14 buildings totaling \$350. In addition, there would be a building permit fee of \$0.45 for each \$100.00 or major fractional part thereof, of the sworn estimate of the cost of construction

exclusive of equipment. Using the total cost of construction of \$7,182,003 set forth in Blitchton's Application, that yields an additional building permit fee under the Ordinance of \$32,319. Including the \$350.00 fee for the 14 buildings, the total Building Permit fee required by the Ordinance is \$32,669. This does not comport with the amount of Building Permit fees claimed as waived in Blitchton's documents, \$49,307.00.

34. Using Blitchton's total development cost as stated in its Application, \$9,944,515.00, rather than its stated total cost of construction, \$7,182,003.00, the fee calculated according to the building permit fee ordinance of the City would yield a total fee of only \$45,100 (\$350 for the 14 building permit fees at \$25.00 and \$44,750 at \$0.45 per \$100). As noted above, this calculated building permit fee of \$45,100 is less than the \$49,307 claimed for building permit fee waivers in Blitchton's Application.

35. Because it is located in Marion County, Blitchton's development must achieve at least \$100,00 in local government contribution in order to qualify for the maximum of five (5) points in the scoring process. In its Application, Blitchton proposed that it would receive this bare minimum of \$100,000 in local government contributions. To achieve that bare minimum of \$100,000 in local government contributions, Blitchton claimed in its "cure" documents that the City would waive Building Permit

fees in the amount of \$49,307. Given the total cost of construction set forth by Blitchton in its Application, the amount of building permit fees that it is possible for the City to waive under its ordinance is less than \$49,307. Blitchton did not demonstrate that it would receive \$100,000 in local government contribution.

36. In its Application, and most particularly in its cure document, Joint Exhibit 14, Blitchton asserts that it will receive as local government contributions the amount of \$50,693 of fee waivers other than Building Permit Fee waivers. Ordinance 5203 of the City of Ocala requires that the building permit fee be calculated on a sworn estimate of the cost of construction, \$7,182,003. As noted above, that yields a total building permit fee that the City could charge of \$32,669. Added to the \$50,693 of local government contribution not in dispute, the total local government contribution, demonstrated in Blitchton's Application is \$83,362. Blitchton had to demonstrate at least \$100,000 of local government contribution to achieve the maximum five (5) points for scoring purposes. Using the scoring formula set forth in Part IV.A of the Universal Application Instructions, Blitchton is entitled to only 4.17 points in scoring its local government contribution.

STIPULATED CONCLUSIONS OF LAW

1. Florida Housing has jurisdiction over this matter. R. 67-48.005, Fla. Admin. Code; sec. 420.507(22), Fla. Stat.

2. Petitioners' substantial interests were affected by Florida Housing's scoring decisions on the Blichton Station application, No. 2004-107C, so Tiger Bay and Goodbread have standing to challenge those decisions.

3. Part IV.A of the Universal Application Instructions provides that an applicant can receive a maximum of five (5) points for certain contributions from local government. One of the local government contributions that counts for the purpose of scoring is a waiver of fees, including building permit fees.

4. The Universal Application Instructions in Part IV.A further provide that:

In order for an Application to achieve the maximum 5 points, the Applicant must provide evidence of a contribution whose dollar amount is equal to or greater than the amount listed on the County Contribution List for the county in which the proposed Development will be located. Those Applications that do not have the necessary contributions to achieve maximum points will be scored on a pro-rata basis.

5. Blichton's Application asserts that it will receive, as part of its \$100,000 of local government contribution, a waiver of building permit fees

in the amount of \$49,307. However, the City Ordinance governing building permit fees provide in this case for a maximum building permit fee of only \$32,669. When taken with other undisputed fee waivers, Blichton has shown a local government contribution of \$83,362 which does not achieve the threshold of \$100,000 of local government contribution required to achieve the maximum five (5) points for scoring purposes. Applying the pro rata scoring formula set forth in Part IV.A of the Universal Application Instructions, Blichton is entitled to only 4.17 points for its local government contribution.

6. Because Blichton has scored less than the maximum five (5) points possible with regard to local government contribution, the Blichton Application should be scored lower than either of the Petitioners' Applications.

STIPULATED RESOLUTION

1. Florida Housing finds and accepts that Tiger Bay of Gainesville, Ltd., and Goodbread Hills, Ltd., should have been funded due to Blichton Station, Ltd.'s, failure to provide proper documentation of its local government contribution, and agrees to fund Tiger Bay and Goodbread out of the next available tax credit allocations.

2. Tiger Bay and Goodbread each withdraw their respective challenges to Florida Housing's decision in this case in all other respects.

3. Florida Housing agrees to fund Tiger Bay's and Goodbread's requests for funding out of the next available allocation of tax credits, as provided in R. 67-48.005(7), Fla. Admin. Code.

4. Each party will bear its own attorneys fees and costs.

5. All parties agree that this Settlement Agreement resolves all issues in the captioned cases, and hereby waive any further administrative proceedings and appeals as to such issues.

WHEREFORE, Florida Housing, Tiger Bay, and Goodbread request that the Board of Directors accept and adopt this Settlement Agreement, and enter a Final Order in this matter accordingly.

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DATED this _____th day of June, 2005.

By: _____

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