STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CYPRESS SENIOR VILLAGE, LLC,

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC CASE NO.: 2006-027UC
APPLICATION NO. 2006-020H

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation ("Board") for consideration and final agency action on July 28, 2006. On or before February 1, 2006, Cypress Senior Village, LLC ("Petitioner"), submitted its 2006 Universal Cycle Application ("Application") to Florida Housing Finance Corporation ("Florida Housing") to compete for funding from the HOME Investments Partnerships Program. Petitioner timely filed its Petition for Informal Administrative Proceedings, pursuant to Sections 120.569 and 120.57(2), Florida Statutes, (the "Petition") challenging Florida Housing's scoring on parts of the Application. An informal hearing was held in this case on June 20, 2006, in Tallahassee, Florida, before Florida Housing's designated Hearing Officer, Chris H. Bentley. Petitioner and Respondent timely filed Proposed Recommended Orders.

After consideration of the evidence, arguments, testimony presented at hearing, and the Proposed Recommended Orders, 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 finding that:

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION
D Green /DATE 7-31-06

1. Petitioner, Cypress Senior Village, LLC, did not violate Rule 67-48.004(6) when, as a cure, it filed a new LOCAL GOVERNMENT VERIFICATION OF CONTRIBUTION FEE WAIVER and did not file a new computation sheet, and is therefore entitled to the full 5 points available for a local government contribution.

RULING ON THE RECOMMENDED ORDER

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

ORDER

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

1. The Findings of Fact of the Recommended Order 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 of the Recommended Order are adopted as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Order.

Accordingly, it is found and ordered that Petitioner's Application is scored as follows:

1. Petitioner, Cypress Senior Village, LLC, did not violate Rule 67-48.004(6) when, as a cure, it filed a new LOCAL GOVERNMENT VERIFICATION OF CONTRIBUTION FEE WAIVER and did not file a new computation sheet, and is therefore entitled to the full 5 points available for a local government contribution.

IT IS HEREBY ORDERED that Petitioner's Application is awarded the full 5 points available for a local government contribution.

DONE and ORDERED this 28th day of July, 2006.

FLORIDA HOUSING FINANCE CORPORATION

By: Terry Cantens
Chairperson

Copies to:

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General Counsel
Florida Housing Finance Corporation
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Vicki Robinson
Deputy Development Officer
Florida Housing Finance Corporation
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Warren H. Husband, Esquire
Metz, Husband & Daughton, P.A.
P.O. Box 10909
Tallahassee, FL 32302-2909

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

CYPRESS SENIOR VILLAGE, LLC,

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FHFC CASE NO. 2006-027UC
Application No. 2006-020H

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice and Sections 120.569 and 120.57(2) of the Florida Statutes, the Florida Housing Finance Corporation, by its duly designated Hearing Officer, Chris H. Bentley, held an informal hearing in Tallahassee, Florida, in the above styled case on June 20, 2006.

APPEARANCES

For Petitioner, Cypress Senior Village, LLC ("Cypress"):	Warren H. Husband, Esquire Metz, Husband & Daughton, P.A. P. O. Box 10909 Tallahassee, FL 32302-2909
For Respondent, Florida Housing Finance Corporation ("Florida Housing"):	Robert J. Pierce Assistant General Counsel Florida Housing Finance Corporation 227 North Bronough Street, Suite 5000 Tallahassee, FL 32301-1329

STATEMENT OF THE ISSUE

The issue to be determined in this case is whether Cypress Senior Village, LLC, submitted documentation in its Application, including both its initial Application and its subsequent cure materials, sufficient to receive 5 points for a local government contribution.

PRELIMINARY STATEMENT

At the final hearing, the parties submitted a Joint Stipulation of Facts and Exhibits, which has been admitted as Joint Exhibit 1. Joint Exhibits 2 through 7, were admitted into evidence pursuant to the stipulation embodied in Joint Exhibit 1. Petitioner's Exhibits 1 through 6 and Respondent's Exhibits 1 through 6 were admitted into evidence.

At the request of Florida Housing, official recognition was taken of Rule Chapter 67-48 of the Florida Administrative Code and the Universal Application Package adopted as a rule and incorporated by reference therein.

FINDINGS OF FACT

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

1. The facts recited in Joint Exhibits 1 through 7 are accepted as fact in this proceeding and hereby incorporated by reference.

2. Cypress is a Florida limited liability corporation. It is in the business of providing affordable rental housing units.

3. Cypress timely submitted an application in the 2006 Universal Application Cycle seeking a loan through the HOME program. Cypress applied for a HOME loan of $4,000,000 to help finance its project, a 50-unit garden-style apartment complex for seniors located in Arcadia, Florida, being developed in cooperation with the City of Arcadia Housing Authority.

4. Upon final scoring by Florida Housing, Cypress' application met all threshold requirements. However, Cypress' application received a total score of only 61 points out of a possible 66 points. This 5-point difference arose because Florida Housing denied Cypress any points for the "Local Government Contribution" documented in its application, which consisted of a fee waiver from the City of Arcadia.

5. Pursuant to the Universal Application Instructions (Part IV.A.) and the Universal Application (Part IV.A.), an applicant is eligible to receive up to 5 points for documenting a Local Government Contribution to its proposed development. The Local Government Contribution may take the form of a grant, a fee waiver, a loan,

or a fee deferral. For a fee waiver, an applicant must provide with its application a Local Government Verification of Contribution - Fee Waiver Form (the "Fee Waiver Form") behind a tab labeled Exhibit 44, signed by the appropriate local government official. [Pet. Exh. 1; Jt. Exh's 2 & 3].

6. The rules of Florida Housing provide a Fee Waiver Form entitled LOCAL GOVERNMENT VERIFICATION OF CONTRIBUTION FEE WAIVER (Fee Waiver Form). That Fee Waiver Form, immediately after the foregoing title, sets forth certain instructions which state:

> No credit will be given for fee waivers unless the computations by which the total amount of each waiver is determined accompanies this verification form in the Application. Computations should include, where applicable, waived fee amount per unit.

These instructions are in bold print which sets them off from the remainder of the form which requests information and contains the certification. These instructions do not request any information.

7. The "computations" referenced in the instructions at the beginning of the Fee Waiver Form are not referred to on that form or elsewhere in the rules of Florida Housing as an "attachment" or "exhibit" to the Fee Waiver Form.

8. The Universal Application Instructions, at Part IV.A. [Jt. Exh. 2], state in relevant part:

> For waiver of fees, attach a sheet behind the Local

> Government Verification of Contribution Form detailing how the amount of savings was calculated. For waivers of fees that are determined on a per unit basis, calculations should show the amount waived per unit for each waived fee. Failure to attach a sheet showing these calculations will result in the contribution not being considered.

9. At Exhibit 44 of its original Application, Cypress submitted a form, entitled LOCAL GOVERNMENT VERIFICATION OF CONTRIBUTION OF FEE WAIVER ("Fee Waiver Form"). This form has been adopted as a rule.

10. The Fee Waiver Form requests certain information and then requires certification of that information by the appropriate local government official. One of the requested pieces of information is entitled "Development Location". Immediately beneath that request on the form are instructions with regard to the provision of that information which state "At a minimum, provide the address assigned by the United States Postal Service, including the address number, street name and city... ."

11. In the original Fee Waiver Form submitted by Cypress as Exhibit 44 to its original Application, the information provided in response to the request on the form for "development location" stated "SE corner of E. Cypress Street and N. 11th Avenue". Missing from the information provided for "Development Location" on Exhibit 44 of Cypress' original Application was the city in which the development is located.

12. In Cypress' original Application, a sheet was attached to the Application

behind Exhibit 44. This sheet is entitled "Cypress Senior Village-Computation of Fee Waivers." The sheet contains a computation of how the fee waiver of $32,400 as shown on Exhibit 44 to the original Application was computed.

13. Florida Housing issued its preliminary scoring of Cypress' application in its 2006 HOME Scoring Summary, dated as of 03/01/2006. The preliminary scoring summary noted the following deficiency with respect to the Fee Waiver Form:

> The Development Location stated on the Local Government Verification of Contribution - Fee Waiver form is incomplete because the City is not stated. Therefore, the Applicant cannot receive credit for this contribution.
>
> [Jt. Exh. 5 (Item #8S)].

14. As a cure to the deficiency noted by Florida Housing with regard to Exhibit 44 to its original Application, Cypress submitted a new Fee Waiver Form. The new Fee Waiver Form included the name of the city, Arcadia, Florida, with regard to the information requested for "Development Location". The Fee Waiver Form submitted as a cure is a one-page document. Cypress did not submit a new sheet containing the computation by which the total amount of the waived fee was calculated.

15. As a matter of fact, throughout this process there was no confusion

about the city in which the project was to be located. It is plain from the Application that the project is proposed to be located in Arcadia, Florida.

16. Upon consideration of the cure submitted by Cypress with regard to the Fee Waiver Form, Florida Housing determined that because a new computation sheet for the fee waiver was not provided with the new Fee Waiver Form, the attempted cure was in violation of Rule 67-48.004(6), F.A.C.

17. Therefore, Cypress was awarded no points out of a possible 5 points for Local Government Contribution. The failure by Florida Housing to award Cypress points with regard to Local Government Contribution, has prejudiced Cypress' ability to receive a $4,000,000 HOME loan.

18. Cypress timely requested a hearing challenging the action of Florida Housing.

CONCLUSIONS OF LAW

19. Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Rules 28-106.301 and 67-48.005, Florida Administrative Code, the Hearing Officer has jurisdiction over the parties and the subject matter of this case.

20. Cypress' substantial interests are affected by the Proposed Action of Florida Housing. Therefore, Cypress has standing to bring this proceeding.

21. The 2006 Universal Application Package including instructions, exhibit forms and an uncompleted application are incorporated as a rule by reference by Rule 67-48.004(1)(a), F.A.C.

22. Rule 67-48.004(6), F.A.C., provides in pertinent part:

> Pages of the Application that are not revised or otherwise changed may not be resubmitted, except that documents executed by third parties must be submitted in their entirety, including all attachments and exhibits referenced therein, even if only a portion of the original document was revised.

23. Florida Housing relies upon the language in Rule 67-48.004(6) cited above, that states "...documents executed by third parties must be submitted in their entirety, including all attachments and exhibits referenced therein... ." Florida Housing argues that the computation sheet is an "attachment" to the Fee Waiver Form and therefore, when a new Fee Waiver Form was submitted as a cure, the computation sheet was also required to be resubmitted.

24. Cypress argues that the computation sheet is not a "attachment" to the Fee Waiver Form and that therefore, the language of Rule 67-48.004(6) that says "[p]ages of the Application that are not revised or otherwise changed may not be resubmitted...", prohibited the presentation of a new computation sheet with the Fee Waiver Form presented in its cure. Cypress also argues that the Fee Waiver Form and computation sheet submitted by Cypress in its original Application were sufficient

to entitle Cypress to 5 points for its Local Government Contribution.

25. It should be noted that counsel for both parties presented cogent, intelligent and persuasive arguments at hearing, and both counsel presented exceptional Proposed Recommended Orders. This issue turns in large part on the nuance of the language contained in the rules of Florida Housing.

26. In construing the instructions at the beginning of the Fee Waiver Form wherein it is stated no credit will be given unless the computations by which the amount of the waiver is determined "accompanies" the Fee Waiver Form, Florida Housing argues that the word "accompanies" according to the Encarta World English Dictionary means "be present with something: to be enclosed, attached, or present with something." Florida Housing then relates that definition of the word "accompany" to the requirements of Rule 67-48.004(6) requiring "...that documents executed by third parties must be submitted in their entirety, including all attachments...." Florida Housing argues that the word "accompanies" means that the computations are an attachment to the Fee Waiver Form. Florida Housing, in seizing upon the word "attached" in the definition of the word "accompany" has disregarded the definition of the word "accompany" as "be present with something". Further re-enforcing the role that nuance of language plays in this matter is the definition of the word accompany found in the Random House Webster's College Dictionary, 2000

Second Revised and Updated Random House Edition, April 2000, wherein the definition of accompany is:

> 1. To go along or in company with. 2. To exist or occur in association with: thunder accompanies lightning. 3. To cause to be associated with or attended by: He accompanied his speech with gestures. 4. To perform musical accompaniment for. 5. To provide the musical accompaniment.

That dictionary further states that "To ACCOMPANY is to go as an associate or companion, usu. on equal terms... ." Thus, it is not at all clear from dictionary definitions that the word "accompanies" as used in the instructions on the Fee Waiver Form clearly requires the computation sheet to be an "attachment" or "exhibit" to the Fee Waiver Form.

27. Part IV.A. of the Universal Application Instructions, at page 55, further highlights the nuance of language in this matter. Those instructions, adopted as a rule, state in pertinent part:

> For waiver of fees, attach a sheet behind the Local Government Verification of Contribution Form detailing how the amount of savings was calculated.

Florida Housing argues that this instruction requires an applicant to "attach" a computation sheet to the Fee Waiver Form. However, the language of that instruction could just as easily be read to require an applicant to attach the computation form to its application and to be an instruction telling the applicant where in the application

the computation form should be placed. That is, "behind the Local Government Verification of Contribution Form". The Instructions elsewhere inform the applicant where the Fee Waiver Form must appear in the application.

28. In the "CERTIFICATION" section of the Fee Waiver Form, it requires the local government official to sign a certification that states "I certify that the foregoing information is true and correct and that this commitment is effective... ." Florida Housing argues that the use of the words "foregoing information" captures not only the specific information an applicant must provide in the blanks requesting information above the certification on the Fee Waiver Form, but also includes the information in the computations which the instructions at the beginning of the Fee Waiver Form reference. Once again, the nuance of language comes into play. The definition of "foregoing" in Random House Webster's College Dictionary, 2000 Second Revised and Updated Random House Edition, April 2000, defines "foregoing" as "previously stated, written, or occurring; preceding: the foregoing paragraph." Florida Housing cites a slightly different definition from the Merriam-Webster Online Dictionary in its Proposed Recommended Order. Certainly, focusing on the Random House definition, the computations were not "previously stated" in the Fee Waiver Form. Nor were the computations "written" in the Fee Waiver Form. Likewise, the computations were not "occurring" in the Fee Waiver Form above the

certification.

29. If Florida Housing intended the computation sheet to be an attachment or exhibit to the Fee Waiver Form, it could have simply so stated explicitly. Such, however, is not the case.

30. Cypress has presented evidence of an example in the 2004 application cycle where, in Application No. 2004-107C, the applicant therein supplied in its original application a Fee Waiver Form, but it did not include the required computation sheet. In its cure materials, the applicant in that case then provided the required computation sheet, but it did not provide a second copy of the Fee Waiver Form. Nevertheless, Florida Housing awarded the applicant the full 5 points available for its fee waiver. The situation in the 2004 case is essentially identical to the situation in this case. It should be noted that the relevant rules from the 2004 cycle with regard to this matter are identical to the current rules of Florida Housing. While, in this case, Florida Housing argues that its action in the 2004 case may be considered a mistake which should not be held against Florida Housing, the more appropriate interpretation of that action is that it is in the nature of a final order at least implicitly interpreting its rules in a manner that considers the computation sheet to be a separate document from the Fee Waiver Form and not an attachment or exhibit thereto.

31. Important in the consideration of this matter is the language in Rule 67-48.002(6) wherein it states that "pages of the Application that are not revised or otherwise changed may not be resubmitted... ." Because, in this case, the computation sheet was not revised or otherwise changed in any way, if Cypress had submitted a computation sheet with the new Fee Waiver Form, it could have been subject to sanctions for violating the rule prohibition on a resubmission of unchanged documents. When an applicant is placed in such a dilemma faced with a "catch-22" situation, the rules should be construed in favor of the applicant.

32. The very nuance of the language embodied in the rules of Florida Housing with regard to the issue herein creates a certain inherent ambiguity with regard to the proper interpretation of Florida Housing's rules. Since, in this Application process, applicants are held to strict compliance with the clear requirement of Florida Housing's rules, when there are ambiguous implications in the interpretation of those rules, that ambiguity must be decided in favor of the applicant. To do otherwise would be unreasonable.

33. It is concluded as a matter of law that the computation sheet is neither an attachment nor exhibit to the Fee Waiver Form. It is a separate, independent document which is required to be attached to the application immediately behind the Fee Waiver Form.

34. It is concluded as a matter of law that Cypress did not violate the requirements of Rule 67-48.004(6) by failing to file a second computation sheet with the Fee Waiver Form presented during the cure. Indeed, it is concluded as a matter of law that had Cypress filed a second computation sheet during the cure period it would have been in violation of Rule 67-48.004(6).

35. Cypress argues that the Fee Waiver Form and computation sheet it submitted in its original Application were sufficient to entitle Cypress to 5 points for its Local Government Contribution. The legal arguments made by Cypress in that regard are hereby rejected as a matter of law.

36. Cypress is substantially affected by the proposed action of Florida Housing.

RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law stated herein, it is RECOMMENDED:

1. That a Final Order be entered determining that Petitioner, Cypress Senior Village, LLC, did not violate Rule 67-48.004(6) when, as a cure, it filed a new LOCAL GOVERNMENT VERIFICATION OF CONTRIBUTION FEE WAIVER and did not file a new computation sheet, and is therefore entitled to the full 5 points

available for local government contribution.

Respectfully submitted and entered this 14th day of July, 2006.

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:

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NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

In accordance with Rule 67-48.005(3), Florida Administrative Code, 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 Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301-1329, no later than 5:00 p.m. on July 21, 2006. 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.

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

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FHFC CASE NO.: 2006-027UC
Application No. 2006-020H

FLORIDA HOUSING FINANCE CORPORATION,

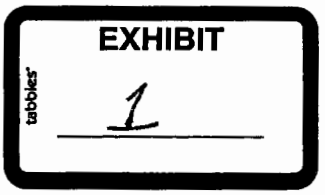
Respondent.
_____/

JOINT STIPULATION OF FACTS AND EXHIBITS

The parties, CYPRESS SENIOR VILLAGE, LLC ("Cypress"), and FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing"), hereby stipulate for purposes of expediting the informal hearing scheduled for 11:00 a.m., June 20, 2006, in Tallahassee, Florida, and agree to the following facts and exhibits:

GENERAL

1. Florida Housing is a public corporation organized pursuant to Section 420.504, Florida Statutes, to provide and promote the public welfare by administering the governmental function of financing and refinancing affordable housing and related facilities in Florida. Florida Housing is governed by a Board of Directors (the "Board"), appointed by the Governor with Secretary of the Department of Community Affairs sitting ex-officio. Florida Housing is an agency as defined in Section 120.52, Florida Statutes, and, therefore, is subject to the provisions of Chapter 120, Florida Statutes.



2. Florida Housing administers the Home Investment Partnerships ("HOME") Program, as provided in Section 420.5089, Florida Statutes. The HOME program loans funds to entities constructing or rehabilitating affordable rental units for low income and/or very low income persons. These HOME funds are allocated each year through a competitive application process known as the Universal Application Cycle in accordance with Rule Chapter 67-48, F.A.C. The applications are competitively ranked and compete for a limited amount of funds during a given annual cycle.

3. Rule 67-48.004, F.A.C., is entitled "Application and Selection Procedures for Developments." This rule establishes a multistage process for scoring by Florida Housing of the applications submitted in the Universal Application Cycle.

4. Pursuant to Rule 67-48.004(3), F.A.C., applications are evaluated and preliminarily scored by Florida Housing, with the resulting scores then transmitted to all applicants.

5. Rule 67-48.004(4), F.A.C., provides a mechanism through which an applicant may challenge the preliminary score of another applicant through written submission to Florida Housing. Such a submission is referred to as a Notice of Possible Scoring Error or "NOPSE." Once a NOPSE is filed, Florida Housing reviews the challenge and transmits to each affected applicant the NOPSE as well as Florida Housing's position with respect to the challenge. *See*, Rule 67-48.004(5), F.A.C.

6. Under Rule 67-48.004(6), F.A.C., an applicant is allowed to cure alleged deficiencies in its application raised as a result of the preliminary scoring or Florida Housing's position regarding a NOPSE. In curing an alleged deficiency, an applicant is permitted to submit "additional documentation, revised pages and such other information

as the Applicant deems appropriate to address the issues ..." raised by the preliminary scoring or NOPSE. Additional information submitted under this provision is referred to as a "cure" and becomes part of the application evaluated by Florida Housing. *See*, Rules 67-48.004(6), .002(9), F.A.C.

7. Pursuant to Rule 67-48.004(7), F.A.C., applicants may submit to Florida Housing a Notice of Alleged Deficiency ("NOAD") contesting a cure filed by another applicant. A NOAD is "limited only to the issues created by document revisions, additions, or both, by the Applicant submitting the Application pursuant to subsection (6) [of the Rule]."

8. Following the receipt and review of NOPSEs, cures and NOADs, Florida Housing prepares, and transmits to all applicants, final scores. *See*, Rule 67-48.004(9), F.A.C. In determining these final scores, Florida Housing may reject an application or reduce its score at this stage only with respect to matters previously identified by Florida Housing in its preliminary or NOPSE scoring or with respect to inconsistencies created between the applicant's cure materials and other parts of the application. *Id.*

9. An applicant may contest its final score by filing a petition with Florida Housing. If the petition does not raise a disputed issue of material fact, an informal hearing will be conducted; if the petition raises one or more disputed issues of material fact, a formal hearing will be conducted. *See*, Rule 67-48.005, F.A.C.

CYPRESS APPLICATION

10. Cypress submitted an application in the 2006 Universal Application Cycle seeking a loan through the HOME program. Cypress' application was assigned Application No. 2006-020H

11. The Universal Application Package, or UA 1016 (Rev. 1-06), which includes both its forms and instructions, is adopted as a rule. *See*, Rule 67-48.004(1)(a), F.A.C. Accordingly, both Cypress and Florida Housing are bound by its terms

12. Upon final scoring by Florida Housing, Cypress' application met all threshold requirements. However, Cypress' application received a total score of only 61 points out of a possible 66 points. This 5-point difference arose because Florida Housing denied Cypress any points for the "Local Government contribution" documented in its application, which consisted of a fee waiver from the City of Arcadia.

13. Pursuant to the Universal Application Instructions (Part IV.A.) and the Universal Application (Part IV.A.), an applicant is eligible to receive up to 5 points for documenting a Local Government contribution to its proposed development. The Local Government contribution may take the form of a grant, a fee waiver, a loan, or a fee deferral. For a fee waiver, an applicant must provide with its application a Local Government Verification of Contribution – Fee Waiver Form behind a tab labeled Exhibit 44, signed by the appropriate Local Government official. (*See*, Joint Exhibits 2 and 3).

14. The Local Government Verification of Contribution – Fee Waiver Form contains the following language at the top of the form:

> No credit will be given for fee waivers unless the computations by which the total amount of each waiver is determined accompanies this verification form in the Application. Computations should include, where applicable, waived fee amount per unit.

15. The Universal Application Instructions, at Part IV.A., state, in relevant part:

> For waiver of fees, attach a sheet behind the Local Government Verification of Contribution Form detailing how the amount of savings was calculated. For waivers of fees that are determined on a per unit basis, calculations should show the amount waived per unit for each waived fee. Failure to attach a sheet showing these calculations will result in the contribution not being considered.

16. Cypress submitted a Local Government Verification of Contribution – Fee Waiver Form, including a sheet entitled "Cypress Senior Village – Computation of Fee Waivers," at Exhibit 44 to its original application. (*See*, Joint Exhibit 4).

17. Florida Housing issued its preliminary scoring of Cypress' application in its 2006 HOME Scoring Summary, dated as of 03/01/2006. (*See*, Joint Exhibit 5). The preliminary scoring summary noted the following deficiency with respect to the Local Government Verification of Contribution – Fee Waiver Form:

> The Development Location stated on the Local Government Verification of Contribution – Fee Waiver form is incomplete because the City is not stated. Therefore, the Applicant cannot receive credit for this contribution.
>
> (*See*, Item # 8S of Joint Exhibit 5).

18. As a cure, Cypress submitted a new Local Government Verification of Contribution – Fee Waiver Form. (*See*, Joint Exhibit 6).

19. Florida Housing issued its final scoring of Cypress' application in its 2006 HOME Scoring Summary, dated as of 05/03/2006. (*See*, Joint Exhibit 7). The final scoring summary rejected the cure submitted by Cypress and noted the following:

> The Applicant provided a new Local Government Verification of Contribution – Fee Waiver form that reflects the "City" in the Development Location. The instructions on the Fee Waiver form state that "No credit will be given for fee waivers unless the computations by which the total amount of each fee waiver is determined accompanies this verification form in the Application." Rule subsection 67-48.004(6), F.A.C., states that "Pages of the Application that are not revised or otherwise changed may not be resubmitted, except that documents executed by third parties must be submitted in their entirety, including all attachments and exhibits referenced therein, even if only a portion of the original document was revised." Because the computation for the fee waiver was not provided with the new Fee Waiver form, the form is incomplete and ineligible for points.
>
> (*See*, Item # 8S of Joint Exhibit 7).

20. As the result of final scoring, Cypress was awarded no points out of a possible 5 points for a Local Government contribution.

21. Along with the final scoring summary Florida Housing provided Cypress a Notice of Rights, informing Cypress that it could contest Florida Housing's actions by requesting a hearing.

22. Cypress timely requested a hearing by filing its Petition for Informal Administrative Proceedings on May 26, 2006.

The parties offer the following JOINT EXHIBITS into evidence:

Joint Exhibit 1: Joint Stipulation.

Joint Exhibit 2: Part IV.A. (Pages 52 through 56) of the Universal Application Instructions.

Joint Exhibit 3: Part IV.A. (Pages 30 and 31) of the Universal Application.

Joint Exhibit 4: Exhibit 44 to Cypress' original application (Local Government Verification of Contribution – Fee Waiver Form and Computation Sheet).

Joint Exhibit 5: Preliminary 2006 HOME Scoring Summary for Cypress dated as of 03/01/2006.

Joint Exhibit 6: Cure submitted by Cypress in response to Item # 8S noted on the preliminary scoring summary.

Joint Exhibit 7: Final 2006 HOME Scoring Summary for Cypress dated as of 05/03/2006.

Respectfully submitted this 20th day of June, 2006.

By: _____

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