STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

TOWN PARK CROSSING, L.P.,

Petitioner,

v.

FHFC CASE NO.: 2010-018UC
Application No. 2009-255C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation ("Board") for consideration and final agency action on April 30, 2010. Northwest Properties III, Ltd. ("Petitioner"), timely submitted its 2009 Universal Cycle Application ("Application") to Florida Housing Finance Corporation ("Florida Housing") to compete for an allocation of competitive housing credits under the Housing Credit (HC) Program administered by Florida Housing. Petitioner's application met all of Florida Housing's threshold application requirements, received the maximum application score, the maximum proximity tie-breaker points and ability to proceed points. However, based on its ranking order relative to other applications under Florida Housing's ranking methodology, Petitioner's application was not among those included in the funding

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
Della M Harrell/DATE 5/4/2010

range in the final rankings. Thereafter, Petitioner timely filed a petition and amended petition (as amended, the "Petition") for an Administrative Proceeding pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Rule 67-48.005(5), Florida Administrative Code, in which it challenged Florida Housing's scoring of one or more competing applications ranked above it, alleging in its Petition that but for Florida Housing's erroneous scoring of those applications, Petitioner's application would have received its requested HC allocation.

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

RULING ON THE CONSENT AGREEMENT

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

ORDER

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

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

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

3. The stipulated disposition as set forth in the Consent Agreement is adopted and, accordingly:

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

(b) Florida Housing shall provide Petitioner with an award of Exchange funds under the terms of RFP 2010-04 (the "RFP"), subject only to satisfaction of the requirements in the RFP.

DONE and ORDERED this 30th day of April, 2010.

FLORIDA HOUSING FINANCE CORPORATION

By: _____
Chairperson

Copies to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

TOWN PARK CROSSING, L.P.,

Petitioner,

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FHFC CASE NO.: 2010-018UC
Application No. 2009-255C
2009 Universal Cycle

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

CONSENT AGREEMENT

Petitioner, Town Park Crossing, L.P. ("Petitioner" or "Town Park"), and Respondent, Florida Housing Finance Corporation ("Respondent" or "Florida Housing"), by and through undersigned counsel, hereby present this Consent Agreement for consideration by the Florida Housing Board of Directors.

STATEMENT OF THE CASE

1. Petitioner applied for $1,735,993.00 in annual tax credits in the 2009 Universal Application Cycle pursuant to Application No. 2009-255C to help finance the development of its project, a 100-unit apartment complex in Broward County, Florida. Petitioner's application met all threshold requirements and received the maximum application score, the maximum proximity tie-breaker measurement points, and the maximum ability to proceed tie-breaker points.

However, under Florida Housing's ranking procedures, Petitioner's application was not among those in the funding range in the final rankings adopted by Florida Housing.

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

3. Petitioner timely filed its petition, and subsequently its amended petition (as amended, the "Petition") challenging Florida Housing's scoring of the following applications submitted during the 2009 Universal Application Cycle:

(a) RST Lodges at Pinellas Park, LP, Application No. 2009-097C

(b) Ability Mayfair II, LLC, Application No. 2009-121CH.

(c) Dr. Kennedy Homes, Ltd., Application No. 2009-144C

(d) Ehlinger Apartments, Ltd., Application No. 2009-146C

(e) Reliance-Progresso Associates, Ltd., Application No. 2009-123C

The applications identified in (a) through (d) above, collectively, are referred to herein as the "Challenged Scattered Site Applications" and the challenge to those applications will be addressed herein under the heading below entitled "Issue 1 – The Scattered Site Issue." The application identified in (e) above is referred to herein as the "Progresso Point" application and the challenge to that application will be addressed under the heading "Issue 2 – Progresso Point."

ISSUE I - THE SCATTERED SITE ISSUE

5. Specifically, the scoring issue raised by Petitioner is whether the development site in each of the Challenged Scattered Site Applications constitutes a "Scattered Site" development as that term is defined in Rule 67-48.002(106), F.A.C. Petitioner alleges that it should obtain the same benefit as other applicants who are challenging Florida Housing's determination that the development site in one or more of the Challenged Scattered Site Applications did not constitute a Scattered Site.[1]

6. To the extent Petitioner raises in its Petition issues regarding the Challenged Scattered Site Applications other than that identified in Paragraph 5

[1] *See*, Bonita Cove, LLC v. Florida Housing Finance Corporation (FHFC Case No. 2010-008UC) (challenging Mayfair Village); and Oak Ridge Estates, LLC, and Avery Glen, LLC v. Florida Housing Finance Corporation (FHFC Case No. 2010-009UC) (challenging RST Lodges, Dr. Kennedy Homes and Ehlinger).

above and subject to Paragraph 32 below, Petitioner hereby withdraws such allegations and its Petition shall be deemed amended accordingly with the effect that the only scoring decision being challenged by Petitioner as regards the Challenged Scattered Site Applications in this proceeding is the one described in Paragraph 5.

BACKGROUND - THE ½ POINT REDUCTION

7. In an attempt to encourage applicants in the 2009 universal cycle to submit more complete applications at application deadline, certain deficiencies that were curable in the past without affecting an applicant's score, for the first time were assessed a ½ point reduction in the applicant's score if a cure was filed. Not surprisingly, those deficiences became the focus of applicants when scrutinizing competing applications for potential NOPSE and NOAD filings. As a result, deficiencies that would have been cured by an applicant in the past (regardless of whether the applicant may have agreed or disagreed with Florida Housing's underlying scoring decision), for the first time took on greater importance. In some cases, rather than acknowledge the deficiency and provide a cure with its attendant ½ point reduction, the applicant elected to take issue with the underlying scoring determination itself.

8. Among the cures affected by the ½ point reduction were some of those necessary to address deficiencies flowing from a scoring determination that

an applicant's development site was a Scattered Site (in those cases where the applicant failed to recognize its site as a Scattered Site and complete its application accordingly). Instead of attempting to cure those deficiencies, affected applicants in the 2009 universal cycle instead chose to contest the determination that its site was a Scattered Site. As a result, the definition of Scattered Sites became the focus of intense scrutiny, particularly that part of the definition which makes a development a scattered site if it is divided by an easement. For the first time, issues were raised regarding the type, nature and size of the easement involved and whether that easement "divided" the site within the contemplation of the rule, issues that had not been contested or litigated in the past.

THE CHALLENGED SCATTERED SITE APPLICATIONS

9. In scoring the Challenged Scattered Site Applications, Florida Housing determined that the development site in each was divided by an easement and, thus, constituted a Scattered Site within the literal rule definition which defines a Scattered Site as "...a Development consisting of real property in the same county...(ii) any part of which is divided by a street or easement..." See Rule 67-48.002(106), F.A.C.

10. While bound by the literal language in the rule for purposes of scoring the Challenged Scattered Site Applications, Florida Housing recognized that the development site in each of those applications, despite the presence of the

easement(s) in question, was not intended to be captured within the Scattered Site definition.

11. Subsequently, when the applicants in the Challenged Scattered Site Applications filed their respective petitions contesting Florida Housing's scoring determination that each of their development sites was a Scattered Site, Florida Housing reconsidered that scoring determination and, in each case, agreed that the easement(s) in question did not divide the development site within the ***intended*** meaning of a Scattered Site as defined in Rule 67-48.002(106). Emphasis added. The agreement in each case is evidenced by a consent agreement between Florida Housing and the applicant, and adopted by Final Order (collectively, the "Challenged Scattered Site Applications Final Orders").[2]

12. Florida Housing intends to consider revisions to the definition of Scattered Sites and related rules as part of the rule making in connection with its next universal application cycle. In the meantime, Florida Housing is of the opinion that the disposition of the petitions filed by the applicants in the Challenged Scattered Site Applications as set forth in the Challenged Scattered Site Applications Final Orders is fair, reasonable and proper under the particular facts

[2] RST Lodges at Pinellas Park, LP v. Florida Housing Finance Corporation, FHFC Case No. 2009-068UC (Final Order February 26, 2010); Town Park Crossing, LP v. Florida Housing Finance Corporation, FHFC Case No. 2009-064UC (Final Order February 26, 2010)Dr. Kennedy Homes, Ltd. v. Florida Housing Finance Corporation, FHFC Case No. 2009-073UC (Final Order February 26, 2010); and Ehlinger Apartments, Ltd. v. Florida Housing Finance Corporation, FHFC Case No. 2009-074UC (Final Order February 26, 2010). In actuality, the decision represented by these Final Orders (except for the Final Order in Petitioner's own case) is the scoring decision being challenged by the Petitioner in this proceeding.

and circumstances involved. However, Florida Housing recognizes that the determination set forth in the Challenged Scattered Site Applications Final Orders is inconsistent with the manner in which it scored the Challenged Scattered Site Applications based on the literal language in the rule definition. The determination made by Florida Housing in the Challenged Scattered Site Applications Final Orders, together with the scoring error regarding the Progresso Point application, effectively forced Petitioner's application out of the funding range, a position it would have otherwise occupied based on Florida Housing's initial scoring of those applications. Because of the facts and circumstances unique to the Challenge Scattered Site Applications development sites and for purposes of the Petition filed by Petitioner, Florida Housing agrees that the ranking of Petitioner's application should not be adversely impacted as a result of Florida Housing's subsequent determination that the easement(s) in question did not divide each of the Challenge Scattered Site Applications development sites within the ***intended*** meaning of a Scattered Site as defined in Rule 67-48.002(106).

ISSUE 2 – PROGRESSO POINT

13. Petitioner also challenges Florida Housing's scoring of the Progresso Point application. Consent agreements are pending Florida Housing Board approval in connection with petitions filed by two other applicants challenging

Florida Housing's scoring of the Progresso Point application.[3] The relevant issue for purposes of those cases is the allegation that Florida Housing erred by not rejecting the Progresso Point application because of changes made by the applicant to its ownership structure after application deadline.

CHRONOLOGY OF EVENTS

14. In its preliminary scoring of the Progresso Point application, Florida Housing determined that the equity commitment letter provided by Progresso Point failed meet threshold because the limited partner interest stated in the equity commitment (99.99%) was inconsistent with the limited partners' interest in the applicant entity shown on Exhibit 9 (99.90%).[4]

15. Progresso Point attempted to cure the deficiency by providing a new Exhibit 9 which revised the limited partners' percentage ownership interest in the applicant entity to 99.99%, and changed the general partners' ownership splits from .051/.049% to .0051/.0049%.

16. Significantly, Progresso Point included a header on its revised Exhibit 9 that states "As of August 20, 2009" (which was the application deadline for the 2009 Universal Application Cycle).

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[3] *See*, Ehlinger Apartments, Ltd., v. Florida Housing Finance Corporation (FHFC Case No. 2010-014UC; and Northwest Properties III, Ltd. v. Florida Housing Finanee Corporation (FHFC Case No. 2010-015UC).

[4] Per page 74 of the 2009 Universal Applieation Instructions, the percentage of credits being purchased must be equal to or less than the percentage of ownership interest held by the limited partner or member in the applicant entity.

17. NOADs were filed in response to Progresso Point's cure which alleged that the applicant ownership structure listed on the revised Exhibit 9 did not reflect the ownership structure of the Progresso Point applicant entity as of application deadline, but instead represented a change made in the ownership structure after application deadline. Information provided in the NOADs included references to applications filed by Progresso Point from previous universal application cycles.

18. Florida Housing nevertheless accepted Progresso Point's revised Exhibit 9 as having cured the deficiency noted at preliminary scoring.

19. Florida Housing normally accepts revisions to an applicant's Exhibit 9 when it appears that the applicant is merely correcting typographical errors made in its originally submitted Exhibit 9 in order to make the information listed on Exhibit 9 conform to the actual ownership structure that existed as of application deadline. Here, however, that does not appear to be the case.

20. Progresso Point submitted applications in the 2006, 2007 and 2008 universal application cycles.[5] The Exhibit 9 filed with all of those applications state that the percentage ownership interest held by the limited partners in Progresso Point is 99.90%, and the corresponding percentage ownership interest held by the general partner(s) is .1%. In addition, the equity commitment letters issued by AIG

[5] See Applications 2006-040C, 2007-087C and 2008-161C.

Sun America in all of those applications state that the limited partnership interest being acquired is 99.90%.

21. The fact that the 99.90%/.10% limited partner/general partner ownership structure appeared on Exhibit 9 in 3 previous applications submitted by Progresso Point, together with the fact that the equity commitment letters in those applications were consistent with that structure, demonstrates that the 99.90%/.10% ownership structure has been in place for some time and that this same structure was in place as of the application deadline for 2009 Universal Application Deadline.

SCORING ERROR AND AMENDMENT TO PETITION

22. For purposes of the Petition filed by Petitioner, Florida Housing agrees that it erred in scoring the Progresso Point application by accepting the revised Exhibit 9 submitted by Progresso Point on cure to the extent that the ownership structure listed thereon did not reflect the ownership structure of the applicant as of application deadline as required by the 2009 Universal Application Instructions.

23. To the extent Petitioner alleges in its Petition that Florida Housing committed scoring error(s) in scoring the Progresso Point application other than the error identified and described in Paragraph 22 above and subject to Paragraph 32 below, Petitioner hereby withdraws all such allegations and its Petition shall be

deemed amended accordingly with the effect that the only scoring error being challenged by Petitioner regarding the Progresso Point application in this proceeding is the one described in Paragraph 22.

CONCLUSIONS OF LAW

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

25. Petitioner has standing to challenge the scoring of the Challenged Scattered Site Applications and the Progresso Point application pursuant to Rule 67-48.005(5), F.A.C.

26. Because of the facts and circumstances unique to the Challenge Scattered Site Applications development sites and for purposes of the Petition filed by Petitioner, Florida Housing agrees that the ranking of Petitioner's application should not be adversely impacted as a result of Florida Housing's subsequent determination that the easement(s) in question did not divide each of the Challenge Scattered Site Applications development sites within the ***intended*** meaning of a Scattered Site as defined in Rule 67-48.002(106).

27. For purposes of the Petition filed by Petitioner, Florida Housing agrees that it erred in scoring the Progresso Point application by accepting the revised Exhibit 9 submitted by Progresso Point on cure to the extent that the

ownership structure listed thereon did not reflect the ownership structure of the applicant as of application deadline as required by the 2009 Universal Application Instructions.

28. Petitioner's application would have been in the funding range of the 2009 universal cycle final ranking but for the determination described in Paragraph 26 and the error described in Paragraph 27 above.

29. Petitioners' Petition shall be deemed amended to the extent provided in Paragraphs 6 and 23 above.

STIPULATED DISPOSITION

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

31. In addition, Florida Housing shall provide Petitioner with an award of Exchange funds under the terms of RFP 2010-04 (the "RFP"), subject only to satisfaction of the requirements in the RFP.

BOARD APPROVAL AND FINAL DISPOSTION

32. This Consent Agreement is conditioned upon approval by Florida Housing's Board of Directors, such approval to be evidenced by the Board's issuance of a Final Order adopting the terms and conditions of this Consent Agreement. If the Board has not issued such Final Order by April 30, 2010, this

Consent Agreement shall be deemed automatically null and void without further notice or action by either party, whereupon Petitioner may pursue its Petition unaffected by this Consent Agreement.

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

[SIGNATURES FOLLOW]

Respectfully submitted, this 27th day of April, 2010.

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