STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

OAK RIDGE ESTATES, LLC, and
AVERY GLEN, LLC,

Petitioner,

v.

FHFC CASE NO.: 2010-009UC
Application No. 2009-171C
Application No. 2009-139C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation ("Board") for consideration and final agency action on April 30, 2010. Oak Ridge Estates, LLC ("Oak Ridge"), and Avery Glen, LLC ("Avery Glen") (each, a "Petitioner" and collectively, the "Petitioners"), each submitted a 2009 Universal Cycle Application ("Application") to Florida Housing Finance Corporation ("Florida Housing") to compete for an allocation of competitive housing credits under the Housing Credit (HC) Program administered by Florida Housing. The Petitioners' applications each met all of Florida Housing's threshold application requirements, received the maximum application score, the maximum proximity tie-breaker points and ability to proceed points. However, based on the

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION
Della M Harrell /DATE 5/4/20

ranking order relative to other applications under Florida Housing's ranking methodology, the Petitioners' applications were not among those included in the funding range in the final rankings. Thereafter, Petitioners timely filed a Petition for an Administrative Proceeding pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Rule 67-48.005(5), Florida Administrative Code, in which each challenged Florida Housing's scoring of one or more competing applications ranked above theirs, alleging in the Petition that but for Florida Housing's erroneous scoring of those applications, Petitioners' applications would have received their requested HC allocations.

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

RULING ON THE CONSENT AGREEMENT

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

ORDER

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

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

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

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

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

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

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

[SIGNATURE PAGE FOLLOWS]

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

FLORIDA HOUSING FINANCE CORPORATION

By: _____
Chairperson

Copies to:

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

Kevin Tatreau
Director of Multifamily Development Programs
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Gary J. Cohen
Shutts & Bowen, LLP
201 Biscayne Blvd., Ste. 1500
Miami, Florida 33131

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

OAK RIDGE ESTATES, LLC, and AVERY GLEN, LLC,

Petitioner,

v.

FHFC CASE NO.: 2010-009UC
Application No. 2009-171C
Application No. 2009-139C
2009 Universal Cycle

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

CONSENT AGREEMENT

Petitioners, Oak Ridge Estates, LLC ("Oak Ridge"), and Avery Glen, LLC ("Avery Glen") (collectively, the "Petitioners"), and Florida Housing Finance Corporation ("Respondent" or "Florida Housing"), by and through undersigned counsel, hereby present this Consent Agreement for consideration by the Florida Housing Board of Directors.

STATEMENT OF THE CASE

1. Petitioner Oak Ridge applied for $961,000.00 in annual tax credits in the 2009 Universal Application Cycle pursuant to Application No. 2009-171C to help finance the development of its project, a 62-unit scattered site townhouse

apartment complex in Tarpon Springs, Florida. Petitioner Oak Ridge's application met all threshold requirements and received the maximum application score, the maximum proximity tie-breaker measurement points, and the maximum ability to proceed tie-breaker points. However, under Florida Housing's ranking procedures, Petitioner's application was not among those in the funding range in the final rankings adopted by Florida Housing.

2. Petitioner Avery Glen applied for $2,150,000.00 in annual tax credits in the 2009 Universal Application Cycle pursuant to Application No. 2009-139C to help finance the development of its project, a 139-unit scattered site garden apartment complex in Sunrise, Florida. Petitioner Avery Glen's application met all threshold requirements and received the maximum application score, the maximum proximity tie-breaker measurement points, and the maximum ability to proceed tie-breaker points. However, under Florida Housing's ranking procedures, Petitioner's application was not among those in the funding range in the final rankings adopted by Florida Housing.

3. Rule 67-48.005(5), Florida Administrative Code ("F.A.C."), provides an entry point and a procedure pursuant to which an applicant in the Universal Application Cycle may file an administrative petition contesting the final rank or score of a competing applicant, subject to certain conditions. The rule is designed to provide a means of redress to an otherwise eligible universal cycle applicant

whose application was not ranked in the funding range in the final ranking adopted by Florida Housing due to an error made by Florida Housing in its scoring of a competing application. The rule requires that the petitioner allege facts in its petition sufficient to demonstrate that "but for" a specifically identified error(s) made by Florida Housing in scoring or ranking the challenged application, the petitioner's application would have been in the funding range at the time Florida Housing issued its final rankings.

4. Petitioners timely filed their petition (the "Petition") challenging Florida Housing's scoring of the following applications (the "Challenged Applications") submitted during the 2009 Universal Application Cycle:

The Lodges at Pinellas Park, Application No. 2009-097

Dr. Kennedy Homes, Application No. 2009-144C

Ehlinger Apartments, Application No. 2009-146C

5. Specifically, the scoring issue raised by Petitioners is whether the development site in each of the Challenged Applications constitutes a "Scattered Site" development as that term is defined in Rule 67-48.002(106), F.A.C. Petitioners allege that Florida Housing incorrectly determined that the development site in each of the Challenged Applications did not constitute a Scattered Site.

6. To the extent Petitioners raise in their Petition issues regarding the Challenged Applications other than that identified in Paragraph 5 above and

subject to Paragraph 21 below, Petitioners hereby withdraw such allegations and their Petition shall be deemed amended accordingly with the effect that the only scoring error being challenged by Petitioners in this proceeding is the one described in Paragraph 5.

BACKGROUND - THE ½ POINT REDUCTION

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

8. Among the cures affected by the ½ point reduction were some of those necessary to address deficiencies flowing from a scoring determination that an applicant's development site was a Scattered Site (in those cases where the

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

THE CHALLENGED APPLICATIONS

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

10. While bound by the literal language in the rule for purposes of scoring the Challenged Applications, Florida Housing recognized that the development site in each of those applications, despite the presence of the easements in question, was not intended to be captured within the Scattered Site definition.

11. Subsequently, when the applicants in the Challenged Applications filed their respective petitions contesting Florida Housing's scoring determination that each of their development sites was a Scattered Site, Florida Housing reconsidered that scoring determination and, in each case, agreed that the easement(s) in question did not divide the development site within the ***intended*** meaning of a Scattered Site as defined in Rule 67-48.002(106). Emphasis added. The agreement in each case is evidenced by a consent agreement between Florida Housing and the applicant, and adopted by Final Order (collectively, the "Challenged Applications Final Orders").[1]

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

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

scored the Challenged Applications based on the literal language in the rule definition. The determination made by Florida Housing in the Challenged Applications Final Orders effectively forced Petitioners' applications out of the funding range, a position they would have otherwise occupied based on Florida Housing's initial scoring of the Challenged Applications. Because of the facts and circumstances unique to the Challenge Applications' development sites and for purposes of the Petition filed by Petitioners, Florida Housing agrees that the ranking of Petitioners' applications should not be adversely impacted as a result of Florida Housing's subsequent determination that the easement(s) in question did not divide each of the Challenge Applications' development sites within the ***intended*** meaning of a Scattered Site as defined in Rule 67-48.002(106).

CONCLUSIONS OF LAW

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

14. Petitioners have standing to challenge the scoring of the Challenged Applications pursuant to Rule 67-48.005(5), F.A.C.

15. Because of the facts and circumstances unique to the Challenge Applications' development sites and for purposes of the Petition filed by Petitioners, Florida Housing agrees that the ranking of Petitioners' applications

should not be adversely impacted as a result of Florida Housing's subsequent determination that the easement(s) in question did not divide each of the Challenge Applications' development sites within the ***intended*** meaning of a Scattered Site as defined in Rule 67-48.002(106).

16. Petitioners' respective applications would have been in the funding range of the 2009 universal cycle final ranking but for that determination.

17. Petitioners' Petition shall be deemed amended to the extent provided in Paragraph 6 above.

STIPULATED DISPOSITION

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

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

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

BOARD APPROVAL AND FINAL DISPOSTION

21. This Consent Agreement is conditioned upon approval by Florida Housing's Board of Directors, such approval to be evidenced by the Board's issuance of a Final Order adopting the terms and conditions of this Consent Agreement. If the Board has not issued such Final Order by April 30, 2010, this Consent Agreement shall be deemed automatically null and void without further notice or action by either party, whereupon Petitioners may pursue their Petition unaffected by this Consent Agreement.

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

[SIGNATURES FOLLOW]

Respectfully submitted, this 22nd day of April, 2010.

Gary J. Cohen
Florida Bar No.: 353302
Shutts & Bowen, LLP
201 Biscayne Blvd., Ste. 1500
Miami, Florida 33131
Attorney for Petitioners, Oak Ridge Estates, LLC, and Avery Glen, LLC

Robert J Pierce, Assistant General Counsel
Florida Bar No.: 0194048
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
Attorney for Respondent, Florida Housing