STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

MAGNOLIA TERRACE HOUSING PARTNERS, LTD.,
Petitioner,

v.

FHFC CASE NO.: 2002-0059

FLORIDA HOUSING FINANCE CORPORATION,

APPLICATION NO.: 2002-085C

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 October 10, 2002. On or before April 15, 2002, Petitioner submitted its Application to Florida Housing Finance Corporation ("Florida Housing") to compete for an allocation of housing tax credits. Petitioner timely filed a Petition for Formal Administrative Hearing, pursuant to Sections 120.569 and 120.57(1), Florida Statutes, (the "Petition") challenging Florida Housing's scoring on parts of the Application. Florida Housing reviewed the Petition pursuant to Section 120.569(c), Florida Statutes, and determined that there were no disputed issues of material fact. An informal hearing was held in this case on September 3, 2002, in Tallahassee, Florida, before Florida Housing appointed Hearing Officer, Christopher H. Bentley. Petitioner and Respondent presented a Joint Proposed Recommended Order at the hearing.

After consideration of the evidence and the Proposed Recommended Order, the Hearing Officer issued a Recommended Order. A true and correct copy of the Recommended Order is attached hereto as "Exhibit A." The Hearing Officer recommended Florida Housing enter a

Final Order affirming that the financing commitment provided by Petitioner is "firm" and therefore meets the threshold requirement of providing a firm financial commitment. .

The findings and conclusions of the Recommended Order are supported by competent substantial evidence.

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

The Hearing Officer's recommendation that a Final Order be entered affirming that the financing commitment provided by Petitioner is "firm" and therefore meets the threshold requirement of providing a firm financial commitment is approved and accepted as the appropriate disposition of this case. Accordingly, Petitioner's application meets threshold and staff is directed to rank Petitioner's application to determine Petitioner's eligibility for an award of an allocation of low-income housing tax credits in the 2002 Universal Cycle.

DONE and ORDERED this 10th day of October, 2002.

FLORIDA HOUSING FINANCE CORPORATION

By: _____
Chairperson

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.

Copies to:

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Jon C. Moyle, Jr., Esquire
Cathy M. Sellers, Esquire
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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

MAGNOLIA TERRACE HOUSING PARTNERS, LTD.,

Petitioner,

v.

FHFC CASE NO. 2002-0059
Application No. 2002-085C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

ORDER

Pursuant to notice and Sections 120.569 and 120.57(2), Florida Statutes, an informal hearing was held before the undersigned hearing officer on September 3, 2002. At the time of hearing, the parties submitted a Joint Proposed Recommended Order, which is attached hereto as Exhibit A. In essence, the parties have agreed that the financing commitment provided by Petitioner is "firm" and therefore meets the threshold requirement of providing a firm financial commitment.

Based upon this agreement and the Joint Proposed Recommended Order, there is no need for additional Findings of Fact and/or Conclusions of Law, and the issues raised in the Petition are moot. Accordingly, no Findings of Fact or Conclusions of Law are made herein. The parties' jointly executed Joint Proposed Recommended Order, is attached.

EXHIBIT
A

Respectfully submitted and entered this 1 day of October, 2002.

CHRIS H. BENTLEY
Hearing Officer for Florida Housing
Finance Corporation
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

MAGNOLIA TERRACE HOUSING PARTNERS, LTD.

Petitioner,

v.

FHFC CASE NO.: 2002-0059
APPLICATION NO. 2002-085C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

JOINT
PROPOSED RECOMMENDED ORDER

MAGNOLIA TERRACE HOUSING PARTNERS, LTD ("Petitioner") and FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing") hereby present the following Joint Proposed Recommended Order:

APPEARANCES

The representatives for the parties at the hearing are as follows:

For Petitioner:

Jon C. Moyle, Jr., Esquire
Cathy M. Sellers, Esquire
Moyle Flanigan Katz Raymond & Sheehan, P.A.
118 North Gadsden Street
Tallahassee, FL 32301

EXHIBIT
A

For Respondent:

Laura J. Cox, Assistant General Counsel
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

PRELIMINARY STATEMENT

Petitioner applied for funding during the 2002 Universal Cycle, seeking an allocation of Low Income Housing Tax Credits ("Housing Credits"). Petitioner was notified by Florida Housing of its final scores on or about July 22, 2002. On August 13, 2002, Petitioner Magnolia Terrace Housing Partners, Ltd. ("Magnolia Terrace") timely filed a Petition for Formal Administrative Hearing under Sections 120.569 and 120.57(1), Florida Statutes, disputing the Florida Housing Finance Corporation's ("Corporation") final scoring of its 2002 Universal Cycle Application for the proposed Magnolia Terrace garden apartments project. The Corporation granted Magnolia Terrace an informal hearing in this matter. Petitioner sought a determination that the construction/permanent financing commitment provided by Petitioner is "firm" and therefore meets threshold requirements. The parties agree the financing commitments provided by Petitioner contain all of the required elements of a "firm commitment" and therefore satisfy the threshold requirements.

FINDINGS OF FACT

1. On or before April 15, 2002, Petitioner submitted an Application to Florida Housing Finance Corporation's ("Florida Housing") 2002 Universal Cycle for the award of an allocation of low-income housing tax credits ("Tax Credits") for the development of Magnolia Terrace, a proposed 160-unit garden apartments affordable housing development to be located in Sumter County, Florida.

2. Florida Housing is a public corporation organized under Chapter 420, Fla. Stat., to provide and promote the public welfare by administering the governmental function of financing and refinancing houses and related facilities in Florida in order to provide decent, safe and sanitary housing to persons and families of low, moderate and middle income.

3. To encourage the development of low-income housing for families, in 1987 Congress created federal income Tax Credits that are allotted to each state, including Florida. Section 42 of the Internal Revenue Code governs this program. The Tax Credits equate to a dollar for dollar reduction of the holder's federal tax liability which can be taken for up to ten years, if the project satisfies the Internal Revenue Code's requirements each year. The developer sells, or syndicates, the Tax Credits to generate a substantial portion of the funding necessary for the construction of the development.

4. Florida Housing is the statutorily created "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. (See Section 420.5099, Fla. Stat.)

5. Each state receives an annual allotment of Tax Credits allocated to the state, primarily on a per capita basis.

6. After the scoring process, Florida Housing allocates the Tax Credits pursuant to Fla. Admin. Code R. 67-48 *et. al.*, and a Qualified Allocation Plan ("QAP"). The provisions of the QAP are adopted and incorporated by reference in Fla. Admin. Code R. 67-48.025. The Internal Revenue Code requires Florida Housing to develop the QAP. (See 26 U.S.C.A., § 42 (m).)

7. Pursuant to the QAP, Tax Credits are apportioned among the most populated counties, medium populated counties and least populated counties. There are also various other set-asides and special targeting goals set forth in the QAP. Set-asides and special targeting goals for the 2001 Combined Cycle include non-profit, elderly, farmworkers, commercial fishing workers, Front Porch/Hope VI, urban in-fill, a high-rise in an urban in-fill and the Rural Development 514, 515 and 516 programs.

8. Pursuant to the state and federal statutory mandates, Florida Housing has established a competitive application process that attempts to insure the most effective use of available Tax Credits. (See Section 420.507 (22)(f), Fla. Stat. and Fla. Admin. Code R. 67.48 *et. al.*) Awards for the SAIL program, the Multifamily Mortgage Revenue Bonds program and the Low Income Housing Tax Credit program are included in a single application process (the

"Universal Cycle") governed by Fla. Admin. Code R. 67-48 *et. al.* The Housing Credit program is included in this competitive application process in which applicants for any of the above-referenced Florida Housing multi-family rental programs submit a single application (the "Universal Application").

9. The 2002 Universal Application, adopted by Fla. Admin. Code R. 67-48.002(116), parts I through VI, 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. Other parts allow applicants to earn points, however, the failure to provide complete, consistent and accurate information as prescribed by the instructions may reduce the Applicant's overall score.

10. After Petitioner submitted its 2002 Universal Application, on or before April 15, 2002, Florida Housing's staff commenced scoring the Application pursuant to Part V, Chapter 420, Fla. Stat., and Fla. Admin. Code R. 67-48 *et. al.* Florida Housing completed the scoring process on May 13, 2002.

11. After performing preliminary scoring, Florida Housing's staff notified Petitioner of the results. Florida Housing determined the Petitioner did not meet four threshold items including the two items designated as 2T and 3T on the 2002 Universal Scoring Summary, pertaining to Part V, Section E of the Application. Florida Housing determined the commitment letters provided in Petitioners Application were not "firm" commitments.

12. Any applicant could question the scoring of Petitioner's Application if it believed Florida Housing had made a scoring error, within ten calendar days after the date the applicant received the preliminary scores by filing a Notice of Possible Scoring Error ("NOPSE").

13. Florida Housing reviewed each NOPSE that was timely received. On June 10, 2002, Florida Housing sent Petitioner any NOPSE relating to its Application submitted by other applicants and Florida Housing's position on any NOPSE.

14. Petitioner could submit additional documentation, revised forms, and other information that it deemed appropriate to address any curable issue raised in any NOPSE, Florida Housing's position on each NOPSE and preliminary scoring. These documents, revised

forms and other information were known as "cures" and were due on or before June 26, 2002 (the "cure period"). Any Applicant could submit to Florida Housing of a NOPSE.

15. Petitioner submitted a cure to Part V, Section E providing revised commitment letters from Bank of America and GMAC Commercial Mortgage Corporation ("GMACCM") for Petitioner's financing under the Fannie Mae Delegated Underwriter Servicing ("DUS") Product Line.

16. After Petitioner submitted its cures, all applicants had an opportunity to review Petitioner's cures. Any applicant could submit to Florida Housing a Notice of Alleged Deficiencies ("NOAD") to challenge the Petitioner's cures. Several NOADs were filed on Petitioner's application questioning Petitioner's cure to Part V, Section E, Exhibit 49, specifically, whether the commitment letter from Bank of America was firm when the letter did not state an interest rate.

17. Florida Housing then reviewed each NOAD and made a determination on each NOAD.

18. As a result of the cures submitted by Petitioner, in its final scoring of Petitioner's Application, Florida Housing rescinded its determination that Petitioner did not meet the threshold requirements for items 3T, as well as the other two items (1T and 4T) that were identified in the preliminary scoring as not meeting threshold requirements.

20. In its final scoring of Petitioner's Application, Florida Housing determined the cure to Part V, Section E, and Exhibit 49 failed threshold and noted the "Commitment letter from Bank of America does not state the interest rate, therefore the commitment cannot be considered firm." This item is designated as 5T on the 2002 Universal Scoring Summary.

21. Following this process, Florida Housing on July 22, 2002, sent Pre-Appeal Scores and a Notice of Rights to Petitioner. The Notice of Rights notified Petitioner that it could contest Florida Housing's actions by requesting an informal hearing before a contracted hearing officer.

22. Petitioner timely requested an informal hearing by filing its "Petition for Informal Proceeding in Accordance with Sections 120.569 and 120.57(2), Florida Statutes," on August 13, 2002.

23. Petitioner's financing is a Fannie Mae Delegated Underwriter and Servicer ("DUS") Multifamily Affordable Housing New Construction Forward Commitment to a Permanent financing product. Under this product, Fannie Mae advances funds equal to the permanent loan to an approved bank that provides servicing for the construction loan. Bank of America, acting as an authorized servicer under the DUS program, is providing servicing of the construction loan. Bank of America must issue Fannie Mae a Letter of Credit to guarantee the construction funds advanced. The Bank of America "Commitment Letter" provides the required elements for a firm commitment to issue a Letter of Credit.

24. Under this financing product, when construction is complete and the property has achieved 90% occupancy for 90 consecutive days, the construction loan converts to a Fannie Mae permanent loan through an authorized Seller/Servicer under the DUS program. In this case, the Fannie Mae permanent loan is through GMACCM in its capacity as an authorized Seller/Servicer under the DUS program. Through its delegated authority by Fannie Mae, GMACCM issued a "Forward Commitment" for the financing. The required elements of a "firm commitment" for the construction loan (hereinafter referred to as the "Mortgage Loan Advance") and the permanent loan (hereinafter referred to as the "Mortgage Loan") are both expressed within the "Forward Commitment" letter issued by GMACCM.

25. The instructions to Part V, Section E (Funding Commitment(s)), on pages 46-47 of the Universal Application provide the elements of a firm commitment for debt financing. One of the required elements is an interest rate.

26. As provided in the "Forward Commitment" letter, "[t]he Mortgage Loan Advance shall bear interest at the interest rate for the Mortgage Loan." The interest rate provided in the "Forward Commitment" letter for the Mortgage Loan is 7.50%; therefore the interest rate provided for the Mortgage Loan Advance is 7.50%.

27. For these reasons, the Commitment Letters provide a firm financing commitment. Thus, Magnolia Terrace has satisfied the threshold requirement under Part V, Section E of the 2002 Universal Application Cycle with respect to providing firm financing for the Magnolia Terrace development. Accordingly, the determination in the final 2002 Universal Scoring Summary regarding items 2T and 5T should be rescinded.

CONCLUSIONS OF LAW

1. Pursuant to Sec. 120.569 and 120.57(2), Fla. Stat. and Fla. Admin. Code R. 67-48 *et. al.*, the Hearing Officer has jurisdiction over the parties to this proceeding. The Petitioner's substantial interests are affected by the proposed action of the Corporation. Therefore, the Petitioner has standing to bring this proceeding.

2. Florida Housing is authorized to institute a competitive application process pursuant to section 420.507 (22)(f), Fla. Stat., and has done so at Fla. Admin. Code R. 67-48.004.

3. The 2002 Universal Application, Parts I through VI, and accompanying instructions are incorporated by reference into Fla. Admin. Code R. 67-48.002(116).

4. Petitioner has provided information in its cure documentation which satisfies the required elements of a firm commitment as provided in the instructions to Part V, section E of the Universal Application. Accordingly, Petitioner meets the threshold requirements for Part V, section E of the Universal Application.

RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law stated above, the parties recommend the Hearing Officer enter a Recommended Order affirming the financing commitment provided by Petitioner is "firm" and therefore meets the threshold requirement of providing a firm financial commitment.

Respectfully submitted this 19th day of September, 2002.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Regular U. S. Mail to Jon C. Moyle, Jr., Esq. and Cathy M. Sellers, Esq., Moyle Flanigan Katz Raymond & Sheehan, P.A., 118 North Gadsden Street, Tallahassee, FL 32301, and via hand delivery to Chris Bentley , Hearing Officer, this 19th of September, 2002.

Laura J. Cox, Assistant General Counsel
Florida Housing Finance Corporation

NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

All parties have the right to submit written arguments in response to a Recommended Order for consideration by the Board. Any written argument should be typed, double-spaced with margins no less than one (1) inch, in either Times New Roman 14-point or Courier New 12-point font, and may not exceed five (5) pages. Written arguments must be filed with Florida Housing's Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301-1329, no later than 5:00 p.m. on Monday, October 7, 2002. Submission by facsimile will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to Recommended Orders.