

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

PINE BRANCH LIMITED PARTNERSHIP,

Petitioner,

vs.

FHFC Case No: 2007-0324C  
Application No. 2007-153C

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**PETITION FOR INFORMAL  
ADMINISTRATIVE PROCEEDING**

Petitioner, PINE BRANCH LIMITED PARTNERSHIP (“Pine Branch”), pursuant to sections 120.569 and 120.57(2), Florida Statutes, and Rules 67-48.005 and 28-106.301, Florida Administrative Code (“F.A.C.”), hereby requests an informal administrative proceeding to challenge the scoring of its Application for 2007 tax credit funding by Respondent, the FLORIDA HOUSING FINANCE CORPORATION (“FHFC”), and states:

1. The name and address of the agency affected by this action are:

Florida Housing Finance Corporation  
City Center Building, Suite 5000  
227 N. Bronough Street  
Tallahassee, Florida 32301-1329

2. The address and telephone number of the Petitioner are:

Pine Branch Limited Partnership  
6455 Gateway Avenue, Suite A  
Sarasota, FL 34231  
Telephone No. - (941) 929-1279

FHFC Case No: 2007-0324C  
Application No. 2007-153C

3. The name, address, telephone number, and fax number of the Petitioner's representative, which shall be the Petitioner's address for service purposes during the course of this proceeding, are:

Warren H. Husband  
Metz, Hauser, Husband & Daughton, P.A.  
P.O. Box 10909  
Tallahassee, Florida 32302-2909  
Telephone No. (850) 205-9000  
Facsimile No. (850) 205-9001

**The Low-Income Housing Tax Credit Program**

4. The United States Congress has created a program, governed by Section 42 of the Internal Revenue Code ("IRC"), by which federal income tax credits are allotted annually to each state on a per capita basis to encourage private developers to build and operate affordable low-income housing for families. These tax credits entitle the holder to a dollar-for-dollar reduction in the holder's federal tax liability, which can be taken for up to ten years if the project continues to satisfy all IRC requirements.

5. The tax credits allocated annually to each state are awarded by state "housing credit agencies" to single-purpose applicant entities created by real estate developers to develop specific multi-family housing projects. An applicant entity will then sell this ten-year stream of tax credits, typically to a "syndicator," with the sale proceeds generating much of the funding necessary for development and construction of the project. The equity produced by this sale of tax credits in turn reduces the amount of long-term debt required for the project, making it possible to operate the project at rents that are affordable to low-income and very-low-income tenants.

6. Pursuant to section 420.5099, Florida Statutes, FHFC is the designated “housing credit agency” for the State of Florida and administers Florida’s low-income housing tax credit program. Through this program, FHFC allocates Florida’s annual fixed pool of federal tax credits to developers of affordable housing.

7. Because FHFC’s available pool of federal tax credits each year is limited, qualified projects must compete for this funding. To assess the relative merits of proposed projects, FHFC has established a competitive application process pursuant to Chapter 67-48, F.A.C. Specifically, FHFC’s application process for 2007, as set forth in Rules 67-48.002-.005, F.A.C., involves the following:

- a. the publication and adoption by rule of an application package;
- b. the completion and submission of applications by developers;
- c. FHFC’s preliminary scoring of applications;
- d. an initial round of administrative challenges in which an applicant may take issue with FHFC’s scoring of another application by filing a Notice of Possible Scoring Error (“NOPSE”);
- e. FHFC’s consideration of the NOPSE’s submitted, with notice to applicants of any resulting change in their preliminary scores;
- f. an opportunity for the applicant to submit additional materials to FHFC to “cure” any items for which the applicant received less than the maximum score;
- g. a second round of administrative challenges whereby an applicant may raise scoring issues arising from another applicant’s cure materials by filing a Notice of Alleged Deficiency (“NOAD”);
- h. FHFC’s consideration of the NOAD’s submitted, with notice to applicants of any resulting change in their scores;

- i. an opportunity for applicants to challenge, via informal or formal administrative proceedings, FHFC's evaluation of any item for which the applicant received less than the maximum score; and
- j. final scores, ranking, and allocation of tax credit funding to applicants through the adoption of final orders.

**Issue Presented:**

**Did Pine Branch Present Sufficient Evidence in its Cure Materials to Demonstrate that the Pine Branch Development Does Not Share Any Common Financial Beneficiaries With the Oak Branch Development?**

8. In its preliminary scoring, FHFC awarded the Pine Branch Application the maximum score of 66 points, but determined that the Application failed a threshold financing requirement due to a defect in its loan commitment letter.<sup>1</sup>

9. After considering various NOPSE's filed by competitors, Pine Branch's maximum score of 66 points remained in tact, but FHFC decided to reject the Pine Branch Application outright and remove it from further funding consideration:

Per subsection 67-48.004(11), F.A.C., Applications shall be limited to one submission per subject property. A NOPSE provided information that the properties provided in Application Nos. 2007-153C and 2007-154C share one or more of the same Financial Beneficiaries. The Family Demographic was selected in both Applications and it is apparent that the property sites are contiguous. Therefore, the Application with the lowest (best) lottery number must be rejected. The Application with the lowest lottery number will still be rejected even if the Applicant withdraws the Application with the highest (worst) lottery number. Application No. 2007-153C received a lottery number of 25 and Application No. 2007-154C received a lottery number of 92. Therefore, Application No. 2007-153C is rejected.

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<sup>1</sup> This defect was later cured to FHFC's satisfaction.

*FHFC Scoring Summary for Applic. #2007-153C, Item 3T (attached as “Appendix A”).*

10. The rule cited by FIIFC in its Scoring Summary, Rule 67-48.004(11), states as follows:

Except for Local Government-issued Tax-Exempt Bond-Financed Developments that submit a separate Application for non-competitive Housing Credits, Applications shall be limited to one submission per subject property. Two or more Applications, submitted in the same Funding Cycle, that have the same demographic commitment and one or more of the same Financial Beneficiaries, will be considered submissions for the same Development if any of the following is true: (i) any part of any of the property sites is contiguous with any part of any of the other property sites, or (ii) any of the property sites are divided by a street or easement, or (iii) it is readily apparent from the Applications, proximity, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of development. If two or more Application are considered to be submissions for the same Development, the Corporation will reject all such Applications except the Applications with the highest (worst) lottery number. The Application with the lowest lottery number will still be rejected even if the Applicant withdraws the Application with the highest (worst) lottery number.<sup>2</sup>

11. The rule cited by FIIFC thus raises three questions regarding whether Application No. 2007-153C (Pine Branch) and Application No. 2007-154C (Oak Branch) will be considered “submissions for the same Development”:

- a. Do the two Applications have the same demographic commitment?
- b. Do the two Applications have “one or more of the same Financial Beneficiaries”?

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<sup>2</sup> All emphasis in quoted material is supplied by the undersigned unless otherwise noted.

- c. Is any part of the Pine Branch site contiguous with any part of the Oak Branch site?

12. In this proceeding, there is no dispute that the answers to questions “a.” and “c.” are “yes.” As the Applications themselves state, the Pine Branch and Oak Branch Developments both have the same demographic commitment of “Family.” Further, as the land contracts in the two Applications also make clear, the Pine Branch site is contiguous with the Oak Branch site. This proceeding therefore centers on the remaining factor cited by FHFC from the rule – whether there are one or more common “Financial Beneficiaries” between the Pine Branch Development and the Oak Branch Development.

13. FHFC has defined the term “Financial Beneficiary” in Rule 67-48.002(47), F.A.C., as follows:

“Financial Beneficiary” means any Developer and its principals or Principals of the Applicant entity who receives or will receive a financial benefit as outlined in paragraphs (a) and (b) below and as further described in Rule 67-48.0075, F.A.C.:

(a) 3 percent or more of Total Development Cost if Total Development Cost is \$5 million or less; or

(b) 3 percent of the first \$5 million and 1 percent of any costs over \$5 million if Total Development Cost is greater than \$5 million.

14. FHFC has defined in Rule 67-48.002(85) the term “Principal,” as used above, as follows:

“Principal” means an Applicant, any general partner of an Applicant, and any officer, director, or any shareholder of any Applicant or shareholder of any general partner of an Applicant.

15. As referenced in the definition of “Financial Beneficiary,” the relevant provisions of Rule 67-48.0075, F.A.C., state:

(5) Financial Beneficiary, as defined in Rule 67-48.002, F.A.C., does not include third party lenders, third party management agents or companies, Housing Credit Syndicators, credit enhancers who are regulated by a state or federal agency and who do not share in the profits of the Development or contractors whose total fees are within the limit described in Rule 67-48.0072, F.A.C.

16. Keeping all of these provisions in mind, it must be recognized from the outset that **no** Applicant (or its principals) and **no** Developer (or its principals) could have already received a financial benefit of the requisite magnitude from either Development, since neither Development has produced any income or profit. Both Developments are merely concepts at this point in time. Thus, any such financial benefit would be a future one, contingent upon the financial performance of the Developments themselves.

17. The two determinative questions then that must be asked under the above-quoted FHFC rules about the Pine Branch Development and Oak Branch Development are as follows:

- a. For each Development, who are the Applicant and its principals and who are the Developer and its principals that might qualify as “Financial Beneficiaries” and lay claim to such a future financial benefit?
- b. Is there a principal in one Development that is also a principal in the other Development, resulting in the two Developments sharing one or more common “Financial Beneficiaries”?

18. FHFC requires each Applicant to disclose the identity of its principals and the principals of its Developer in Exhibit 9 of the Application. Exhibit 9 from the original

Pine Branch Application and the original Oak Branch Application are attached as Appendix B to this Petition. Neither of these exhibits were revised in any way in the cure materials submitted by the respective Applicants.

19. The following summarizes the principals of the respective Applicants and their Developers, as listed in Exhibit 9 of each Application:

	<b><u>Pine Branch</u></b>	<b><u>Oak Branch</u></b>
<b><u>Applicant</u></b>	<b><u>Pine Branch Limited Partnership</u></b>	<b><u>Oak Branch Apartments Limited Partnership</u></b>
- Limited Partner	Robert Lomas	Donald W. Paxton
- General Partner	Beneficial Pine Branch LLC	Beneficial Oak Branch LLC
- Sole Member of GP	AHG-RLI LLC	Beneficial Holdings II LLC
- Manager of Sole Member of GP	Robert Lomas	Donald W. Paxton
- Members of Sole Member of GP	Robert Lomas	- Paxton Family Holdings LLC - O'Grady Family Holdings LLC

	<b><u>Pine Branch</u></b>	<b><u>Oak Branch</u></b>
<b><u>Developer</u></b>	<b><u>RLI Development, Inc.</u></b>	<b><u>Beneficial Development II LLC</u></b>
- Management	Robert Lomas (Officer & Director)	Donald W. Paxton (Manager)
- Ownership	Robert Lomas	- Paxton Family Holdings LLC - O'Grady Family Holdings LLC

20. As can be seen above, the principals of the two Applicants and the two Developers are separate and distinct across the two Applications, in full compliance with FHFC's rules. This disclosure of principals in Exhibit 9 was accurate at the time it was submitted to FHFC, and it remains accurate to the present day. No evidence whatsoever has been produced by FHFC, or by competing Applicants filing NOPSE's or NOAD's,



demonstrating that this disclosure of principals is incorrect or that there are in fact some other undisclosed principals shared between the two Developments.

21. In its NOPSE scoring, FHFC stated the following as the basis for its rejection of the Pine Branch Application: “A NOPSE provided information that the properties provided in Application Nos. 2007-153C and 2007-154C share one or more of the same Financial Beneficiaries.” *See* Appendix A (Item 3T).

22. On the contrary, however, the “information” provided in the referenced NOPSE can be distilled down to one simple, wholly unsubstantiated, piece of conjecture – since Mr. Lomas and Mr. Paxton are co-principals (and potential co-Financial Beneficiaries) with respect to other Applicants and Developers in the 2007 Universal Cycle, and apparently have other business dealings together, then they must also be co-principals (and potential co-Financial Beneficiaries) of both the Pine Branch Development and the Oak Branch Development.

23. Of course, this bald assertion offers absolutely no evidence whatsoever that the Applicant’s respective Exhibit 9’s are anything other than an accurate listing of the principals of the respective Applicants and Developers. The fact that Mr. Lomas and Mr. Paxton are co-principals (and potential co-Financial Beneficiaries) with respect to other Applicants and Developers in the 2007 Universal Cycle is utterly irrelevant under the express terms of FHFC’s rule, which confines its reach to the two contiguous Developments at issue – Pine Branch and Oak Branch.

24. Nor does this bald assertion counter the fact that, whatever their other business relationships may be, it is perfectly legitimate for Mr. Lomas and Mr. Paxton to decide to separately develop the Pine Branch project and the Oak Branch project. Not only is such an arrangement not prohibited by FHFC's rules, but it expressly complies with the terms of Rule 67-48.004(11), as cited by FHFC. Indeed, Mr. Lomas and Mr. Paxton looked to this rule and relied upon its express terms in structuring their business affairs relative to these two Applications in order to ensure that no one party would be in a position to be a Financial Beneficiary of both Developments.

25. In terms of responding to this issue via "cure" materials, FHFC's rules offered no guidance to Pine Branch as to what needed to be provided to further demonstrate that the Pine Branch Development and the Oak Branch Development do not share common principals across Applicants or Developers and that the Exhibit 9's in the respective Applications are accurate and correct. Nor did FHFC's Scoring Summary rejecting the Pine Branch Application provide any guidance on what FHFC was looking to receive from Pine Branch in this regard.

26. Faced with these circumstances, Mr. Lomas and Mr. Paxton both executed affidavits, under oath and penalty of perjury, attesting to the fact that the Pine Branch Development and the Oak Branch Development share no common Financial Beneficiaries. Originals of these affidavits were provided in the cure materials for the Pine Branch Application. *See Appendix C.*

27. In spite of the Exhibit 9's contained in the Applications and the affidavits of Mr. Lomas and Mr. Paxton, as well as the inability of competing Applicants to produce any actual evidence that these documents were inaccurate, FHFC decided to continue to reject the Pine Branch Application on the grounds that:

The Applicant attempted to cure Item 3T. However, the Cure provided insufficient evidence to remedy the issues raised.

*FHFC Scoring Summary for Applic. #2007-153C, Item 5C (attached as "Appendix A").<sup>3</sup>*

28. On the contrary, however, Pine Branch did provide sufficient evidence, both in the original Applications and in the cure materials, to refute and respond to the unsubstantiated allegations lodged by Pine Branch's competitors. In contrast to this pure innuendo – drawn from Applications other than the only two actually at issue here (Pine Branch and Oak Branch), Pine Branch has demonstrated again and again that its principals and those of its Developer are distinct from those of the Oak Branch Development. The only parties providing "insufficient evidence" in this situation were the competing Applicants who filed NOPSE's or NOAD's against Pine Branch. Unfortunately, FHFC chose to rely on that insufficient "evidence" as grounds for rejecting the Pine Branch Application.

29. FHFC's contention that Pine Branch produced "insufficient evidence" in its cure is materially identical to the situation presented in another recent FHFC case,

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<sup>3</sup> Pine Branch's substantial interests in competing for 2007 tax credit funding have therefore been materially and adversely affected. Absent this rejection by FHFC, the Pine Branch Application would be sufficiently ranked to receive its requested tax credit funding.

*Creative Choice Homes XXX, Ltd. v. FHFC*, Case No. 2004-027-UC (FHFC Oct. 14, 2004). In that case, one of the Applicant's land contracts contained an addendum stating that the contract was contingent upon the approval of the seller's board of directors. FHFC initially found that the Applicant had failed to demonstrate the threshold requirement of site control, because "[t]he Applicant has not shown that this sale has been approved [by the seller's board]." *Id.*, Recommended Order at ¶16 [quoting FIIFC Scoring Summary].

30. In its cure materials, the Applicant submitted a letter from the corporate seller's general counsel indicating that the board of directors had indeed approved the contract in question. FHFC, however, continued to hold that site control had not been demonstrated, stating:

The cure is deficient because no consents to action, resolution, or other official action of the . . . Board of Directors demonstrating the Board's consent was provided.

*Id.*, Recommended Order at ¶18 [quoting FIIFC Scoring Summary].

31. FIIFC's Board later reversed this scoring decision, based upon the recommendations and findings of its designated hearing officer.<sup>4</sup> In recommending reversal, the hearing officer observed that FIIFC's Scoring Summary did not specify what evidence of board approval was desired by FHFC. Rather, the Scoring Summary merely pointed out the need to provide some reasonable and reliable evidence that the

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<sup>4</sup> As a result, this Application was reinstated and ultimately ranked high enough to receive its requested tax credit funding. *See FHFC 2004 Universal Application Cycle Ranking* (Oct. 14, 2004).

board had approved the contract, which could have been produced in many different forms, e.g., corporate minutes, a written acceptance from each director, etc. *Id.*, Recommended Order at ¶31. As such, the hearing officer held:

Absent specific direction by Florida Housing, an Applicant does not have to guess which means of showing that the sale has been approved would be acceptable to Florida Housing. What must be concluded as a matter of law to be acceptable is any reasonable and reliable method for showing that the sale has been approved.

*Id.*, Recommended Order at ¶31.

32. In this instance, one reasonable and reliable method was to provide the referenced letter “from the attorney represented as General Counsel for the Seller who . . . unequivocally confirms that the Board of Directors . . . approved the subject Contract.” *Id.*, Recommended Order at ¶32. While the letter in question was not executed under oath, the hearing officer observed that the attorney would be subject to professional discipline if the letter proved false, further bolstering its reliability. The hearing officer thus held that it was reasonable and rational for FHFC to rely upon this statement from an “agent for the Seller apparently authorized to act on the part of the corporation,” or, stated otherwise, that it was unreasonable and irrational for FHFC to dismiss the letter as insufficient. *Id.*

33. Similarly, in this case, FHFC provided no direction to Pine Branch on what it needed to produce to satisfy FHFC that there are no common principals between the Applicants and Developers for the Pine Branch and Oak Branch projects. As such, Pine Branch provided affidavits in its cure materials, under oath and penalty of perjury, from

the principal of Pine Branch and its Developer (Mr. Lomas) and the principal of the Oak Branch Applicant and its Developer (Mr. Paxton), attesting that there are no common Financial Beneficiaries between these two projects and that there were none at the time of submitting the original Applications to FHFC. In the complete absence of any evidence to the contrary, it is patently unreasonable for FHFC not to rely upon these affidavits and the information contained in the Applications submitted.

34. FHFC must explicitly state its requirements in its adopted application and rules. *City View Apt's at Hughes Sq. v. FHFC*, Case No. 2004-028-UC, Rec. Order at ¶46 (FHFC Oct. 14, 2004). Applicants are entitled to rely upon adopted FHFC rules, and FHFC cannot enlarge upon the express requirements of those rules after applications are submitted. *Pines-Cypress, Ltd. v. FHFC*, Case No. 2002-0072, Rec. Order at ¶29 (FHFC Oct. 24, 2002).<sup>5</sup>

35. Further, as a fundamental matter of due process, if FHFC wanted Pine Branch to produce some specific item or type of evidence to address the NOPSE issue, then it was incumbent upon FHFC to tell Pine Branch what it was required to produce, instead of leaving Pine Branch to guess at what might or might not satisfy FHFC's unspoken desires. This must particularly be the case where such notice triggered Pine Branch's right under FHFC's rules to submit additional documentation to "cure" the alleged defect

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<sup>5</sup> See also *Newport Sound Partners, Ltd. v. FHFC*, Case No. 2002-0058, Rec. Order at pp. 5-9 (FHFC Oct. 10, 2002); *The Landings on Millennia Blvd. v. FHFC*, Case No. 2002-0057, Rec. Order at pp. 7-8 (FHFC Oct. 10, 2002).

at issue and avoid the rejection of its Application. *Creative Choice Homes XXX, Ltd. v. FHFC*, Case No. 2004-027-UC (FHFC Oct. 14, 2004).<sup>6</sup>

36. Here, no FHFC rule directed Pine Branch on what additional “evidence” it needed to provide to satisfy FHFC that neither Pine Branch nor its Developer share common principals with the Oak Branch Applicant and its Developer. Further, FHFC provided no such direction to the Applicant in FHFC’s Scoring Summary.

37. In the face of this lack of direction from FHFC, Pine Branch provided ample evidence that neither Pine Branch nor its Developer share common principals with the Oak Branch Applicant and its Developer, thus ensuring compliance with the express terms of FHFC’s Rule 67-48.004(11).

38. Moreover, if there is any ambiguity with respect to Rule 67-48.004(11) or what Pine Branch was required to provide to FHFC to address this scoring issue, such ambiguity

should be decided in favor of the applicants. To do otherwise would unfairly place the applicants in the unfortunate role of having to guess at their risk how to resolve any ambiguity inherent in the Corporation rule.

*Ybor III, Ltd., v. FHFC*, FHFC Case No. 2001-091, Rec. Order at p. 10, (FHFC Sept. 20, 2001); *Cypress Senior Village, LLC v. FHFC*, FHFC Case No. 2006-027UC, Rec. Order

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<sup>6</sup> See also *Brisas Del Mar, Ltd. v. FHFC*, FHFC Case No. 2001-087 (FHFC Sept. 20, 2001) (FHFC conceded at hearing that it had not given sufficient notice to the applicant of a curable defect in Form 7 regarding the omission of the word “street” from the Development Address during its preliminary scoring and rescinded the resulting 1.5-point penalty imposed).

at ¶32 (FHFC July 28, 2006). This must particularly be the case here where the apparent construction adopted by FHFC would result in the harshest of consequences – rejection of the Application.

39. As Pine Branch is well aware, FHFC (and its credit underwriters) will have ample opportunity to review and scrutinize all of the organizational documents of Pine Branch and its Developer to ensure that there are no common Financial Beneficiaries with the Oak Branch Application. As stated in the Exhibit 1 signed by all Applicants:

The Applicant acknowledges that the Corporation may conduct its own independent review, analysis and verification of all information contained in this Application and that any funding preliminarily secured by the Applicant is expressly conditioned upon such verification, the successful completion of credit underwriting, all necessary approvals by the Board of Directors, Corporation legal counsel, Bond Counsel, if applicable, the Credit Underwriter, and Corporation Staff.

If preliminary funding is approved, the Applicant will promptly furnish such other supporting information, documents, and fees as may be requested or required.

40. Moreover, FHFC rule's provide harsh penalties – denial of funding and up to a two-year suspension from all FHFC programs – for Applicants and their affiliates determined to have engaged in fraudulent actions or to have materially misrepresented information in an Application. Rule 67-48.004(12), F.A.C.

41. In conclusion, per the rule cited in FHFC's Scoring Summary, Rule 67-48.004(11), the issue here is whether Pine Branch has sufficiently demonstrated that its Development and the Oak Branch Development do not share any common "Financial Beneficiaries," i.e., there are no parties in common among the "Developer and its

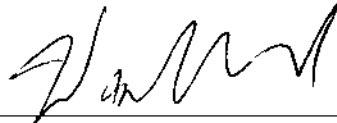


principals or Principals of the Applicant entity.” Rule 67-48.002(47), F.A.C. (definition of “Financial Beneficiary”). Pine Branch and Oak Branch provided ample evidence to FHFC to this effect, and complied with the express terms of FHFC’s Rule 67-48.004(11).

WHEREFORE, Petitioner, Pine Branch Limited Partnership, requests that:

- a. FHFC reinstate the Pine Branch Application and revise its scoring to reflect satisfaction of all threshold items;
- b. FHFC conduct an informal hearing on the matters presented in this Petition if there are no disputed issues of material fact to be resolved;
- c. FHFC forward this Petition to DOAH for a formal administrative hearing pursuant to section 120.57(1), Florida Statutes, if there are disputed issues of material fact to be resolved, or if non-rule policy forms the basis of any FHFC actions complained of herein;
- d. FHFC’s designated hearing officer or an Administrative Law Judge, as appropriate, enter a Recommended Order directing FHFC to reinstate the Pine Branch Application and revise its scoring to reflect satisfaction of all threshold items;
- e. FHFC enter a Final Order reinstating the Pine Branch Application and revising its scoring to reflect satisfaction of all threshold items; and
- f. Pine Branch be granted such other and further relief as may be deemed just and proper.

Respectfully submitted on this 3rd day of August, 2007.

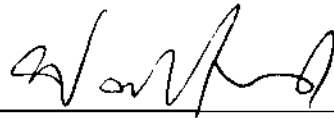


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850/205-9000  
850/205-9001 (Fax)  
Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original and a true and correct copy of the foregoing document were served via hand delivery to the **CORPORATION CLERK**, Florida Housing Finance Corporation, 227 N. Bronough Street, City Center Building, Suite 5000, Tallahassee, Florida, 32301-1329, on this 3<sup>rd</sup> day of August, 2007.



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Attorney

## 2007 MMRB, SAIL & HC Scoring Summary

As of: 07/19/2007

File # 2007-153C

Development Name: Pine Branch Apartments

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points
07 - 19 - 2007	66	N	7.5
Preliminary	66	N	6.25
NOPSE	66	N	6.25
Final	66	N	7.5
Final-Ranking	0	N	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
Ability To Proceed									
4S	III	C	1.	Site Plan/Plat Approval	2	2	2	2	0
5S	III	C	4.	Evidence of Zoning	3	3	3	3	0
Set-Aside Commitments									
6S	III	E	1.b.(2)(b)	Total Set-Aside Commitment	3	3	3	3	0
7S	III	E	3.	Affordability Period	5	5	5	5	0
Resident Programs									
8S	III	F	1.	Programs for Non-Elderly & Non-Homeless	6	6	6	6	0
8S	III	F	2.	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
8S	III	F	3.	Programs for Elderly	6	0	0	0	0
9S	III	F	4.	Programs for All Applicants	8	8	8	8	0

## 2007 MMRB, SAIL & HC Scoring Summary

As of: 07/19/2007

Development Name: Pine Branch Apartments

File # 2007-153C

**Scores:**

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
10S	IV	A.		Local Government Support	5	5	5	5	0
11S	IV	B.		Contributions Incentives	4	4	4	4	0

**Threshold(s) Failed:**

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	V	D		Loan Commitment	The Column Financial loan commitment dated April 3, 2007 listed the amount of the construction commitment as an "estimated loan amount." Therefore, the commitment is not considered firm and is not counted as a source of construction financing.	Preliminary	Final
2T	V	B		Construction Financing Shortfall	The Application has a construction financing shortfall of \$5,594,349.	Preliminary	Final
3T				Program Requirements	Per subsection 67-48.004(11) F.A.C., Applications shall be limited to one submission per subject property. A NOPSE provided information that the properties provided in Application Nos. 2007-153C and 2007-154C share one or more of the same Financial Beneficiaries. The Family Demographic was selected in both Applications and it is apparent that the property sites are contiguous. Therefore, the Application with the lowest (best) lottery number must be rejected. The Application with the lowest lottery number will still be rejected even if the Applicant withdraws the Application with the highest (worst) lottery number. Application No. 2007-153C received a lottery number of 25 and Application No. 2007-154C received a lottery number of 92. Therefore, Application No. 2007-153C is rejected.	NOPSE	

**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	1.25	1.25	1.25	0
2P	III	A	10.a.(2)(b)	Public School	1.25	0	0	1.25	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	1.25	0
6P	III	A	10.b.	Proximity to Development on FHFC Development Proximity List	3.75	3.75	3.75	3.75	0

## 2007 MMRB, SAIL & HC Scoring Summary

As of: 07/19/2007

File # 2007-153C Development Name: Pine Branch Apartments

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

Item #	Reason(s)	Created As Result of	Rescinded as Result of
2P	The 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

### Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
1C	V	B		Pro Forma	The Applicant listed "reserves required by lender" in the amount of \$227,799. However, number (b) on the Development Cost Pro Forma Notes states that, "The only reserves allowed are contingency reserves for rehabilitation and construction." Therefore, the Development Cost was reduced by \$227,799.	Preliminary	
2C	V	B		Pro Forma	The maximum Developer Fee of 16% was exceeded by \$36,448.00. Therefore, the Developer Fee and Total Development Cost were reduced.	Preliminary	
3C	V	D		Commitment to Defer Developer Fee	The Applicant provided a Commitment to Defer Developer Fee form listing \$2,713,355 for construction and permanent financing. However, because this exceeded the 16% maximum, only \$2,676,907 could be used as a source of financing.	Preliminary	
4C	V	B		Pro Forma	The Applicant attempted to cure Items 1C, 2C and 3C. However, the Pro Forma provided reflects the same Total Development Cost as the first Pro Forma. It therefore appears that these Items have not been cured because the reserve amounts have simply been reflected in a different line item.	Final	
5C				Program Requirements	The Applicant attempted to cure Item 3T. However, the Cure provided insufficient evidence to remedy the issues raised.	Final	

**Pine Branch Limited Partnership**

a Florida limited partnership  
Ownership Structure

**Sole General Partner of applicant - .01%:**

**Beneficial Pine Branch LLC**, a Florida limited liability company  
6455 Gateway Avenue  
Suite A  
Sarasota, FL 34231

**Sole Member (100%): AHG-RLI LLC**, a Florida limited liability company

Member and Manager (100%): Robert Lomas, individually

**Initial Limited Partner of applicant – 99.99%**  
(to be replaced at syndication closing)

**Robert Lomas**, an individual

There are no warrant holders or option holders in the proposed development.

**DEVELOPER:**

**RLI Development, Inc.**, an Ohio corporation

Officer and Director: Robert Lomas, President, *sole Shareholder*

**Oak Branch Apartments Limited Partnership,**  
a Florida limited partnership  
Ownership Structure

**Sole General Partner of applicant - .01%:**

**Beneficial Oak Branch LLC**, a Florida limited liability company  
6455 Gateway Avenue  
Suite A  
Sarasota, FL 34231

**Sole Member**

**(100%): Beneficial Holdings II LLC**, a Florida limited liability company

Holdings LLC, a Florida limited liability company

Member (90%): Paxton Family

Holdings LLC, a Florida limited liability company

Member (10%): O'Grady Family

Manager: Donald W. Paxton

**Initial Limited Partner of applicant – 99.99%**

(to be replaced at syndication closing)

**Donald W. Paxton**, an individual

There are no warrant holders or option holders in the proposed development.

**DEVELOPER:**

**Beneficial Development II LLC**, a Florida limited liability company

Member (90%): Paxton Family Holdings LLC, a Florida limited liability company

Member (10%): O'Grady Family Holdings LLC, a Florida limited liability company

Manager: Donald W. Paxton

## 2007 CURE FORM

(Submit a SEPARATE form for EACH reason relative to  
EACH Application Part, Section, Subsection, and Exhibit)

This Cure Form is being submitted with regard to **Application No. 2007- 53C** and pertains to:

Part \_\_\_\_\_ Section \_\_\_\_\_ Subsection \_\_\_\_\_ Exhibit No. \_\_\_\_\_ (if applicable)

The attached information is submitted in response to the 2007 Universal Scoring Summary Report because:

1. Preliminary Scoring and/or NOPSE scoring resulted in the imposition of a failure to achieve maximum points, a failure to achieve threshold, and/or a failure to achieve maximum proximity points relative to the Part, Section, Subsection, and/or Exhibit stated above. Check applicable item(s) below:

	2007 Universal Scoring Summary Report	Created by:	
		Preliminary Scoring	NOPSE Scoring
<input type="checkbox"/> Reason Score Not Maxed	Item No. _____S	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Reason Failed Threshold	Item No. 3T	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Reason Proximity Points Not Maxed	Item No. _____P	<input type="checkbox"/>	<input type="checkbox"/>

2. Other changes are necessary to keep the Application consistent:

This revision or additional documentation is submitted to address an issue resulting from a cure to Part \_\_\_\_\_ Section \_\_\_\_\_ Subsection \_\_\_\_\_ Exhibit \_\_\_\_\_ (if applicable).



Brief Statement of Explanation regarding  
Application 2007 – 153C

Provide a separate brief statement for each Cure

**Issue 1C:**

**Per subsection 67-48.004(11), F.A.C., Applications shall be limited to one submission per subject property. A NOPSE provided information that the properties provided in Application Nos. 2007-153C and 2007-154C share one or more of the same Financial Beneficiaries. The Family Demographic was selected in both Applications and it is apparent that the property sites are contiguous. Therefore, the Application with the lowest (best) lottery number must be rejected. The Application with the lowest lottery number will still be rejected even if the Applicant withdraws the Application with the highest (worst) lottery number. Application No. 2007-153C received a lottery number of 25 and Application No. 2007-154C received a lottery number of 92. Therefore, Application No. 2007-153C is rejected.**

**Cure:**

**Cure:**

**FHFC Rule 67-48.004(11) states in relevant part:**

**(11) Except for Local Government-issued Tax-Exempt Bond-Financed Developments that submit a separate Application for non-competitive Housing Credits, Applications shall be limited to one submission per subject property. Two or more Applications, submitted in the same Funding Cycle, that have the same demographic commitment and one or more of the same Financial Beneficiaries will**

**be considered submissions for the same Development if any of the following is true:**

**(i) any part of any of the property sites is contiguous with any part of any of the other property sites, or (ii) any of the property sites are divided by a street or easement, or (iii) it is readily apparent from the Applications, proximity, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of development.**

**As evidenced in Exhibit 9 of the Pine Branch Apartments Application (FHFC Applic. #2007-153C) and Exhibit 9 of the Oak Branch Apartments Application (FHFC Applic. #2007-154C), and in the affidavits included with this cure, these two Applications do not have “one or more of the same Financial Beneficiaries.” As such, these two Applications may not be considered “submissions for the same Development” under the express terms of the above-quoted rule, and the Pine Branch Apartments Application must be reinstated.**

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

IN RE: PINE BRANCH APARTMENTS (#2007-153C)  
\_\_\_\_\_ /

**AFFIDAVIT OF ROBERT LOMAS**

Before me, the undersigned authority, personally appeared ROBERT LOMAS, who, being duly sworn, states that he personally knows the following facts and that the same are true and accurate:

1. I have reviewed the definition of the term "Financial Beneficiary" adopted by the Florida Housing Finance Corporation ("FHFC") and set forth in Florida Administrative Code Rule 67-48.002(47), which states as follows:

"Financial Beneficiary" means any Developer and its principals or Principals of the Applicant entity who receives or will receive a financial benefit as outlined in paragraphs (a) and (b) below and as further described in Rule 67-48.0075, F.A.C.:

(a) 3 percent or more of Total Development Cost if Total Development Cost is \$5 million or less; or

(b) 3 percent of the first \$5 million and 1 percent of any costs over \$5 million if Total Development Cost is greater than \$5 million.

2. I have also reviewed the definitions of all FHFC-defined terms used in the above-referenced definition, including the definition of "Principal" adopted by FHFC and set forth in Florida Administrative Code Rule 67-48.002(85), which states as follows:

"Principal" means an Applicant, any general partner of an Applicant, and any officer, director, or any shareholder of any Applicant or shareholder of any general partner of an Applicant.

3. As referenced in the aforementioned definition of "Financial Beneficiary," I have also reviewed the provisions of Florida Administrative Code Rule 67-48.0075, which includes the following:

(5) Financial Beneficiary, as defined in Rule 67-48.002, F.A.C., does not include third party lenders, third party management agents or companies, Housing Credit Syndicators, credit enhancers who are regulated by a state or federal agency and who do not share in the profits of the Development or contractors whose total fees are within the limit described in Rule 67-48.0072, F.A.C.

4. With respect to the 2007 Universal Cycle Application for Pine Branch Apartments (FHFC Applic. No. 2007-153C), I am a principal of both the Applicant for the Pine Branch Apartments project (Pine Branch Limited Partnership) and the Developer of the Pine Branch Apartments project (RLI Development, Inc.), and I have the authority to act on behalf of both entities and to bind same.

5. I have personal knowledge of the identity of all "Financial Beneficiaries" of the aforementioned Pine Branch Apartments project, as that term is defined by FHFC.

6. I also have personal knowledge of the identity of all "Financial Beneficiaries" of the 2007 Universal Cycle Application for Oak Branch Apartments (FHFC Applic. No. 2007-154C), as that term is defined by FHFC.

7. On both my own behalf and on behalf of Pine Branch Limited Partnership and RLI Development, Inc., I hereby attest that no "Financial Beneficiary" of the aforementioned Pine Branch Apartments project, as that term is defined by FHFC, was or is a "Financial Beneficiary" of the Oak Branch Apartments project, either at present or as of the Application Deadline on April 10, 2007.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

FURTHER AFFIANT SAYETH NOT.

*Robert Lomas*  
ROBERT LOMAS  
Date: 6/11/07

STATE OF Colorado  
COUNTY OF Montrose

Sworn to and subscribed before me on June 11<sup>th</sup>, 2007, by ROBERT LOMAS.



My Commission Expires 08-27-09

*Vanessa R. Ellis*  
NOTARY PUBLIC  
Commission No. \_\_\_\_\_

**VANESSA R. ELLIS**

Name of Notary, typed, printed or stamped  
My Commission Expires: 08-27-09

Personally Known \_\_\_\_\_ OR Produced Identification X  
Type of Identification Produced Ohio Div. Lic #1848-077-13-01

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

IN RE: PINE BRANCH APARTMENTS (#2007-153C)  
\_\_\_\_\_ /

**AFFIDAVIT OF DONALD W. PAXTON**

Before me, the undersigned authority, personally appeared DONALD W. PAXTON, who, being duly sworn, states that he personally knows the following facts and that the same are true and accurate:

1. I have reviewed the definition of the term "Financial Beneficiary" adopted by the Florida Housing Finance Corporation ("FHFC") and set forth in Florida Administrative Code Rule 67-48.002(47), which states as follows:

"Financial Beneficiary" means any Developer and its principals or Principals of the Applicant entity who receives or will receive a financial benefit as outlined in paragraphs (a) and (b) below and as further described in Rule 67-48.0075, F.A.C.:

(a) 3 percent or more of Total Development Cost if Total Development Cost is \$5 million or less; or

(b) 3 percent of the first \$5 million and 1 percent of any costs over \$5 million if Total Development Cost is greater than \$5 million.

2. I have also reviewed the definitions of all FHFC-defined terms used in the above-referenced definition, including the definition of "Principal" adopted by FHFC and set forth in Florida Administrative Code Rule 67-48.002(85), which states as follows:

"Principal" means an Applicant, any general partner of an Applicant, and any officer, director, or any shareholder of any Applicant or shareholder of any general partner of an Applicant.

3. As referenced in the aforementioned definition of "Financial Beneficiary," I have also reviewed the provisions of Florida Administrative Code Rule 67-48.0075, which includes the following:

(5) Financial Beneficiary, as defined in Rule 67-48.002, F.A.C., does not include third party lenders, third party management agents or companies, Housing Credit Syndicators, credit enhancers who are regulated by a state or federal agency and who do not share in the profits of the Development or contractors whose total fees are within the limit described in Rule 67-48.0072, F.A.C.

4. With respect to the 2007 Universal Cycle Application for Oak Branch Apartments (FHFC Applic. No. 2007-154C), I am a principal of both the Applicant for the Oak Branch Apartments project (Oak Branch Apartments Limited Partnership) and the Developer of the Oak Branch Apartments project (Beneficial Development II LLC), and I have the authority to act on behalf of both entities and to bind same.

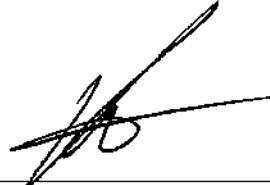
5. I have personal knowledge of the identity of all "Financial Beneficiaries" of the aforementioned Oak Branch Apartments project, as that term is defined by FHFC.

6. I also have personal knowledge of the identity of all "Financial Beneficiaries" of the 2007 Universal Cycle Application for Pine Branch Apartments (FHFC Applic. No. 2007-153C), as that term is defined by FHFC.

7. On both my own behalf and on behalf of Oak Branch Apartments Limited Partnership and Beneficial Development II LLC, I hereby attest that no "Financial Beneficiary" of the aforementioned Oak Branch Apartments project, as that term is defined by FHFC, was or is a "Financial Beneficiary" of the Pine Branch Apartments project, either at present or as of the Application Deadline on April 10, 2007.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

FURTHER AFFIANT SAYETH NOT.




DONALD W. PAXTON  
Date: 6/7/07

STATE OF FLORIDA  
COUNTY OF Sarasota

Sworn to and subscribed before me on June 7, 2007, by DONALD W. PAXTON.

NOTARY PUBLIC-STATE OF FLORIDA  
Laura Gamsby  
Commission # DD679129  
Expires: AUG. 16, 2008  
BONDED THROUGH ATLANTIC BONDING CO., INC.

  
NOTARY PUBLIC  
Commission No. DD679129

Laura Gamsby  
Name of Notary, typed, printed or stamped  
My Commission Expires:

Personally Known  OR Produced Identification   
Type of Identification Produced \_\_\_\_\_