2005-039UC

BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPRATION

GHG FLAGLER CROSSING LIMITED PARTNERSHIP,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

DOAH Case NO. _____

Agency Case No.: Application No. 2005-036

PETITION FOR FORMAL HEARING BEFORE THE DIVISION OF ADMINISTRATIVE HEARINGS AND THE GRANT OF THE RELIEF REQUESTED

Pursuant to §§120.569 and 120.57, Florida Statutes ("FS"), Rule 67-48.005, Florida Administrative Code ("F.A.C.") and Rule 28-106.201, F.A.C., Petitioner, GHG Flagler Crossing Limited Partnership, requests a formal hearing before an Administrative Law Judge from the Division of Administrative Hearings ("DOAH") regarding the scoring by Florida Housing Finance Corporation of the Housing Credit Application No. 2005-036C ("Application") filed by Merry Place at Pleasant City Associates, Ltd. ("Applicant" or "Merry Place") for the proposed development referred to within such Application and to then grant the relief requested herein. In support of this Petition, Petitioner states as follows:

1. The Petitioner is GHG Flagler Crossing Limited Partnership, a Florida limited partnership ("Petitioner" or "Flagler Crossing"). The address of Petitioner is c/o The Gatehouse Group, 120 Forbes Boulevard, Mansfield, Massachusetts 02048, telephone number (508) 337-2525. Petitioner's representatives are Michael G. Maida, Esq., and J. Stephen Menton, Esq., Rutledge, Ecenia, Purnell & Hoffman, 215 South Monroe Street, Suite 420, Tallahassee, Florida 32302-0551, Telephone Phone No. (850) 681-6788. For purposes of this proceeding, all pleadings, notices and correspondence should be sent to Petitioner's representatives.

2. The name and address of the agency affected is Florida Housing Finance Corporation

("FHFC"), 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The agency's file or identification number with respect to the application which is the subject matter of this Petition is Application No. 2005-036C.

BACKGROUND

3. Petitioner and numerous other developers, including Merry Place, applied for an allocation of Federal Low-Income Housing Tax Credits ("HC") under the HC Program administered by FHFC. The HC Program operated under §42 of the Internal Revenue Code of 1986, as amended, and it awards developers and investors a dollar for dollar reduction in federal income tax liability through the allocation of tax credits in exchange for the construction of affordable rental housing units. FHFC is the agency designated by the United States Treasury to administer the allocation of HC in the State of Florida.

4. Petitioner and Merry Place submitted their respective applications for an allocation of HC from FHFC in the 2005 competitive application cycle for HC (the "2005 Cycle").

5. HC are a scarce resource. In the 2005 Cycle, FHFC had available for allocation approximately $40,000,000 of HC; approximately 68 applicants (requesting in the aggregate approximately $86,322,547 of HC) applied in the 2005 Cycle.

6. FHFC has developed a Universal Application from which must be submitted in order to compete for HC. Applicants applying for HC are advised by FHFC to closely review the Universal Application Instructions (the "Instructions") and Rule 67-48, F.A.C. when completing and submitting such applications to FHFC.

7. An HC application is comprised of numerous forms which request information of each applicant. FHFC has adopted the forms by reference in Rule 67-48.004(1)(a), F.A.C.

8. The Instructions set forth the manner in which competitive applications are scored and ranked. The current application form and Instructions have not been substantially changed since 2002.

9. Due to the substantial number of applications filed in each cycle and the quality of

such applications, it is frequently difficult to differentiate between competing applications. FHFC has, over the years, insisted upon strict application of its rules in order to differentiate between competitive applications and achieve fair final scoring results. As set forth below, in the instant case, FHFC has failed to uniformly and strictly apply its own rules, resulting in an unfair ranking result to Petitioner.

10. The Instructions to the Universal Application provide a maximum score of 66 points. In the event of a tie among competing applications receiving 66 points, a series of tie-breakers are set forth to rank such applications. 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 "proximity tie-breaker points"; and finally, an application with a lower lottery number prevails over an application with a higher lottery number.

11. The Instructions contain several sections wherein specific responses must be given by an applicant if its development site consists of "scattered sites", as defined under F.A.C. Rule 67-48.002(92).

THE APPLICATIONS

12. On or about February 16, 2005, Petitioner submitted its application in an attempt to assist in the financing of the construction of a 154 unit apartment complex in West Palm Beach, Florida. Petitioner's HC application was assigned Application No. 2005-064C.

13. Petitioner's Application No. 2005-064C was scored by FHFC in accordance with the provisions of §420.5099 FS, and Rule 67-48, F.A.C. By letter and scoring summary dated August 25, 2005, FHFC advised Petitioner that its final post-appeal score was 66 points, that Petitioner's application had met all threshold requirements, that Petitioner's application was classified into "Group A", and that Petitioner's application had received the maximum 7.5 "proximity tie-breaker points."

14. As indicated above, Merry Place also submitted an application for HC in the 2005 Cycle. In the final scoring of Merry Place's Application No. 2005-036C, FHFC failed to strictly

apply its rules.

15. Rule 67-48.004(7), F.A.C., permits applicants (such as Petitioner) to submit a Notice of Alleged Deficiency ("NOAD") identifying possible issues created by document revisions or "cures" submitted by competing applicants (such as Merry Place). On or about May 4, 2005 Petitioner filed a NOAD with respect to Merry Place's Application. The NOAD alleged that Merry Place's Application failed to satisfy numerous threshold requirements arising in part from Merry Place's failure to disclose that its development consisted of "scattered sites". The NOAD also asserted that Merry Place was not entitled to any additional proximity tie-breaker points since the "Surveyor Certification" attached as Exhibit 25 to Merry Place's Application failed to disclose that the development consisted of "scattered sites."

16. FHFC preliminarily agreed with the NOAD filed by Petitioner against the Merry Place Application, and determined that the Merry Place Application failed to meet various threshold requirements. In addition, FHFC determined that Merry Place's proximity tie-breaker points were not maximized, due to failure to comply with those provisions of the "proximity tie-breaker" portion of the application Instructions pertaining to "scattered site" developments.

17. Rule 67-48.004(9), F.A.C., provides that after consideration of NOPSE's, "cure" documentation and NOAD's, FHFC shall transmit final scores to all applicants. FHFC mailed final scoring summaries for the 2005 Cycle on or about May 25, 2005. An applicant who wishes to contest its final score can file a petition with FHFC under F.A.C. Rule 67-48.005(2). If the petition does not raise a disputed issue of material fact, the hearing on the petition is conducted pursuant to Section 120.57(2), F.S. (an "informal hearing").

18. A notice of potential scoring error ("NOPSE") was filed against Merry Place by a competing applicant alleging that the proposed development site falls within the definition of a "scattered site" development, as described in Rule 67-48.004(92), F.A.C., and as further explained by FHFC in their 2005 Universal Application Q&A questions 45 and 54. FHFC (without comment) denied the NOPSE. (Insert footnote from page ___)

19. At the conclusion of the FHFC scoring of the Merry Place Application, FHFC

advised Merry Place (on or about May 25, 2005) that its final score (prior to appeals permitted pursuant to F.A.C. Rule 67-48.005(2)) was 66 points, that Merry Place was classified into "Group A", that Merry Place had received 3.75 "proximity tie-breaker points", and that Applicant's Application had failed numerous threshold requirements due to the failure of Applicant to indicate that its Application was for a "scattered site" development. See Items 4T, 5T, 6T, 7T, 8T, 9T, 10T, 1P, 2P, 5P, 1C and 2C of the final May 24, 2005 scoring summary for Applicant attached as Exhibit "A".

20. As reflected on FHFC's scoring summary dated May 24, 2005 (Exhibit "A"), FHFC agreed with Petitioner's NOAD, finding that Applicant's Application consisted of "scattered sites."

21. Merry Place contested its final score by filing a petition with FHFC on June 16, 2005, pursuant to Rule 67-48.005(2), F.A.C. An informal hearing was conducted following which FHFC adopted a Final Order at its meeting on August 25, 2005, awarding Merry Place 7.5 "proximity tie-breaker points" and finding that Applicant had satisfied all threshold requirements. See attached Exhibit "B" which set forth the Final Rankings dated August 24, 2005 identifying Applicant as being funded in the Large County geographic set-aside.

22. Merry Place then filed "cure documentation" to its initial application, providing an additional real estate purchase contract to acquire property in addition to that real estate described in its initial application. Applicant proposed to acquire the additional property in order to maximize its "proximity tie-breaker points". A Notice of Alleged Deficiency ("NOAD") was filed against Merry Place by Petitioner, alleging that the development site consisted of "scattered sites" under FHFC's rules and, as such, Merry Place's application should be rejected due to the failure of such application to be properly completed due to its "scattered site" status..

22. Petitioner did not have an opportunity to participate or intervene in the informal hearing granted to Merry Place. FHFC does not permit a competing applicant to intervene in the appeal of another applicant.

23. In other words, under FHFC's rules and practices, Petitioner was not permitted to

participate in Merry Place's informal hearing even though it dealt directly with issues raised in Petitioner's NOAD position.

24. The effect of FHFC's final order on Merry Place's informal hearing was to cause that Applicant to be funded and to cause Petitioner's application to fall out of the funding range. Hhad FHFC adhered to its own clear rules and Instructions, Petitioner's application would have been in the funding range and would have received an allocation of HC. Consequently, it is only through this Petition that the position advanced in Petitioner's NOAD regarding Merry Place can be vindicated and Petitioner's application be awarded the allocations of HC that it is rightfully entitled to receive.

POST-RANKING APPEAL

25. Under FHFC's rules, Petitioner is afforded the opportunity of a "post-final ranking appeal." This post-final ranking appeal is the constitutionally mandated opportunity for Petitioner to demonstrate that its application should have been funded. Because Petitioner was denied the opportunity to participate in Merry Place's pre-final ranking informal appeal of Petitioner's right of appeal until after final rankings are adopted guarantees (presuming Petitioner is successful in its appeal) funding of the wrong application (Merry Place). Under FHFC's "post-final ranking" appeal rule, the funding of a project whose application has beenchallenged is not held up. Instead, the applicant filing such "post-final ranking appeal" (Petitioner) is (if successful) awarded HC from the next year's funding cycle if HC are not available in the current year. In this post-final rankings appeal, Petitioner is entitled to a *de novo* hearing on the scoring and ranking of Merry Place's application.

26. This principal was enumerated in a post-final appeal petition filed with respect to the 2004 Universal Cycle (Tiger Bay of Gainesville, Ltd. vs. Florida Housing Finance Corporation), the identical procedural situation existed. In that case, Hearing Officer Bentley (in rendering his Recommended Order), found as follows:

> "The Respondent's rules, in effect, prohibit substantially affected competing applicants from intervening or participating in hearings in which an applicant challenges the Respondent's proposed action with respect to an individual application. The Respondent has chosen to preserve the due process

rights of the competing applicants so prohibited, by the mechanism set forth in Subsection 67-48.005(5), F.A.C., by allowing the competing applicants, after the ranking or score has been determined on an application, to engage in a separate de novo challenge (emphasis added) to the scoring of that application. Because Respondent's rule specifically says that this point of entry comes into existence only after the final ranking or score of an applicant has been determined, it clearly envisions that there may well have been a separate administrative hearing between the Respondent and the applicant receiving the final score and that the final score may be the result of the final order entered pursuant to that administrative hearing. In full recognition of that fact, the Respondent has nevertheless created the opportunity for a competing applicant to initiate a second administrative hearing contesting that same final score or ranking and has not limited the issues which can be raised except for the "cure" issues. Thus, after the final ranking or score of an applicant, a competing applicant can file a petition and initiate a de novo administrative proceeding in which the competing applicant can litigate the exact same issues litigated in an earlier administrative hearing between Respondent and applicant regardless of the final order entered in that earlier proceeding.

While a unique and anomalous mechanism, in the context of the application process with its appurtenant time constraints, the mechanism as created by Respondent is rational. The due process rights of all applicants must be protected. Because the applicants are competing for a finite resource, to allow a mechanism whereby all competing applicants could contemporaneously intervene or challenge the other applicants could create a chaotic and time consuming process. With the mechanism set forth in Subsection 67-48.005(5), the Respondent has created a workable mechanism that protects the due process rights of all applicants. The applicant who challenges the scoring of its application by Respondent in an administrative hearing, receives its due process in that hearing and achieves a final order which remains binding on that applicant, either granting its request or denying its request. The mechanism in Subsection 67-48.005(5) then provides that after that final order has been achieved with regard to an individual application, the competing applicants who are substantially affected by that final order can, in a separate and new de novo proceeding, litigate the same issues that were litigated in the previous hearing. Clearly implicit in that mechanism is the anomaly that the final order resulting from the second administrative hearing may differ from that in the first hearing on identical issues. Presumably, Respondent has determined to accept this anomaly as the price for avoiding the chaotic and time consuming situation that would result from all applicants being able to contemporaneously intervene in each other's challenges to the scoring."

See Recommended Order attached as Exhibit "C". Thus, Petitioner's assertion that FHFC erroneously failed to disqualify the Applicant for failure to satisfy numerous threshold requirements in its Application due to its failure to treat the subject real estate as a "scattered site" development is entitled to *de novo* review without consideration of the prior Merry Place informal proceeding. This Petititon is timely filed in accordance with the Notice of Rights which allowed applicants until September 16, 2005, to file a post-hearing appeal petition.

27. As is more fully set forth herein, there are disputed issues of material fact

concerning application of F.A.C. Rule 67-48.005(5)(b), pertaining to the issue of whether Applicant's failure to complete its Application as a "scattered site development" was feasibly curable within the time allowed for cures in Subsection 67-48.004(6), F.A.C.

28. If FHFC properly applies its rules and administrative procedures, Petitioner is entitled to receive funding.

ALLOCATION OF HC

29. In the FHFC Qualified Allocation Plan ("QAP") disseminated as part of the 2005 HC Application (attached as Exhibit "E"), FHFC advised all potential HC Applicants as to the manner in which HC would be allocated. See Section 6 of the QAP. HC is allocated first to certain "special set-asides" (Front Porch Community, Rural Development, Homeless, Florida Keys, etc.), then to satisfy certain "targeting goals" (elderly, farm worker, 11 hurricane affected counties, non-profit, etc.), and then the remainder is allocated 60% to large county geographic set-aside, 30% to medium county geographic set-aside and 10% to small county geographic set-aside. HC allocated to satisfy "targeting goals" not met by the "Special Set-Asides" are offset against the HC otherwise allocable to the geographic set-aside in which the application satisfying such targeting goal is located.

30 .To the extent of any unused allocation authority within either a special set-aside or a geographic set-aside, Section 9 of the QAP requires such unused HC allocation authority to be used (i) first, to fund partially funded applications in order to more fully fund such developments, and (ii) thereafter, "...to fund the next highest scoring, eligible Application regardless of which of the above stated Set-Asides it is in until all Housing Credits are allocated. If the last remaining Allocation Authority after application of the foregoing is not sufficient to fully fund the next highest scoring, eligible Application, such Applicant shall be entitled to a Binding Commitment for the unfunded balance, without regard to the limitation imposed by Section 14 hereof" (the requirement that an application must be funded in an amount equal to at least 60% of its request in order to receive a Binding Commitment). This process is referred to herein as the "Last Dollar Analysis."

31. As a result of the application of the Last Dollar Analysis, Application No. 2005-123C (Pebble Hill Estates) was designated the "Last Dollar Application" and received an allocation of the last remaining HC authority of $133,828 (see 2005 Universal Cycle HC ranking attached as Exhibit "D").

32. Had FHFC correctly scored the Merry Place's Application, FHFC would have determined that Merry Place's Application failed numerous threshold requirements and should have received only 3.75 proximity tie-breaker points. Had FHFC scored Applicant's Application correctly, Petitioner's application would have been awarded an allocation of HC under the "Last Dollar Analysis". But for FHFC's error in scoring Merry Place's Application, Petitioner would have received an allocation of HC in the 2005 Cycle. If Petitioner is successful hereunder, Petitioner will be entitled to a binding commitment of HC from the 2006 HC authority, pursuant to Rule 67-48.005(7), F.A.C.

NOTICE OF AGENCY DECISION

33. Petitioner received notice of the final scores and rankings and its Notice of Rights to file a post-appeal petition on or about August 25, 2005. See attached Exhibit "D". Neither the Notice of Rights nor the Universal Scoring Summary for Applicant's Application explains why the position taken in the NOAD filed by Petitioner (as to the issue of whether Applicant's proposed development consisted of "scattered sites") and initially agreed to by FHFC was ultimately reversed.

34. Under Rule F.A.C. 67-48.004 and 67-48.005, a competing party (such as Petitioner) has no right to participate or affect the scoring of another applicant's application during the time period between the filing of NOAD's and the approval of final scores and rankings by FHFC Board. See the May 25, 2005 memorandum from FHFC attached as Exhibit "B" (last sentence of second paragraph). As such, Petitioner was unable to intervene or participate in the informal hearing on Merry Place's application. This Petition is Petitioner's remedy to ensure that its substantial interests in obtaining an allocation of HC are protected.

35. Under F.A.C. Rule 67-48.005(5)(b) and (c), an applicant who wishes to challenge the

final ranking or score of another applicant may do so in a "post-final ranking" appeal.1 The petitioning applicant must demonstrate that, but for the error in scoring, it would have been in the funding range at the time of final ranking. Here, Petitioner contests the final ranking of Merry Place's Application under the foregoing Rule. Petitioner asserts that there was an error in the final scoring of the Merry Place Application and the contested issues (although curable) were not curable solely within the Applicant's control.

36. By rule and FHFC action, Petitioner wasexcluded from the earlier informal proceedings. Petitioner has a legal, indeed a constitutional, right to challenge the scoring and ranking of a competing applicant.[1]

37. Under Rule 67-48.005, F.A.C., when erroneous decisions are made and ultimately corrected by way of post-final ranking appeals (such as this proceeding), the erroneously scored and ranked application (Merry Place) still gets funded, and the application which should have been funded (Petitioner's Application) receives funding from the following year's HC allocation if none remains available in the current year. The funding of petitioners (such as Petitioner) out of next year's HC allocation creates a significant disadvantage to applicants applying for an allocation of HC in the succeeding year's cycle, since the amount of HC available in such year's cycle will be reduced by the amount allocated to parties such as Petitioner.

DISPUTED ISSUES OF MATERIAL FACT

38. The disputed issues of material fact in this proceeding include, but are not limited to:

(a) Whether the Merry Place project was in fact a "scattered site" under the FHFC rules and the application Instructions;

1If the contested issue involves an error in scoring, the contested issue must be one that (i) could not have been cured pursuant to Rule 67-48.004(14), F.A.C. (not the case here), or (ii) could have been cured, if the ability to cure was not solely within the applicant's control. With regard to "curable" issues, a petitioner must prove that the contested issue was not feasibly curable within the time allowed for cures in F.A.C. Rule 67-48.004(6). Here, the contested issues could not have been cured by Applicant within the time allowed for cures in F.A.C. Rule 67-48.004(6), since such "cure period" only applies to cures filed in response to NOPSE's. Moreover, the deficiencies in Merry Place's Application due to the "scattered site" classification were not solely within Applicant's control or cure. Consequently, Petitioner has satisfied the prerequisites of F.A.C. Rule 67048.005(5)(b) to a post-final ranking hearing pursuant to F.A.C. Rule 67-48.005(5)(b).

(b) Whether the deficiencies noted in the NOAD filed against the Merry Place application were subject to the "cure" provisions in Rule 67-48.004(6), F.A.C.;

(c) Whether Merry Place could have "feasibly cured" the deficiencies described herein within the time allowed for cures in F.A.C. Rule 67-48.004(6); and

(d) Whether Petitioner's Application should have been awarded an allocation of HC for the 2005 Cycle under the FHFC Rules and the Instructions.

39. The ultimate facts alleged by Petitioner, including the specific facts that demonstrate Petitioner's entitlement to reversal of FHFC's decision not to fund Petitioner's Application are as follows.

40. Merry Place's application filed on February 16, 2005 contained (behind Exhibit 27) a single contract for the purchase of real property dated February 14, 2005, between the Applicant and the West Palm Beach Housing Authority. A copy of this contract (including the legal description of the primary 5.4 acre development site proposed to be acquired) is attached as Exhibit "K".

41. A competing applicant (Falcon Pass, Application No. 2005-045CS) filed a NOPSE against Applicant alleging that the development site referenced in the aforementioned purchase contract constituted a "scattered site". Attached as Exhibit "F" is a copy of the NOPSE, including a copy of the action of the West Palm Beach City Commission approving the site plan and zoning for the project and attaching as Exhibit A to such NOPSE a survey and legal description and attaching as Exhibit B to such NOPSE a site plan with land uses. It is clear from the attached survey and site plan that existing public right-of-ways cross and bisect the subject real estate which comprises the primary 5.4 acre development site. Exhibit 2 attached to the NOPSE (a copy of the January 24, 2005 West Palm Beach City Commission Agenda) made clear (in the third paragraph under the subheading "Background") that the existing street grid system would be retained for the primary development site.

42. FHFC took no action with respect to the NOPSE (effectively denying the NOPSE).

43. Applicant submitted "cure" documentation on or about April 26, 2005. Attached as Exhibit "L" are the following portions of the "cure" documentation:

(a) Revised Surveyor Certification (Exhibit 25) indicating a different grocery store and different bus stop from that contained in Applicant's initial application;

(b) First and second amendments to the real estate purchase contract contained in the original application (revising the legal description of the primary 5.4 acre development site being acquired and decreasing the price thereof);

(c) A new purchase contract between Marine Engine Equipment Company, Inc. (as seller) and West Palm Beach Housing Authority (as purchaser) for three additional pieces of property, together with an assignment of such contract by West Palm Beach Housing Authority to the Applicant; and

(d) a revised site plan approval form (Exhibit 26), necessitated by the purchase of the additional real estate.

44. Petitioner filed a NOAD with respect to Merry Place's Application on or about May 4, 2005. A copy of the NOAD is attached as Exhibit "H". Petitioner pointed out in its NOAD that a "Street Atlas printout" for the proposed Merry Place development clearly demonstrates intersection of the development site by 17th Street and 18th Street, together with an affidavit from a licensed surveyor confirming same.

45. Consistent with its prior interpretations of the applicability of the "scattered sites" provision, FHFC agreed with the assertions contained in Petitioner's NOAD, holding (in the scoring summary issued to Applicant on May 25, 2005, attached as Exhibit "B") that Applicant's proposed development consists of scattered sites.

46. Rule 67-48.002(92), F.A.C. provides that " 'Scattered Sites' for a single Development means a Development consisting of more than one parcel in the same County where two or more of the parcels (i) are not contiguous to one another or are divided by street or easement, and (ii) it is readily apparent from the proximity of the sites, chain of title, or other information available to the Corporation that the properties are part of a common or related

scheme of development."

47. The FHFC's Final Order fails to address that the additional three parcels of land being acquired as set forth in the "cure document" are separated from the primary 5.5 acre development site by a street easement. The FHFC Final Order on the Merry Place Application erroneously concludes that the primary 5.5 acre site itself consisted of "scattered sites." Hearing Officer Ramba determined that the primary 5.5 acre site was in fact a "single parcel", that the secondary parcels were contiguous to the primary parcel and not divided by a street or easement and, as such, the Merry Place development did not consist of "scattered sites."

48. The only guidance offered by FHFC in interpreting the defined term "scattered sites" is offered in the "2005 Universal Application – Q&A" issued by FHFC during the 2005 application cycle. In Question 54, the following question was proffered: "If an alley runs through the Proposed Development Site, would this constitute a Scattered Site?" In response, FHFC answered "yes, if the alley constitutes a street or easement". Question 45 specifically asked whether "Under the definition of Scattered Sites, if a proposed development consists of two parcels that are divided by a roadway, would this constitute a Development consisting of Scattered Sites?" FHFC answered in the affirmative.

49. Under the FHFC Rules and application Instructions, the Merry Place development site consisted of "scattered sites."

50. The primary 5.5 acre development site itself consists of more than one parcel, and is divided by streets. As such, the primary 5.5 acre development site constitutes"scattered sites."

51. The ramifications of a development site being classified as consisting of "scattered sites" in the 2005 Universal Cycle Application are clear. In such case, a part of the boundary of each separate scattered site must be located within one-half mile of the tie-breaker measurement point selected by the applicant. See Part III.A.2.b. of the Application Instructions on page 8 thereof. See also, Exhibit 25 to the Application, wherein the surveyor must answer the question of whether part of the boundary of each parcel is located within one-half mile of the tie-breaker measurement point. Failure to satisfy this requirement results in a rejection of an

application due to failure to satisfy the aforementioned eligibility criteria.

52. In addition, if a development consists of "scattered sites", then in order to be eligible for points, an applicant must commit to locate each feature and amenity that is not unit-specific (for example, a swimming pool, clubhouse, etc.) on each of the scattered sites, or no more than one-sixteenth of a mile from the tie-breaker measurement point, or a combination of both. See Part III.B.2. of the application instructions (page 23 thereof).

53. Finally, as provided in Question 44 of the FHFC's "2005 Universal Application – Q&A", if the proposed development consists of Scattered Sites then various other threshold requirements of the application (infrastructure availability, site plan approval, zoning, environmental condition, local government contribution and local government incentives) all must be complied with and answered with respect to <u>each</u> of the Scattered Sites.

54. The policy rationale for the foregoing is obvious. Scattered Site developments are inherently less feasible and more difficult to develop than non-scattered site developments. Issues such as public safety, availability of non-unit specific amenities to residents, security and other similar issues are unique to scattered site developments, particularly when such developments are divided by roadways. FHFC does not prohibit scattered site developments, but desires to be advised of a development's "scattered site" status in order to more closely analyze (through the application process and the credit underwriting process) whether such "scattered site" developments are in fact feasible. Because the primary 5.5 acre development site is bisected by several roadways, all of the foregoing concerns/issues exist with respect to that project.

55. A development site bisected by major roads, clearly constitutes separate "parcels" of land under the announced interpretations. Otherwise, the clear intent and purpose of FHFC in requiring the identification of a development as consisting of "scattered sites" is defeated.

56. Rule 67-48.004(1)(a), F.A.C., specifically incorporates the 2005 HC Application and Instructions. The instructions to Part III.B.A.2.b. (contained on page 8 of such Instructions) state "To be eligible to apply as a Development with Scattered Sites, a part of the boundary of

each parcel must be located within one-half mile of the Tie-Breaker Measurement Point". The same section also requires that "If the Development will consist of Scattered Sites for each of the sites, provide the Address, total number of units, and a latitude and longitude coordinate, determined in degrees, minutes and seconds truncated after one decimal place, located anywhere on the site. For the site where the Tie-Breaker Measurement Point is located, only provide the Address and total number of units."

57. Exhibit 25 to the Universal Application provides that, in order to be eligible to receive "proximity tie-breaker points", the "Tie-Breaker Measurement Point" (in the case of scattered sites) means a single point on one of the scattered sites which comprise the development that is located within 100 feet of a residential building existing to be constructed as part of the proposed development. In addition, the Tie-Breaker Measurement Point must be located on the site with the most units, if any of the scattered sites has more than four units. On Exhibit 25, the surveyor must also indicate whether the boundary of each parcel contained within the scattered site development is located within one-half mile of the Tie-Breaker Measurement Point.

58. The Merry Place Application fails to satisfy the requirements for a scattered site development.

59. Under Rule 67-48.004(1), F.A.C., "all Applications must be complete (emphasis added), legible and timely when submitted ...". Rule 67-48.004(2), F.A.C., provides in part that "Failure to submit an application completed in accordance with the Application Instructions and these rules will result in rejection of the Application or a score less than the maximum available in accordance with the instructions in the Application in this Rule Chapter." Rule 67-48.004(13)(b)(c), F.A.C., provides in part that "The Corporation shall reject (*emphasis added*) an Application if ... (b) the Applicant fails to achieve the threshold requirements as detailed in these rules, the Applicable Application, and Application Instructions." These provisions and Instructions apply to the issue of the failure of the Applicant to properly identify its development as consisting of "scattered sites."

60. Rule 67-48.005(7), F.A.C., provides that if an applicant (such as Petitioner) ultimately obtains a final order that demonstrates that its application would have been in the funding range, but for the scoring error described in such petition, that such applicant will be provided the requested funding from the next available funding and/or allocation, whether in the current year or a subsequent year. The filing of a petition pursuant to Rule 67-48.004(5), F.A.C. does not stay FHFC's provision of funding to applicants per the final rankings issued by FHFC. Under the provisions of Rule 67-48.005(7), F.A.C., Petitioner should be awarded either an allocation of 2005 HC and/or a binding commitment for 2006 HC.

61. But for the error in the scoring of the Merry Place application, Petitioner would have been entitled to funding under the Last Dollar Analysis or, alternatively from the 2006 Cycle.

RELIEF SOUGHT

62. Merry Place should have been disqualified for a failure to meet numerous threshold requirements pertaining to the proper identification of a development as consisting of a "scattered sites" (including, but not limited to, the information contained in Exhibits 26, 28, 29, 30, 31, 32, 33, and 34 pertaining to satisfaction of threshold requirements contained in the Universal Application). Alternatively, Merry Place should have only received 3.75 proximity tie-breaker points (out of a possible 7.5) due to its failure to properly complete Exhibit 25 to its Application. Merry Place should not have been awarded the full points for a valid local government contribution under Exhibit 43 and should not have been awarded the full points for local government incentives under Exhibits 47 through 50 by virtue of failing to properly identify the development as consisting of "scattered sites."

STATUTES AND RULES APPLICABLE

63. The statutes and rules applicable to this proceeding and which mandate the reversal of FHFC's denial of an allocation of HC to Petitioner, include, but are not limited to the following:

(a) Rule 67-48.004(1)(a), F.A.C., Rule 67-48.004(2), F.A.C., Rule 67-48.004(13)(b)

and (c), F.A.C., Rule 67-48.005(7), F.A.C., Rule 67-48.004(5), F.A.C., and Sections 120.569, 120, 57, F.S. and 42 of the Internal Revenue Code of 1986.

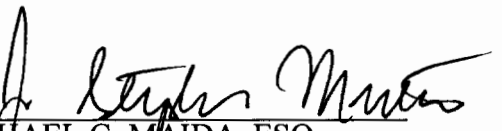
WHEREFORE, Petitioner respectfully requests a determination that:

(a) This matter be referred to DOAH for assignment of an Administrative Law Judge to conduct a *de novo* hearing with respect to the matters set forth herein;

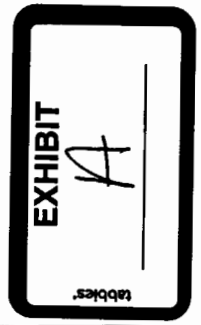
(b) A recommended order and final order be entered finding that FHFC provide the funding requested by Petitioner in its 2005 HC application either from available 2005 HC allocation authority, and/or to provide a binding commitment of HC authority from the 2006 Cycle; and that FHFC erred in scoring the Merry Place application and should have disqualified such application for failure to satisfy the threshhold requirements referenced herein; alternatively, Petitttioner requests a finding that FHFC erred in scoring the Merry Place application, and should have awarded 3.75 (of a total 7.5) proximity tie-breaker points;;

(c) Petitioner's application should have been funded with a 2005 HC allocation in the amount of $1,650,000.00.

Respectfully submitted

By: 

MICHAEL G. MAIDA, ESQ.
Florida Bar No. 0435945
J. Stephen Menton
Florida Bar No. 331181
Rutledge, Ecenia, Purnell & Hoffman
215 South Monroe Street, Suite 420
Tallahassee, FL 32302-0551
(850) 681-6788 (Telephone)
(850) 681-6515 (Facsimile)



2005 MMRB, SAIL & HC Scoring Summary

As of: 05/24/2005

File # 2005-036C **Development Name:** Merry Place

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 - 24 - 2005	66	N	3.75	$58,999.02	%	N
Preliminary	66	N	5	$58,999.02	%	N
NOPSE	66	N	5	$58,999.02	%	N
Final	66	N	3.75	$58,999.02	%	N
Final-Ranking	0	N	0		0	

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
				Optional Features & Amenities					
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
				Set-Aside Commitments					
4S	III	E	1.b.	Total Set-Aside Percentage	3	3	3	3	0
5	III	E	1.c.	Set-Aside Breakdown Chart	5	5	5	5	0
6S	III	E	3	Affordability Period	5	5	5	5	0
				Resident Programs					
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
				Local Government Support					
9S	IV		a.	Contributions	5	5	5	5	0
10S	IV		b.	Incentives	4	4	4	4	0

2005 MMRB, SAIL & HC Scoring Summary

As of: 05/24/2005

File # 2005-036C **Development Name:** Merry Place

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	V	D		Equity Commitment	Applicant provided an equity commitment from Enterprise Social Investment Corporation. Paragraph 3 of the commitment states that the commitment is "subject to investor approval", therefore the commitment was not scored as firm and not considered as a source of financing.	Preliminary	Final
2T	V	B		Construction Financing Shortfall	The Applicant has a construction financing shortfall of $3,302,963.	Preliminary	Final
3T	V	B		Permanent Financing Shortfall	The Applicant has a permanent financing shortfall of $10,154,963.	Preliminary	Final
4T	III	C	1	Site Plan Approval	The Applicant has provided a new completed and executed Local Government Verification of Status of Site Plan Approval form, which reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of site plan approval for each of the Scattered Sites which comprise the proposed Development.	Final	
5T	III	C	3.a.	Availability of Electricity	The Verification of Availability of Infrastructure - Electricity form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of the availability of electricity for each of the Scattered Sites which comprise the proposed Development.	Final	
6T	III	C	3.b.	Availability of Water	The Verification of Availability of Infrastructure - Water form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of the availability of water for each of the Scattered Sites which comprise the proposed Development.	Final	
7T	III	C	3.c.	Availability of Sewer	The Verification of Availability of Infrastructure - Sewer Capacity, Package Treatment or Septic Tank form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of the availability of sewer service for each of the Scattered Sites which comprise the proposed Development.	Final	
8T	III	C	3.d.	Availability of Roads	The Verification of Availability of Infrastructure - Roads form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information	Final	

2005 MMRB, SAIL & HC Scoring Summary

As of: 05/24/2005

File # 2005-036C **Development Name:** Merry Place

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
					provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of the availability of roads for each of the Scattered Sites which comprise the proposed Development.		
T	III	C	4	Zoning	The Local Government Verification that Development is Consistent with Zoning and Land Use Regulations form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of appropriate zoning for each of the Scattered Sites which comprise the proposed Development.	Final	
10T	III	C	5	Environmental Safety	The Verification of Environmental Safety - Phase I Environmental Site Assessment form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of a Phase I environmental review and, if applicable, evidence of a Phase II environmental review, for each of the Scattered Sites which comprise the proposed Development.	Final	

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Final Ranking
1P	III	A	10.a.(2)(a)	Grocery Store	1.25	0	0	0	0
2P	III	A	10.a.(2)(b)	Public School	1.25	0	0	0	0
P	III	A	10.a.(2)(c)	Medical Facility	1.25	0	0	0	0
4P	III	A	10.a.(2)(d)	Pharmacy	1.25	0	0	0	0
5P	III	A	10.a.(2)(e)	Public Bus Stop or Metro-Rail Stop	1.25	1.25	1.25	0	0
6P	III	A	10.b.	Proximity to Developments on FHFC Development Proximity List	3.75	3.75	3.75	3.75	0

Reason(s) for Failure to Achieve Selected Proximity Tie-Breaker Points:

Item #	Reason(s)	Created As Result of	Rescinded as Result of
1P	Applicants are to provide the latitude/longitude coordinates for an exterior public entrance to the service . The provided sketch appears to show a point that is not on a public entrance doorway threshold.	Preliminary	Final

2005 MMRB, SAIL & HC Scoring Summary

As of: 05/24/2005

File # 2005-036C **Development Name:** Merry Place

Reason(s) for Failure to Achieve Selected Proximity Tie-Breaker Points:

Item #	Reason(s)	Created As Result of	Rescinded as Result of
1P	The Grocery Store listed on the Surveyor Certification Fom does not meet Florida Housing's definition of a Grocery Store. As stated on page 13 of the Universal Application Instructions, a Grocery Store must consist of a minimum of 4,500 square feet or more of air conditioned space. The Grocery Store listed on the Certification form consists of only 1,814 square feet and is therefore ineligble for tie-breaker points.	NOPSE	Final
	The Applicant submitted documentation during the CURE period showing that the site is a Scattered Site. Based on this documentation, the Applicant has not correctly answered the question at Part III.A.2.b. and provided the Address, total number of units and latitude/longitude information for each of the Scattered Sites behind a tab labeled Exhibit 20, as required by the Universal Application Instructions. Furthermore, per page 12 of the Application Instructions the Surveyor Certification Form was not properly completed because the Yes/No box regarding Scattered Sites was not filled out.	Final	
2P	Applicants are to provide the latitude/longitude coordinates for an exterior public entrance to the service . The provided sketch appears to show a point that is not on a public entrance doorway threshold.	Preliminary	Final
2P	The Applicant submitted documentation during the CURE period showing that the site is a Scattered Site. Based on this documentation, the Applicant has not correctly answered the question at Part III.A.2.b. and provided the Address, total number of units and latitude/longitude information for each of the Scattered Sites behind a tab labeled Exhibit 20, as required by the Universal Application Instructions. Furthermore, per page 12 of the Application Instructions the Surveyor Certification Form was not properly completed because the Yes/No box regarding Scattered Sites was not filled out.	Final	
5P	The Applicant submitted documentation during the CURE period showing that the site is a Scattered Site. Based on this documentation, the Applicant has not correctly answered the question at Part III.A.2.b. and provided the Address, total number of units and latitude/longitude information for each of the Scattered Sites behind a tab labeled Exhibit 20, as required by the Universal Application Instructions. Furthermore, per page 12 of the Application Instructions the Surveyor Certification Form was not properly completed because the Yes/No box regarding Scattered Sites was not filled out.	Final	

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
1C	III	A	2.b.	Scattered Sites	As a part of its proximity cure, the Applicant deemed it necessary to keep the Application consistent by submitting an April 25, 2005 Contract for Purchase and Sale of Real Property, concerning three parcels consisting of a total of approximately one acre, along with an Assignment of Purchase and Sale Agreement showing the Applicant as the Assignee. With the addition of this property, it appears that the Development site consists of Scattered Sites and the Applicant has not correctly answered the question at Part III.A.2.b. and provided the Address, total number of units and latitude/longitude information for each of the Scattered Sites behind a tab labeled Exhibit 20, as required by the Universal Application Instructions.	Final	
2C	III	B	2	Scattered Sites	Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant has not correctly answered the question at Part III.B.2. relative to the proximity of each	Final	

2005 MMRB, SAIL & HC Scoring Summary

As of: 05/24/2005

File # 2005-036C **Development Name:** Merry Place

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
					feature and amenity to each of the Scattered Sites.		

Ranked Order
2005 Universal Application Cycle Ranking

EXHIBIT 6 tabbies

Application File Number	Development	County	County Size	County below $43,200	Urban In-Fill Dev.	FP or NP	Set-Aside Units	SAIL Tentative Funding Amount	MMRB Tentative Funding Amount	Competitive HC Tentative Funding Amount	Demographic Commitment	Designation Selection	Threshold Met	Total Scoring Points	Score Group	Leveraging Group	Total Proximity Points	SAIL as % of Dev. Cost	Lottery Number
Competitive HC Florida Keys Area Special Set-Aside																			
2005-045CS	Falcon Pass	Monroe	S			FP	84	3,000,000.00		882,000.00	F	FK	Y	60	2	B	7.25	24.59%	109
SAIL Homeless Special Set-Aside																			
2005-020CS	Villa Aurora	Miami-Dade	L			NP	76	3,000,000.00		2,338,500.00	H	H	Y	66	1	B	7.50	13.82%	76
2005-106CS	McCurdy Center	Palm Beach	L		Y	NP	92	1,750,000.00		1,363,350.00	H	H	Y	66	1	B	7.50	16.44%	15
Farmworker/Commercial Fishing Worker Special Set-Aside																			
None																			
SAIL Elderly Special Set-Aside																			
2005-115BS	Columbian Apartments	Pinellas	L		Y	FP	188	3,920,000.00	7,900,000.00		E	E	Y	66	1	A	7.50	51.98%	119
2005-043BS	Christine Cove Apartments	Duval	L		Y	NP	96	4,000,000.00	7,500,000.00		E	E	Y	66	1	A	7.00	29.71%	36
Competitive HC Front Porch Florida Community Special Set-Aside																			
2005-113C	Laurel Park Apartments, Phase II	Marion	M	Y		FP	68			575,000.00	F	FPF	Y	66	1	A	7.50	0.00%	58
2005-015C	The Villages at Halifax	Volusia	M			FP	71			772,196.00	F	FPF	Y	66	1	A	7.50	0.00%	79
2005-128C	Tiger Bay Court	Alachua	M		Y	FP	96			906,500.00	F	FPF	Y	66	1	A	7.50	0.00%	95
2005-099C	Goodbread Hills	Leon	M			FP	93			746,304.00	F	FPF	Y	66	1	A	7.50	0.00%	116
Competitive HC RD Development Special Set-Aside																			
2005-088C	Wakulla Trace Apartments	Wakulla	S			FP	34			227,999.00	E	R	Y	66	1	A	7.50	0.00%	39
2005-004C	Sunny Hill Apartments	Lake	M			FP	33			68,500.00	F	R	Y	61	2	A	7.50	0.00%	26
MMRB HOPE VI Special Set-Aside																			
None																			
Geographic Set-Asides																			
Competitive HC Goals																			
Two Farmworker/Commercial Fishing Worker Developments																			
2005-105C	DESOTO LANDING	De Soto	S	Y		NP	48			431,873.00	FF		Y	66	1	A	7.50	0.00%	51
2005-049C	Sonrise Villas II	Indian River	M			NP	80			900,000.00	FF		Y	61	2	A	7.50	0.00%	42
Urban In-Fill Developments																			
Funded above																			
One Elderly Development																			
Funded above																			
One Brevard County Development																			
2005-126C	Royal Palms Senior Apartments	Brevard	M		Y	FP	96			990,147.00	E		Y	66	1	A	7.50	0.00%	62
One Charlotte County Development																			
2005-084C	Charleston Cay	Charlotte	M			FP	128			892,500.00	F		Y	66	1	A	7.00	0.00%	53
One De Soto County Development																			
4-036C/5-002C	*Jacaranda Trail II*																		
One Escambia County Development																			
2005-127C	Pines at Warrington	Escambia	M		Y	FP	144			1,364,924.00	F		Y	66	1	A	7.50	0.00%	103

NP = Non-Profit, FP = For Profit, FK = Florida Keys, E = Elderly, FF = Farmworker/Fishing Worker, H = Homeless, VI = HOPE VI, R = RD-515, RF = RD-514/516. U = Urban In-Fill, FPF = Front Porch Florida, F = Family, * = End of the Line SAIL

Ranked Order
2005 Universal Application Cycle Ranking

Application File Number	Development	County	County Size	County below $43,200	Urban In-Fill Dev.	FP or NP	Set-Aside Units	SAIL Tentative Funding Amount	MMRB Tentative Funding Amount	Competitive HC Tentative Funding Amount	Demographic Commitment	Designation Selection	Threshold Met	Total Scoring Points	Score Group	Leveraging Group	Total Proximity Points	SAIL as % of Dev. Cost	Lottery Number
One Hardee County Development																			
2005-046C	Valencia Garden	Hardee	S	Y		FP	104			975,000.00	F		Y	66	1	A	7.50	0.00%	30
One Indian River County Development																			
Funded above																			
One Martin County Development																			
None																			
One Okeechobee County Development																			
05-124C	Oaks at Shannon's Crossing	Okeechobee	S	Y		FP	100			974,898.00	F		Y	66	1	A	7.25	0.00%	94
One Polk County Development																			
4-140C/5-003C	*Residences at Lake May*																		
One St. Lucie County Development																			
None																			
One Santa Rosa County Development																			
2005-047C	Bell Ridge	Santa Rosa	M			FP	122			892,500.00	F		Y	61	2	A	7.50	0.00%	74
12% to Non-Profit Applicants																			
2005-116C	Flagler Point	Broward	L		Y	NP	167			2,368,500.00	E		Y	66	1	A	7.50	0.00%	8
Small County Geographic Set-Aside																			
2005-016C	Arbours at Madison	Madison	S	Y		FP	72			637,385.00	F		Y	66	1	A	7.50	0.00%	24
Medium County Geographic Set-Aside																			
2005-093C	Meetinghouse at Zephyrhills	Pasco	M			FP	160			1,365,000.00	E		Y	66	1	A	7.50	0.00%	83
2005-031C	Lakeside Village	Volusia	M		Y	FP	103			1,080,000.00	F	FPF	Y	66	1	A	7.50	0.00%	97
2005-034BS	Spring Haven II Apartments	Hernando	M			FP	88	2,000,000.00	5,010,000.00		F		Y	66	1	A	7.50	25.77%	29
2005-082S	Oviedo Town Center Apartments	Seminole	M			FP	84	3,000,000.00			F		Y	66	1	A	7.50	27.90%	14
2005-005S	Summer Lakes II Apartments	Collier	M			FP	276	3,000,000.00			F		Y	66	1	A	7.25	13.28%	113
2005-077S	Lake Harris Cove Apartments	Lake	M			FP	107	3,000,000.00			F		Y	66	1	A	7.25	22.78%	32
2005-074BS	Stratford Downs Apartments	Lee	M			FP	146	3,000,000.00	13,000,000.00		F		Y	66	1	A	7.00	18.14%	96
2005-109C	Village Central	Manatee	M			FP	25			368,348.00	F	FPF	Y	66	1	B	7.50	0.00%	64
2005-006S	Manatee Cove Apartments	Brevard	M			FP	192	3,000,000.00			F		Y	66	1	A	7.50	19.60%	45
2005-071S	Nantucket Cove Apartments	Hernando	M			FP	90	2,298,443.60			F		Y	66	1	A	7.50	25.90%	23
2005-056BS	Anderson Terrace Apartments	Hernando	M			FP	275	0.00	14,100,000.00		F		Y	66	1	A	7.00	13.32%	72
2005-023C	Island Horizons Housing	Brevard	M			NP	72			500,000.00	E		Y	66	1	A	5.75	0.00%	70
05-027BS	Brook Haven Apartments	Hernando	M			FP	160	0.00	8,520,000.00		F		Y	66	1	A	7.00	22.11%	92
05-110C	Hibiscus Isle	Lee	M		Y	FP	160			1,355,420.00	F		Y	61	2	A	7.50	0.00%	120
Large County Geographic Set-Aside																			
2005-085C	Madison Manor	Duval	L			FP	160			1,180,000.00	E		Y	66	1	A	7.50	0.00%	4
2005-060C	Park Terrace Apartments	Hillsborough	L		Y	FP	216			1,911,000.00	F		Y	66	1	A	7.50	0.00%	7
2005-063C	Lafayette Square Apartments	Miami-Dade	L		Y	NP	160			2,320,500.00	F		Y	66	1	A	7.50	0.00%	10
2005-038C	Summerlin Oaks	Polk	L		Y	FP	144			928,333.00	F		Y	66	1	A	7.50	0.00%	11
2005-059C	Golfview Apartments	Broward	L		Y	FP	158			2,320,500.00	F		Y	66	1	A	7.50	0.00%	12
2005-061C	Coral Place	Miami-Dade	L		Y	FP	100			1,568,262.00	F		Y	66	1	A	7.50	0.00%	16
2005-035C	Evergreen Apartments	Hillsborough	L		Y	FP	40			388,282.00	F		Y	66	1	A	7.50	0.00%	28
2005-054C	Postmaster Apartments	Miami-Dade	L			FP	55			454,666.00	E		Y	66	1	A	7.50	0.00%	33
2005-100C	Pinnacle Park	Miami-Dade	L		Y	FP	128			2,320,500.00	F		Y	66	1	A	7.50	0.00%	40

NP = Non-Profit, FP = For Profit, FK = Florida Keys, E = Elderly, FF = Farmworker/Fishing Worker, H = Homeless, VI = HOPE VI, R = RD-515, RF = RD-514/516. U = Urban In-Fill, FPF = Front Porch Florida, F = Family, * = End of the Line SAIL

Ranked Order

2005 Universal Application Cycle Ranking

Application File Number	Development	County	County Size	County below $43,200	Urban In-Fill Dev.	FP or NP	Set-Aside Units	SAIL Tentative Funding Amount	MMRB Tentative Funding Amount	Competitive HC Tentative Funding Amount	Demographic Commitment	Designation Selection	Threshold Met	Total Scoring Points	Score Group	Leveraging Group	Total Proximity Points	SAIL as % of Dev. Cost	Lottery Number
2005-053C	Villa Patricia	Miami-Dade	L		Y	FP	160			2,368,500.00	E		Y	66	1	A	7.50	0.00%	50
2005-036C	Merry Place	Palm Beach	L		Y	FP	128			1,309,044.00	F		Y	66	1	A	7.50	0.00%	87
2005-080S	Brookwood Forest Apartments	Duval	L			FP	118	3,000,000.00			F		Y	66	1	A	7.50	21.85%	17
2005-039S	Tallman Pines Apartments	Broward	L		Y	FP	88	3,000,000.00			F		Y	66	1	A	7.50	24.10%	34
2005-030S	Meridian Pointe Apartments	Hillsborough	L		Y	FP	360	3,000,000.00			F		Y	66	1	A	7.50	11.82%	55
2005-032S	Claymore Crossings Apartments	Hillsborough	L		Y	FP	260	3,000,000.00			F		Y	66	1	A	7.50	15.09%	110
5-019BS	Spanish Trace Apartments	Hillsborough	L		Y	FP	120	3,000,000.00	6,740,000.00		F		Y	66	1	A	7.50	27.90%	121
5-029S	Lake Kathy Apartments	Hillsborough	L			FP	360	3,000,000.00			F		Y	66	1	A	7.25	12.03%	127
Housing Credit Redistribution																			
2005-099C	Goodbread Hills	Leon	M			FP	93			243,696.00	F	FPF	Y	66	1	A	7.50	0.00%	116
2005-123C	Pebble Hill Estates	Jackson	S	Y		FP	80			133,828.00	F		Y	66	1	A	7.50	0.00%	89
SAIL Redistribution																			
2005-071S	Nantucket Cove Apartments	Hernando	M			FP	90	701,556.40			F		Y	66	1	A	7.50	25.90%	23
2005-056BS	Anderson Terrace Apartments	Hernando	M			FP	275	3,000,000.00	0.00		F		Y	66	1	A	7.00	13.32%	72
2005-027BS	Brook Haven Apartments	Hernando	M			FP	160	2,900,000.00	0.00		F		Y	66	1	A	7.00	22.11%	92
2005-067S	Enterprise Cove Apartments - Phase II	Volusia	M			FP	73	3,000,000.00			F		Y	66	1	A	4.25	31.58%	105
2005-119S	Portofino Apartments	Palm Beach	L			FP	270	496,488.00			F		Y	66	*1	A	7.50	13.43%	91
Eligible Unfunded Applications																			
2005-014C	Arbor Manor	Polk	L		Y	FP	160			1,203,000.00	E		Y	66	1	A	7.50	0.00%	78
2005-037C	Dixie Court Apartments	Broward	L		Y	FP	122			1,251,220.00	F		Y	66	1	A	7.50	0.00%	102
2005-040C	Sunny Brooke	Hillsborough	L		Y	FP	186			1,807,544.00	F		Y	66	1	A	7.50	0.00%	107
2005-041C	Amber Garden	Miami-Dade	L		Y	FP	110			1,694,617.00	E		Y	66	1	A	7.50	0.00%	71
2005-042C	Villa Amalia	Miami-Dade	L		Y	FP	150			2,311,932.00	E		Y	66	1	A	7.50	0.00%	80
2005-044C	St. Luke's Life Center	Polk	L		Y	NP	150			1,511,082.00	E		Y	66	1	A	7.50	0.00%	68
2005-050C	Le Jardin Apartments	Miami-Dade	L		Y	FP	100			1,568,317.00	E		Y	66	1	A	7.50	0.00%	82
2005-057C	Orange Park Apartments	Hardee	S	Y		FP	96			975,000.00	E		Y	66	1	A	7.50	0.00%	66
2005-062C	Eastlake Village	Broward	L			FP	194			1,678,266.00	F		Y	61	2	A	6.00	0.00%	85
2005-064C	Flagler Crossing Apartments	Palm Beach	L		Y	FP	154			1,650,000.00	F		Y	66	1	A	7.50	0.00%	118
2005-095C	Riverside Place	Miami-Dade	L			FP	110			2,320,500.00	F		Y	62	1	B	3.75	0.00%	48
5-097C	Pinnacle Oaks	Broward	L		Y	FP	138			2,320,500.00	F		Y	66	1	B	6.75	0.00%	21
5-123C	Pebble Hill Estates	Jackson	S	Y		FP	80			941,011.00	F		Y	66	1	A	7.50	0.00%	89
2005-125C	Oaks at Stone Fountain	Hillsborough	L		Y	FP	80			876,458.00	F		Y	66	1	A	7.50	0.00%	56
End of the Line SAIL applications																			
2005-026S	Clarcona Groves Apartments	Orange	L			FP	264	1,000,000.00			F		Y	66	*1	A	7.25	15.38%	93
2005-048S	Royalton	Miami-Dade	L		Y	NP	100	1,000,000.00			H	H	Y	66	*1	B	7.50	34.26%	128
2005-052S	Heron Pond II	Lee	M			FP	155	1,000,000.00			E	E	Y	66	*1	A	7.50	29.23%	115
2005-058S	The Outrigger Apartments	Orange	L			FP	184	1,000,000.00			F		Y	66	*1	A	7.50	32.04%	67
2005-066S	Enterprise Cove Apartments	Volusia	M			FP	112	1,500,000.00			F		Y	66	*1	A	4.25	31.40%	114
2005-068S	The Cove at Lady Lake Apartments	Lake	M			FP	176	1,500,000.00			F		Y	66	*1	A	6.25	19.76%	31
2005-070S	Nassau Club Apartments	Nassau	S			FP	135	1,000,000.00			F		Y	66	*1	A	6.25	19.43%	75
2005-073S	See Addenda for Name	Lake	M			FP	128	1,500,000.00			F		Y	66	*1	A	5.75	26.93%	19

NP = Non-Profit, FP = For Profit, FK = Florida Keys, E = Elderly, FF = Farmworker/Fishing Worker, H = Homeless, VI = HOPE VI, R = RD-515, RF = RD-514/516. U = Urban In-Fill, FPF = Front Porch Florida, F = Family, * = End of the Line SAIL

Ranked Order
2005 Universal Application Cycle Ranking

Application File Number	Development	County	County Size	County below $43,200	Urban In-Fill Dev.	FP or NP	Set-Aside Units	SAIL Tentative Funding Amount	MMRB Tentative Funding Amount	Competitive HC Tentative Funding Amount	Demographic Commitment	Designation Selection	Threshold Met	Total Scoring Points	Score Group	Leveraging Group	Total Proximity Points	SAIL as % of Dev. Cost	Lottery Number
2005-078S	Rivercrest Apartments	Hillsborough	L			FP	168	1,000,000.00			F		Y	66	*1	A	6.00	20.79%	104
2005-083S	Nautilus Cove Apartments	Bay	M			FP	94	1,500,000.00			F		Y	66	*1	A	5.00	30.84%	52
2005-094S	Grande Oaks Apartments	Hillsborough	L		Y	FP	168	1,000,000.00			F		Y	66	*1	A	7.50	25.97%	6
2005-118S	Alhambra Cove Apartments	Miami-Dade	L		Y	FP	240	1,000,000.00			F		Y	66	*1	A	7.50	14.80%	57
2005-119S	Portofino Apartments	Palm Beach	L			FP	270	1,000,000.00			F		Y	66	*1	A	7.50	13.43%	91
2005-120S	Bristol Bay Apartments	Hillsborough	L			FP	300	1,000,000.00			F		Y	66	*1	A	6.00	15.43%	100
rawn Applications																			
2005-012B	Cutler Vista Apartments	Miami-Dade	L			FP	152		8,250,000.00		F		W	60		A	7.00	0.00%	41
2005-076S	Garrett Cove Apartments	Highlands	S			FP	73	3,000,000.00			F		W	66		A	4.25	29.98%	61
2005-121C	Gardenbrook Apartments	Polk	L			FP	136			1,011,853.00	F		W	66		A	7.50	0.00%	18
Ineligible Applications																			
2005-007BS	Clear Harbor Apartments	Pinellas	L			FP	84	2,500,000.00	4,445,000.00		F		N	64		A	6.00	31.34%	101
2005-009CS	Sabella Place	Jackson	S	Y		FP	120	245,000.00		957,102.00	F		N	61		A	0.00	2.79%	59
2005-010C	Summit Pointe Apartments	Hernando	M			FP	192			1,160,250.00	F		N	61		A	0.00	0.00%	35
2005-011C	Scott-Carver Homes	Miami-Dade	L		Y	FP	160			2,037,000.00	F	VI	N	66		A	7.25	0.00%	63
2005-017C	Stadium Tower Apartments	Miami-Dade	L		Y	FP	70			716,200.00	F		N	66		A	6.25	0.00%	88
2005-018C	Arbours at Oakcrest	Escambia	M			FP	108			955,200.00	F		N			A		0.00%	9
2005-021BS	Harbor Pointe Apartments	Hillsborough	L			FP	168	2,400,000.00	9,500,000.00		F		N	66		A	5.00	19.56%	27
2005-028S	Brownsville Manor Apartments	Miami-Dade	L		Y	FP	178	2,000,000.00			F		N	57		A	6.25	14.60%	20
2005-033CS	VOA Little Havana Project	Miami-Dade	L			NP	54	3,000,000.00		1,568,565.00	H	H	N	66		B	7.50	19.51%	117
2005-051C	Mirasol	Miami-Dade	L			FP	155			2,362,500.00	E		N	66		B	4.50	0.00%	106
2005-055C	Gran Via Apartments	Miami-Dade	L			FP	54			420,000.00	F		N	66		A	0.00	0.00%	125
2005-065BS	Woods at Casselberry Apartments	Seminole	M			FP	148	3,000,000.00	6,300,000.00		F		N	62		A	0.00	26.70%	49
2005-069S	Covington Club Apartments	Seminole	M			FP	96	3,000,000.00			F		N	57		A	7.50	26.34%	84
2005-072C	Longview Cove Apartments	Escambia	M			FP	144			1,050,000.00	F		N	66		A	5.25		44
2005-075S	Wickham Club Apartments	Brevard	M			FP	132	1,500,000.00			F		N	66	*	A	3.50	27.31%	5
2005-079S	Rolling Green South Apartments	Sarasota	M			FP	136	1,500,000.00			F		N	66	*	A	5.00	25.70%	126
2005-081S	Club at Via Loma Apartments	Seminole	M			FP	84	3,000,000.00			F		N	57		A	4.25	23.08%	47
2005-086C	Madison Cay	Escambia	M			FP	96			990,000.00	E		N	66		B	7.50	0.00%	46
2005-087C	Madison Heights	Hillsborough	L		Y	FP	160			1,911,000.00	E		N	66		A	7.50	0.00%	65
2005-089S	Villa Maria Apartments	Miami-Dade	L			NP	34	900,000.00			E	E	N	66		A	7.25	42.45%	13
[illegible]-090CS	Townparc at Okeechobee	Okeechobee	S	Y		FP	96	312,000.00		865,550.00	F		N	66		A	3.75	4.18%	37
[illegible]91BS	Meetinghouse at the Grove	St. Lucie	M			FP	160	0.00	8,590,000.00				N	56		A	0.00	0.00%	90
[illegible]-092C	Meetinghouse at Fort Pierce	St. Lucie	M			FP	100			897,109.00			N	56		A	0.00	0.00%	99
2005-096C	Pinnacle Plaza	Miami-Dade	L		Y	FP	132			2,320,500.00	F		N	61		A	6.25	0.00%	25
2005-098C	Howard C. Forman Senior Village	Broward	L		Y	FP	150			1,600,000.00			N	60		A	5.25	0.00%	122
2005-103C	Wauchula Landing	Hardee	S	Y		NP	80			683,972.00	F		N	66		A	3.75	0.00%	69
2005-111C	Orchid Isle	Lee	M		Y	FP	112			931,672.00	E		N	61		A	7.25	0.00%	81
2005-112BS	Kanapaha Villas	Alachua	M			FP	174	3,000,000.00	9,600,000.00		F		N	66		A	7.50	20.01%	77
2005-114C	Holly Pointe Apartments	Marion	M	Y		FP	126			1,075,000.00	E		N	57		A	7.50	0.00%	22
2005-117BS	Altamira Apartments	Miami-Dade	L		Y	FP	152	3,000,000.00	8,870,000.00		F		N	66		A	7.50	18.32%	86
2005-122S	The Palms at Lake Tulane	Highlands	S			FP	80	1,000,000.00			F		N	49		A	0.00	0.00%	123

NP = Non-Profit, FP = For Profit, FK = Florida Keys, E = Elderly, FF = Farmworker/Fishing Worker, H = Homeless, VI = HOPE VI, R = RD-515, RF = RD-514/516, U = Urban In-Fill, FPF = Front Porch Florida, F = Family, * = End of the Line SAIL

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

TIGER BAY OF GAINESVILLE, LTD.,

Petitioner,

v. **FHFC CASE NO. 2004-051-UC**
Application No. 2004-107C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

GOODBREAD HILLS, LTD.,

Petitioner,

v. **FHFC CASE NO. 2004-052-UC**
Application No. 2004-144C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, the Florida Housing Finance Corporation (hereinafter "Florida Housing"), by its duly designated Hearing Officer, Chris H. Bentley, held an informal hearing in Tallahassee, Florida, in the above-styled case on February 16, 2005. The parties have agreed to

EXHIBIT
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consolidate FHFC Case Nos. 2004-051UC and 2004-052UC, since the issues presented in the cases are identical.

APPEARANCES

For Petitioner, Tiger Bay of Gainesville, Ltd. and Goodbread Hills, Ltd.:	Gary J. Cohen, Esquire Stephen T. Maher, Esquire Shutts & Bowen, LLP 201 S. Biscayne Boulevard 1500 Miami Center Miami, FL 33131
For Respondent, Florida Housing Finance Corporation (Florida Housing):	Hugh R. Brown Assistant General Counsel Florida Housing Finance Corporation 227 North Bronough Street, Suite 5000 Tallahassee, FL 32301-1329

STATEMENT OF THE ISSUE

The issues for determination are whether Respondent erred in scoring the application ("Application") submitted by Applicant Blitchton Station, Application Number 2004-107C, submitted in the 2004 Cycle; more specifically, whether Respondent erred in determining that the Applicant Blitchton Station, Ltd., (hereinafter referred to as the "Blitchton") (i) satisfied the threshold requirement of "site control" contained in the Universal Application, and (ii) was entitled to an award of the full five (5) points available for the "local government contribution" portion of the Universal Application.

PRELIMINARY STATEMENT

At the informal hearing, the parties stipulated to the admission into evidence of Joint Exhibits 1A, 1B, 2A, 2B, and 3 through 14. Petitioners proffered two additional exhibits which were objected to by Respondent, and were denoted as Hearing Officer Exhibits 1 (an excerpt from the 2005 Universal Cycle Application) and 2 (an excerpt from the City of Ocala Ordinances). Hearing Officer Exhibit 1 was allowed into evidence for limited purposes; Hearing Officer Exhibit 2 was admitted into evidence.

Subsequent to the hearing, the parties timely submitted their Proposed Recommended Orders.

FINDINGS OF FACT

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

1. Petitioner, Tiger Bay of Gainesville, Ltd., and Respondent, Florida Housing Finance Corporation, in Joint Exhibit 1A, stipulated to certain facts which are hereby adopted as findings of fact as though set out fully herein. The stipulation, Joint Exhibit 1A, is attached to this Recommended Order as Attachment A.

2. Petitioner, Goodbread Hills, Ltd., and Respondent, Florida Housing Finance Corporation, in Joint Exhibit 1B, stipulated to certain facts which are hereby

adopted as findings of fact as though set out fully herein. The stipulation, Joint Exhibit 1B, is attached to this Recommended Order as Attachment B.

3. Blitchton submitted an application to the Florida Housing Finance Corporation for the award of an allocation of low income housing tax credits under the FHFC 2004 Cycle.

4. The preliminary score awarded by Respondent to Blitchton was 66 points, with 6.25 proximity tie-breaker points and a determination that Blitchton had failed the threshold due to failure to provide sufficient evidence of appropriate zoning and failure to provide a reference letter for the equity provider.

5. As a result of notices of potential scoring error ("NOPSE") filed against Blitchton, Respondent determined that Blitchton's score would be decreased to 62.88 points, that the proximity tie-breaker would remain at 6.25, and that Blitchton was found (in addition to the above-referenced threshold failures) to have failed the threshold requirement of "site control" because evidence provided in a NOPSE (that the Grantor in the "Qualified Contract", Mr. Curtis, did not in fact own the subject property) called into question the ability of John M. Curtis, Trustee, to lawfully convey the property to Blitchton. Respondent also determined that Blitchton should not be awarded full points for its "local government contribution", since Blitchton failed to provide the required computation by which the total amount of the fee

waiver of $62,454.00 was calculated as required by rule. See Joint Exhibit 3.

6. Blitchton filed "cure" documentation with Respondent on or about June 10, 2004. See Joint Exhibit 7. As part of its "cure" documentation (Joint Exhibit 7), Blitchton submitted a separate real estate purchase contract between Carla Denson (the true owner of the real estate) and Mr. Curtis. Section 6.2.4 of that contract (the "Denson Contract") states in part that "The property consists of three parcels substantially as depicted by highlighting on Exhibit "B"." Blitchton failed to attach the referenced Exhibit "B" to the Denson Contract submitted as part of its "cure" documentation.

7. Petitioner filed notices of alleged deficiency (NOAD's) against Blitchton after submission by Blitchton of its "cure" documentation on or about June 18, 2004. See Joint Exhibit 10. Petitioners alleged that Blitchton's "cure" documentation was deficient because (i) the contract between Ms. Denson (as Seller) and John M. Curtis, Trustee (as purchaser) submitted as a "cure" was itself deficient and failed to satisfy the threshold requirement of "site control" because an Exhibit B to such contract was referenced to exist but was missing, and (ii) 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) with respect to the proposed complex. As a result, the amount of building permit fees available to be waived (when combined with the other forms of other local government contribution provided by Blitchton) resulted in a total local government contribution of less than $100,000.00, which is the minimum necessary in order to receive the full five (5) points for "local government contribution."

8. After review by Respondent of Blitchton's "cure" documentation and Petitioner's NOAD's, Blitchton was found by Respondent to be entitled to receive 66 points, that the proximity tie-breaker points would remain at 6.25, that all threshold failures except "site control" were cured, and that the threshold requirement of "site control"had not been demonstrated. Respondent noted in its scoring summary dated July 8, 2004, (Joint Exhibit 4) that:

> [Blitchton] attempted to cure Item 5T (site control) by submitting an Agreement for Purchase and Sale of Real Property. However, this Agreement is deficient because [Blitchton] failed to provide a complete contract as Section 6.2.4 of the Agreement for Purchase and Sale of Real Property between Carla Denson (as Seller) and John M. Curtis (as Buyer) relates (sic) to an Exhibit B that is not attached.

As a result of Respondent's final scoring on July 8, 2004, Blitchton's application was perfect, except it failed the threshold requirement of "site control" and received less than full proximity tie-breaker points due to the selection of too many services. Respondent determined that Blitchton was entitled to the full five (5) points for "local

government contribution."

9. As permitted under Rule 67-48.005, F.A.C., Blitchton submitted a petition on July 30, 2004, to Respondent, seeking a hearing to reverse Respondent's determination that the threshold requirement of "site control" had not been demonstrated. Blitchton also sought to overturn Respondent's determination that only 6.25 (of a total 7.5) proximity tie-breaker points should be awarded to Blitchton as a result of selecting too many services for purposes of the proximity tie-breaker. No notice or opportunity to be heard was given Petitioners concerning this hearing because Respondent's rules specifically excluded them from participation in such proceedings, even though the Petitioner's substantial interests would be adversely affected by a positive outcome for Blitchton, because in such instance the allocation of low-income housing credit authority would go to Blitchton and not to Petitioners.

10. An informal hearing was conducted, and a recommended order was entered in the case on September 13, 2004, finding that Blitchton's application satisfied the threshold requirement of "site control" and that 1.25 additional proximity tie-breaker points should be awarded. That recommended order was adopted by Respondent at its meeting on October 14, 2004, as a final order. See Joint Exhibit 6.

11. Petitioners filed their petitions in the subject case under Rule 67-48.005(5), F.A.C., their sole point of entry under Respondent's rules. Petitioners and

Respondent have stipulated that the issues under consideration in this matter (the scoring of Blitchton's building permit fee waiver from the City of Ocala as a "local government contribution", and the scoring of Blitchton's real estate contract documentation when missing an exhibit to one of the contracts) are properly before the Hearing Officer under the foregoing Rule, and that each of Petitioners has standing to bring this action. In particular, the parties have stipulated that if it is found that there was an error in scoring of Blitchton's application as has been alleged by Petitioners, that each of Petitioners would have been entitled to an award of low income tax credits in the 2004 Universal Cycle. See Joint Exhibits 1A and 1B. Pursuant to Rule 67-48.005(7), F.A.C., if such error in scoring is found, Respondent must provide Petitioners with their requested allocation of low income housing tax credits from the next available allocation.

12. The Blitchton 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.

13. In its original Application, Blitchton 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 which is contained in Joint Exhibit 14 to this proceeding. That explanation 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 anyone and certainly not verified by the Mayor, City Manager or Chairperson of the City Council/Commission. 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.

14. 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. See Hearing Officer Exhibit 2 and Joint Exhibit 10.

15. 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 is in stark contrast to the amount of Building Permit fees claimed to waived in the documents submitted by Blitchton of $49,307.00.

16. Even if one used Blitchton's total development cost in its Application of $9,944,515.00, rather than the total cost of construction in its Application of $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). Once again, this calculated building permit fee of $44,750 is in stark contrast to the $49,307 claimed to be waived for building permit fees in Blitchton's Application.

17. 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 as a matter of fact, for the City to waive is less than $49,307. Thus, as a matter of fact Blitchton has not demonstrated that it will receive $100,000 in local government contribution.

18. 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. The estimate of the cost of construction in Blitchton's Application is $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, this reveals that the total local government contribution, as a matter of fact, demonstrated in Blitchton's Application is $83,362 Blitchton had to demonstrate $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.

CONCLUSIONS OF LAW

19. Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Chapters 67-48, F.A.C., the Hearing Officer has jurisdiction of the parties and the subject of this proceeding. Petitioners' substantial interests are affected by the proposed action of the Respondent. Therefore, Petitioners have standing to bring this proceeding.

20. The issues for determination in this proceeding are whether Respondent erred in determining that (i) Blitchton satisfied the threshold requirement of "site control", notwithstanding that Exhibit B to the Denson Contract was not provided, and (ii) Blitchton was entitled to receive a full five (5) points for its "local government contribution."

21. Rule 67-48.005(5), F.A.C., states:

> Each Applicant will be provided with a final ranking of all Applications and notice of rights, which shall constitute the point of entry to contest any ranking or scoring issue related to any other Applications for the SALE Program, the HOME Program or the HC Program. An Applicant that wishes to contest the final ranking or score of another Applicant may do so only if: ...

> (b) ...[I]f the contested issue involves an error in scoring, the contested issue must (i) be one that could not have been cured...or (ii) be one that could have been cured, if the ability to cure was not solely within the Applicant's control. The contested issue cannot be one that was both curable and within the Applicant's sole control to cure. With regard to the curable issues, a petitioner must prove that the contested issue was not feasibly curable within the time allowed for cures in subsection 67-48.004(6), F.A.C.

22. This mechanism created by Respondent by rule is essentially unique. The Respondent's rules, in effect, prohibit substantially affected competing applicants from intervening or participating in hearings in which an applicant challenges the Respondent's proposed action with regard to an individual application. The Respondent has chosen to preserve the due process rights of the competing applicants so prohibited, by the mechanism set forth in Subsection 67-48.005(5), F.A.C., by allowing the competing applicants, after the final ranking or score has been determined on an application, to engage in a separate de novo challenge to the scoring of that application. Because Respondent's rule specifically says that this point of entry comes into existence only after the final ranking or score of an applicant has been determined, it clearly envisions that there may well have been a separate administrative hearing between the Respondent and the applicant receiving the final score and that the final score may be the result of the final order entered pursuant to that administrative hearing. In full recognition of that fact, the Respondent has

nevertheless created the opportunity for a competing applicant to initiate a second administrative hearing contesting that same final score or ranking and has not limited the issues which can be raised except for the "cure" issues. Thus, after the final ranking or score of an applicant, a competing applicant can file a petition and initiate a de novo administrative proceeding in which the competing applicant can litigate the exact same issues litigated in an earlier administrative hearing between Respondent and applicant regardless of the final order entered in that earlier proceeding.

While a unique and anomalous mechanism, in the context of the application process with its appurtenant time constraints, the mechanism as created by Respondent is rational. The due process rights of all applicants must be protected. Because the applicants are competing for a finite resource, to allow a mechanism whereby all competing applicants could contemporaneously intervene in or challenge the other applicants could create a chaotic and time consuming process. With the mechanism set forth in Subsection 67-48.005(5), the Respondent has created a workable mechanism that protects the due process rights of all applicants. The applicant who challenges the scoring of its application by Respondent in an administrative hearing, receives its due process in that hearing and achieves a final order which remains binding on that applicant, either granting its request or denying its request. The mechanism in Subsection 67-48.005(5) then provides that after that

final order has been achieved with regard to an individual application, the competing applicants who are substantially affected by that final order can, in a separate and new de novo proceeding, litigate the same issues that were litigated in the previous hearing. Clearly implicit in that mechanism is the anomaly that the final order resulting from the second administrative hearing may differ from that in the first hearing on identical issues. Presumably, Respondent has determined to accept this anomaly as the price for avoiding the chaotic and time consuming situation that would result from all applicants being able to contemporaneously intervene in each other's challenges to the scoring.

23. The Universal Application Package, which includes the Universal Application and pertinent forms as well as the Universal Application Instructions, has been adopted as a rule. Rule 67-48.002(111), F.A.C.

24. Part III.C.2 of the Universal Application Instructions states that:

> Applicant must demonstrate site control by providing the documentation required in Section a., b., or c., as indicated below. The required documentation, including any attachments or exhibits, must be provided behind a tab labeled "Exhibit 27". ...
>
> > a. Provide a Qualified Contract - A qualified contract is one that has a term that does expire before the last expected closing date of December 31, 2004 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 not

> earlier than December 31, 2004; provides that the buyer's remedy or default on the part of the seller includes or is specific performance; and the buyer MUST be the Applicant unless a fully executed assignment of the qualified contract which assigns all of the buyer's rights, title and interests in the qualified contract to the Applicant, is provided.

. . .

25. Rule 67-48.004(2), F.A.C., states that:

> Failure to submit an Application completed in accordance with the Application instructions and these rules will result in rejection of the Application or a score less than the maximum available in accordance with the instructions in the Application and this rule chapter.

26. Rule 67-48.004(13)(c), F.A.C., states that the corporation shall reject an Application if, following the submission of the additional documentation, revised pages and other information "[t]he Applicant fails to file all applicable Application pages and exhibits which are provided by the [Respondent] and adopted under this rule chapter... ."

27. In scoring applications in the 2004 Cycle, Respondent has, with one exception, consistently determined that, with respect to exhibits missing from documentation submitted by applicants in their applications, failure to submit all such exhibits results in failure of such applications to satisfy the threshold requirements set out in the Rules, particularly in the case of missing exhibits to agreements

demonstrating "site control." See cases and scoring decisions attached in Joint Exhibit 13.

28. Respondent contends that, unless its decision as evidenced by the final order in the Blitchton Station case was "clearly erroneous", that its final order in such case must be followed here. However, this is not an appeal of the Respondent's approval of funding for Blitchton. If Petitioners are successful in this post-final ranking appeal, Blitchton will not have its funding taken away. See Rule 67-48.005(7), F.A.C. (last sentence). As such, the rights of Blitchton are not the subject of this case. Rather, the rights of Petitioners are the issue. Rule 67-48.005(5), F.A.C., permits Petitioners this point of entry to contest the ranking or scoring of another application (such as that of Blitchton) in situations where, but for the error in ranking or scoring, such petitioners would have received funding from Respondent. Under Rule 67-48, F.A.C., this is the first time that parties such as Petitioners are (under factual circumstances similar to those presented here) given a right to appear and contest the ranking or scoring matters that have denied them their funding. Such a hearing, which does not change the outcome for parties such as Blitchton, must by necessity involve the concept of de novo review. Otherwise, the "point of entry" provided to applicants such as Petitioners would be meaningless and a denial of due process.

29. The Respondent has correctly recognized in its Final Order in the Blitchton case, Joint Exhibit 6, in referencing Part III.C.2 of the Universal Application Instructions concerning evidence of site control that:

> Implicit in the requirement that an applicant demonstrate site control is that the seller designated in the contract have the legal ability to convey the property to the applicant. A contract in which the seller does not own the property is not, by itself, sufficient.

30. The Universal Application Instructions specifically require an applicant to demonstrate site control by providing certain required documentation. The documentation provided by Blitchton in its original application, a contract from Curtis to Blitchton, was recognized by Respondent in its Final Order in the Blitchton case to not be sufficient to demonstrate site control. In order to demonstrate site control under the circumstances of that case, Blitchton necessarily had to include within its application documentation of the contract by which Curtis was to acquire the property. It provided the contract in the cure documents. The second contract by which Curtis was to acquire title to the subject property is "required documentation" as that phrase is used in Respondent's rules. See Universal Application Instruction Part III.C.2. Respondent's rules further require that this "required documentation" must include "any attachments or exhibits." See Universal Application Instruction Part III.C.2.

31. The contract by which Curtis was to acquire title to the subject property demonstrates on its face that there should be attached to the contract an "Exhibit B." The illusive "Exhibit B" was not included in the required documentation furnished to Respondent by Blitchton during the "cure" period. Therefore, Blitchton has failed the threshold item of providing evidence of site control as required in the Universal Application Instructions Part III.C.2. To the extent the Final Order in the Blitchton case is inconsistent with this finding it is clearly erroneous in light of the Respondent's rules and other contemporaneous final orders dealing with the same issue.

32. Nothing in the Universal Application or the Instructions or Rules limits the Petitioners' ability to argue the issues in this case. Rule 67-48.005(5), F.A.C., allows parties such as Petitioners to raise issues of potential scoring and ranking issues as they may arise. Parties such as Petitioners are not limited to issues identified by Respondent in scoring summaries or other information published by Respondent.

33. It is well established that the "materiality" of a missing exhibit is not relevant to the case at hand. See, for example, Bear Lakes Acquisition, Ltd. v. Florida Housing Finance Corporation, (FHFC Case No. 2002-021) (Joint Exhibit 13), wherein notwithstanding the stipulated agreement by all parties that the applicant

owned the subject real estate and had the right to conduct development activities on the site, it was found that such application must be rejected as a matter of law due to the last two pages of such exhibit being missing. The parties stipulated that nothing in the last two pages of the missing exhibit negated or related in any manner to that applicant's rights to conduct development activities on the site. The Hearing Officer found in its recommended order (as adopted by FHFC as a final order) that "...Respondent (FHFC) 'shall reject' an applicant if an applicant fails to provide all required pages and exhibits as provided in its rules." The rationale of the Bear Lakes case is controlling in the instant case. In numerous other cases and scoring decisions in the recently completed 2004 Cycle, Respondent has consistently determined that missing exhibits to contracts submitted to demonstrate "site control" result in failure of this threshold requirement. See Joint Exhibit 13. Respondent's decision not to follow its own precedent was clearly erroneous.

34. 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 waiver of fees. Exhibit 43 to an Application is the Local Government Verification of Contribution Fee Waiver form which has been adopted as a rule as part of the Universal Application Package.

35. The Local Government Verification of Contribution Fee Waiver form, which is a rule, requires that the amount of the fee waiver be set forth in the form. The form also requires that the computations by which the total amount of each fee waiver is determined must accompany the verification form in the Application. The form further contains a CERTIFICATION and states that the form must be signed only by either the Mayor, City Manager, or the Chairperson of the City Council/Commission. The form states that other signatories are not acceptable. The Local Government Verification of Contribution Fee Waiver form requires that the official action of the local government actually waiving the fee be identified along with the month, day and year of that action. It states in pertinent part:

> On or before _____ the City/County of
> (month/day/year)
> _____, pursuant to _____
> (Name of City/County) (Reference Official Action, Cite
> _____, waived the following fees:
> Ordinance or Resolution Number and Date)
> _____.

36. It can be seen that the form contemplates a contemporaneous waiver of the fees, not a promise to waive fees in the future.

37. The Universal Application Instructions in Part IV.A require that for the waiver of fees, an applicant must "... attach a sheet behind the Local Government Verification of Contribution Form detailing how the amount of savings was

calculated."

38. Part IV.A of the Universal Application Instructions provides specifically that:

> Local Government Contributions may be verified by Florida Housing Staff during the scoring and appeals process. The government contact person listed on the Verification of Local Government Contribution Form(s) may be contacted to verify the nature and the amount of the contribution. If the amount and type of contribution is verified to be less than that represented in the Application, the Applicant will receive points only for the lesser amount. If the amount and type of contribution cannot be verified, the Applicant will receive zero points for that contribution.

39. 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.

40. As noted in the Findings of Fact, Blitchton'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, as set forth in the Findings of Fact above, the City Ordinance governing building permit fees provide in this case for a maximum building permit fee of only $32,669. Thus, as a matter of fact Blitchton 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. As a matter of law, 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.

41. The contested issues raised by Petitioners in this case meet the requirements in Subsection 67-48.005(5), F.A.C., allowing Petitioners to contest Blitchton's final ranking and score.

42. Because Blitchton has failed a threshold item with regard to "site control", its Application should be ranked lower than either of the Petitioners' Applications.

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

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law herein, it is RECOMMENDED that:

1. The Petitioners' Applications should each be ranked and scored higher than Blitchton's Application;

2. Each of the Petitioners should be provided an allocation of low income housing tax credit pursuant to Rule 67-48.005(5), F.A.C.

Respectfully submitted and entered this 22nd day of April, 2005.

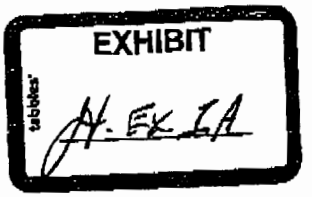
CHRIS H. BENTLEY
Hearing Officer for Florida Housing Finance Corporation
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

Copies furnished to:

Wellington H. Meffert II, General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

Hugh R. Brown
Assistant General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

Gary J. Cohen, Esquire
Stephen T. Maher, Esquire
Shutts & Bowen, LLP
201 S. Biscayne Boulevard
1500 Miami Center
Miami, FL 33131



STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

TIGER BAY OF GAINESVILLE, LTD.,

Petitioner,

v.

FHFC Case No.: 2004-051UC
Application No.: 2004-109C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PREHEARING STIPULATION

Petitioner, Tiger Bay of Gainesville, Ltd. ("Tiger Bay") and Respondent, Florida Housing Finance Corporation ("Florida Housing"), by and through undersigned counsel, submit this Prehearing Stipulation for purposes of expediting the informal hearing scheduled for 2:00pm, February 16, 2005, in Tallahassee, Florida, and agree to the following findings of fact and to the admission of the exhibits described below:

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. Florida Housing is a public corporation, organized to provide and promote the public welfare by administering the governmental function of financing and

ATTACHMENT A

refinancing housing and related facilities in the State of Florida. (Section 420.504, Fla. Stat.; Rule 67-48, Fla. Admin. Code).

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

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

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. On March 31, 2004, all applicants, including Tiger Bay, submitted applications to Florida Housing for review. Tiger Bay submitted its application 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".

11. Tiger Bay's Application No. 2004-109C 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 Tiger Bay's application had met all threshold requirements, that Tiger Bay's application was classified into "Group A", and that Tiger Bay's application had received 7.5 "proximity tie-breaker points".

12. 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 Station application, dated July 8, 2004.

13. 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. On September 13, 2004, the Hearing Officer, David E. Ramba, entered his Recommended Order in favor of Blitchton awarding 7.5 "proximity tie-breaker points" and finding that the Blitchton Application had satisfied the threshold requirement regarding site control. Florida Housing adopted the Recommended Order as a Final Order at the meeting of its Board of Directors on October 14, 2004. As a result, Florida Housing awarded Blitchton an allocation of Tax Credits.

14. 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; Blitchton's application No. 2004-107C; and application Nos. 2004-104C, 2004-141C, 2004-142C, 2004-143C, and 2004-144C.

15. 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, as there was insufficient Tax Credit allocation remaining to fund the developments. Tiger Bay was ranked beneath Blitchton by virtue of Tiger Bay's higher lottery number.

16. But for the result of the informal hearing regarding the scoring of the Blitchton Application, Tiger Bay 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 has standing to initiate the instant proceedings.

17. 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 Hills, Ltd. (Application No. 2004-144C) "Goodbread Hills" 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 had submitted a contract for purchase and sale of the subject real estate between John M. Curtis, Trustee as the seller and Blitchton as the buyer; however, the NOPSEs alleged that John M. Curtis, Trustee was not the owner of the subject real estate and as such Blitchton had not demonstrated "site control".

18. In its Scoring Summary dated May 24, 2004, Florida Housing agreed with Tiger Bay's NOPSE stating that "Evidence provided in NOPSE calls into question the ability of John M. Curtis, Trustee to lawfully convey the property", and made a determination that Blitchton had failed the threshold requirement of "site control".

19. Also in the May 24, 2004 Scoring Summary, Florida Housing 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."

20. 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).

21. Blitchton timely submitted "cure" documentation on or about June 10, 2004. This documentation included an additional real estate purchase contract between Ms. Carla Denson, the owner of the subject real estate, and John M. Curtis, Trustee, attempting to address the issue raised by the Tiger Bay NOPSE and adopted by Florida Housing in its May 24, 2004 Scoring Summary. Blitchton also submitted 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.

22. 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. On or about June 18, 2004, Tiger Bay and Goodbread Hills filed NOADs against the "cure" documentation submitted by Blitchton, alleging that: the application continued to fail threshold, in that the Denson-Curtis contract was missing its Exhibit B; that such a "back-to-back" contract structure failed to provide Blitchton with the remedy of specific performance under its contract with Curtis; and 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.

23. Following the submission of the Tiger Bay/Goodbread Hills NOAD, Florida Housing again found that Blitchton had failed to meet threshold requirements regarding site control, but found that Blitchton had successfully "cured" the defect regarding the calculation of building permit fees.

24. As a result of Blitchton's successful appeal of the scoring of its application, Blitchton was awarded an allocation of Tax Credits.

Respectfully submitted this 16th day of February, 2005.

By: _____

Gary J. Cohen, Esquire
Florida Bar No. 353302
Counsel for Petitioner
Shutts & Bowen, LLP
201 Biscayne Boulevard
1500 Miami Center
Miami, FL 33131
Telephone: (305) 347-7308
Facsimile: (305) 347-7808

By: _____

Hugh R. Brown
Florida Bar No. 0003484
Assistant General Counsel
Florida Housing Finance
Corporation
227 North Bronough Street
Suite 5000
Tallahassee, Florida 32301-1329
Telephone: (850) 488-4197

2005 MMRB, SAIL & HC Scoring Summary

As of: 05/24/2005

File # 2005-036C **Development Name:** Merry Place

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 - 24 - 2005	66	N	3.75	$58,999.02	%	N
Preliminary	66	N	5	$58,999.02	%	N
NOPSE	66	N	5	$58,999.02	%	N
Final	66	N	3.75	$58,999.02	%	N
Final-Ranking	0	N	0		0	

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
				Optional Features & Amenities					
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
				Set-Aside Commitments					
4S	III	E	1.b.	Total Set-Aside Percentage	3	3	3	3	0
5S	III	E	1.c.	Set-Aside Breakdown Chart	5	5	5	5	0
6S	III	E	3	Affordability Period	5	5	5	5	0
				Resident Programs					
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
				Local Government Support					
9S	IV		a.	Contributions	5	5	5	5	0
10S	IV		b.	Incentives	4	4	4	4	0

2005 MMRB, SAIL & HC Scoring Summary

As of: 05/24/2005

File # 2005-036C **Development Name:** Merry Place

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	V	D		Equity Commitment	Applicant provided an equity commitment from Enterprise Social Investment Corporation. Paragraph 3 of the commitment states that the commitment is "subject to investor approval", therefore the commitment was not scored as firm and not considered as a source of financing.	Preliminary	Final
2T	V	B		Construction Financing Shortfall	The Applicant has a construction financing shortfall of $3,302,963.	Preliminary	Final
3T	V	B		Permanent Financing Shortfall	The Applicant has a permanent financing shortfall of $10,154,963.	Preliminary	Final
4T	III	C	1	Site Plan Approval	The Applicant has provided a new completed and executed Local Government Verification of Status of Site Plan Approval form, which reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of site plan approval for each of the Scattered Sites which comprise the proposed Development.	Final	
5T	III	C	3.a.	Availability of Electricity	The Verification of Availability of Infrastructure - Electricity form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of the availability of electricity for each of the Scattered Sites which comprise the proposed Development.	Final	
6T	III	C	3.b.	Availability of Water	The Verification of Availability of Infrastructure - Water form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of the availability of water for each of the Scattered Sites which comprise the proposed Development.	Final	
7T	III	C	3.c.	Availability of Sewer	The Verification of Availability of Infrastructure - Sewer Capacity, Package Treatment or Septic Tank form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of the availability of sewer service for each of the Scattered Sites which comprise the proposed Development.	Final	
8T	III	C	3.d.	Availability of Roads	The Verification of Availability of Infrastructure - Roads form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information	Final	

2005 MMRB, SAIL & HC Scoring Summary

As of: 05/24/2005

File # 2005-036C **Development Name:** Merry Place

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
					provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of the availability of roads for each of the Scattered Sites which comprise the proposed Development.		
9T	III	C	4	Zoning	The Local Government Verification that Development is Consistent with Zoning and Land Use Regulations form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of appropriate zoning for each of the Scattered Sites which comprise the proposed Development.	Final	
10T	III	C	5	Environmental Safety	The Verification of Environmental Safety - Phase I Environmental Site Assessment form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of a Phase I environmental review and, if applicable, evidence of a Phase II environmental review, for each of the Scattered Sites which comprise the proposed Development.	Final	

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Final Ranking
1P	III	A	10.a.(2)(a)	Grocery Store	1.25	0	0	0	0
2P	III	A	10.a.(2)(b)	Public School	1.25	0	0	0	0
3P	III	A	10.a.(2)(c)	Medical Facility	1.25	0	0	0	0
4P	III	A	10.a.(2)(d)	Pharmacy	1.25	0	0	0	0
5P	III	A	10.a.(2)(e)	Public Bus Stop or Metro-Rail Stop	1.25	1.25	1.25	0	0
6P	III	A	10.b.	Proximity to Developments on FHFC Development Proximity List	3.75	3.75	3.75	3.75	0

Reason(s) for Failure to Achieve Selected Proximity Tie-Breaker Points:

Item #	Reason(s)	Created As Result of	Rescinded as Result of
1P	Applicants are to provide the latitude/longitude coordinates for an exterior public entrance to the service . The provided sketch appears to show a point that is not on a public entrance doorway threshold.	Preliminary	Final

2005 MMRB, SAIL & HC Scoring Summary

As of: 05/24/2005

File # 2005-036C **Development Name:** Merry Place

Reason(s) for Failure to Achieve Selected Proximity Tie-Breaker Points:

Item #	Reason(s)	Created As Result of	Rescinded as Result of
1P	The Grocery Store listed on the Surveyor Certification Fom does not meet Florida Housing's definition of a Grocery Store. As stated on page 13 of the Universal Application Instructions, a Grocery Store must consist of a minimum of 4,500 square feet or more of air conditioned space. The Grocery Store listed on the Certification form consists of only 1,814 square feet and is therefore ineligble for tie-breaker points.	NOPSE	Final
1P	The Applicant submitted documentation during the CURE period showing that the site is a Scattered Site. Based on this documentation, the Applicant has not correctly answered the question at Part III.A.2.b. and provided the Address, total number of units and latitude/longitude information for each of the Scattered Sites behind a tab labeled Exhibit 20, as required by the Universal Application Instructions. Furthermore, per page 12 of the Application Instructions the Surveyor Certification Form was not properly completed because the Yes/No box regarding Scattered Sites was not filled out.	Final	
2P	Applicants are to provide the latitude/longitude coordinates for an exterior public entrance to the service . The provided sketch appears to show a point that is not on a public entrance doorway threshold.	Preliminary	Final
2P	The Applicant submitted documentation during the CURE period showing that the site is a Scattered Site. Based on this documentation, the Applicant has not correctly answered the question at Part III.A.2.b. and provided the Address, total number of units and latitude/longitude information for each of the Scattered Sites behind a tab labeled Exhibit 20, as required by the Universal Application Instructions. Furthermore, per page 12 of the Application Instructions the Surveyor Certification Form was not properly completed because the Yes/No box regarding Scattered Sites was not filled out.	Final	
5P	The Applicant submitted documentation during the CURE period showing that the site is a Scattered Site. Based on this documentation, the Applicant has not correctly answered the question at Part III.A.2.b. and provided the Address, total number of units and latitude/longitude information for each of the Scattered Sites behind a tab labeled Exhibit 20, as required by the Universal Application Instructions. Furthermore, per page 12 of the Application Instructions the Surveyor Certification Form was not properly completed because the Yes/No box regarding Scattered Sites was not filled out.	Final	

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
1C	III	A	2.b.	Scattered Sites	As a part of its proximity cure, the Applicant deemed it necessary to keep the Application consistent by submitting an April 25, 2005 Contract for Purchase and Sale of Real Property, concerning three parcels consisting of a total of approximately one acre, along with an Assignment of Purchase and Sale Agreement showing the Applicant as the Assignee. With the addition of this property, it appears that the Development site consists of Scattered Sites and the Applicant has not correctly answered the question at Part III.A.2.b. and provided the Address, total number of units and latitude/longitude information for each of the Scattered Sites behind a tab labeled Exhibit 20, as required by the Universal Application Instructions.	Final	
2C	III	B	2	Scattered Sites	Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant has not correctly answered the question at Part III.B.2. relative to the proximity of each	Final	

2005 MMRB, SAIL & HC Scoring Summary

As of: 05/24/2005

File # 2005-036C **Development Name:** Merry Place

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
					feature and amenity to each of the Scattered Sites.		