

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

RST LODGES AT PINELLAS PARK, L.P.

Petitioner,

**FHFC No. 2009-068 UC
Application No. 2009- 97C
2009 Universal Cycle**

vs.

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

CONSENT AGREEMENT

Petitioner RST Lodges at Pinellas Park, L.P., ("RST") and Respondent, Florida Housing Finance Corporation ("Florida Housing"), by and through undersigned counsel, hereby present the following Consent Agreement:

APPEARANCES

For Petitioner:

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For Respondent:

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Florida Housing Finance Corporation
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PRELIMINARY STATEMENT

On or before August 20, 2009, RST submitted an Application to Florida Housing for funding through the 2009 Universal Cycle. On December 3, 2009, Florida Housing notified RST of the results of scoring its Application and provided RST with a Notice of Rights pursuant to Section 120.569 and 120.57, Florida Statutes. RST timely filed a Petition for Review (“Petition”) challenging the finding that RST consisted of “scattered sites” and therefore failed threshold requirements and was not entitled to 70 total points and 6 ability to proceed tie-breaker points and 7.5 proximity tie-breaker points. Florida Housing determined that the utility easement did not divide the RST Development site within the meaning of the “scattered sites” definition of Rule 67-48.002(106). Thus, RST is entitled to 70 total points, 6 ability to proceed tie-breaker points, and 7.50 proximity tie-breaker points. Additionally, RST has satisfied all threshold requirements.

Upon issuance of a Final Order adopting the terms of this Consent Agreement, RST agrees to dismiss its Petition with prejudice. The parties waive all right to appeal this Consent Agreement or the Final Order to be issued in this case, and each party shall bear his own costs and attorney’s fees. This Consent Agreement is subject to the approval of the Board of Directors of Florida Housing (“The Board”). If the Board does not approve this Consent Agreement, no Final Order will be issued and this Consent Agreement shall be null and void as if it were never executed.

STIPULATED FINDINGS OF FACT

1. RST is a Florida for-profit limited partnership with its address at 1750 Valley View Lane, Suite 420, Dallas, Tx, 75234, and is in the business of providing affordable rental housing units.

2. Florida Housing is a public corporation, organized to provide and promote the public welfare by administering the governmental function of financing and refinancing housing and related facilities in the State of Florida. § 420.504, Fla. Stat.: Rule Chapter 67-48, Fla. Admin. Code.

3. The Low Income Housing Tax Credit ("Tax Credit") program is created within the Internal Revenue Code, and awards a dollar for dollar credit against federal income tax liability in exchange for the acquisition and substantial rehabilitation or new construction of rental housing units targeted at low and very low income population groups. Developers sell, or syndicate, the Tax Credits to generate a substantial portion of the funding necessary for construction of affordable housing development.

4. Florida Housing is the designated "housing credit agency" responsible for the allocation and distribution of Florida's Tax Credits to applicants for the development of rental housing for low income and very low income families.

5. Florida Housing uses a Qualified Allocation Plan (QAP), the Universal Application and a scoring process for the award of Tax Credits, as outlined in Rule 67-48.004, Florida Administrative Code. The provisions of the QAP are adopted and incorporated by reference in Rule 67-48.002(95), Florida Administrative Code. Pursuant to the QAP, Tax Credits are apportioned among the most populated counties, medium populated counties, and

least populated counties. The QAP also establishes various set-asides and special targeting goals.

6. The 2009 Universal Cycle Application is adopted as Form UA1016 (Rev. 5-09) by Rule 67-48.004(1)(a), Fla. Administrative Code, and consists of Parts I through V and Instructions, some of which are not applicable to every Applicant.

7. Florida Housing's scoring process for 2009, found at Rules 67-48.004-.005, Florida Administrative Code, involves the following:

- a. the publication and adoption by rule of an application package;
- b. the completion and submission of applications by developers;
- c. Florida Housing's preliminary scoring of applications;
- d. an initial round of administrative challenges in which an applicant may take issue with Florida Housing's scoring of another application by filing a Notice of Possible Scoring Error ("NOPSE");
- e. Florida Housing's consideration of the NOPSEs submitted, with notice to applicants of any resulting change in their preliminary scores;
- f. an opportunity for the applicant to submit additional materials to Florida Housing 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. Florida Housing's consideration of the NOADs 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, Florida Housing's evaluation of any item for which the applicant received less than the maximum score; and
- j. final scores, ranking, and allocation of funding to successful applicants, as well as those who successfully appeal through the adoption of final orders.

8. The 2009 Universal Cycle Application offers a maximum score of 70 points. In the event of the tie between competing applications, the Universal Cycle Application Instructions provide for a series of tie-breaking procedures to rank such applications for funding priority including the use of lottery numbers (randomly assigned during the application process).

9. On or about August 20, 2009, RST and others submitted applications for financing in Florida Housing's 2009 funding cycle. RST (Application #2009-097C) applied for \$1,660,000 of Tax Credit equity funding to help finance the construction of a 120-unit affordable apartment complex in Pinellas Park, Pinellas County, Florida.

10. RST received notice of Florida Housing's initial scoring of the Application on or about September 21, 2009, at which time RST was awarded a preliminary score of 66 points out of a possible 70 points, and 7.5 of 7.5 possible "tie breaker" points (awarded for geographic proximity to certain services and facilities), and 6 of 6 possible ability to proceed tie-breaker points. Florida Housing also concluded that the RST application had not passed all threshold requirements.

11. On or about October 1, 2009, Florida Housing received a NOPSE in connection with RST's application. On or about October 23, 2009, Florida Housing sent RST NOPSEs relating to its application submitted by other applicants, Florida Housing's position on any NOPSEs, and the effect the NOPSEs may have had on the applicant's score.

12. On or before November 3, 2009, RST timely submitted its cure materials to Florida Housing.

13. On or about November 12, 2009, Florida Housing received a NOAD in connection with RST's application. Florida Housing issued its final scores on December 3, 2009.

14. At the conclusion of the NOPSE, cure review and NOAD processes, Florida Housing awarded the RST Application a score of 46 points. The basis for the score was:

2S	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites (see subsection 67-48.002(108), F.A.C.). The Applicant failed to commit to locate each selected feature and amenity that is not unit-specific on each of the Scattered Sites, or no more than 1/16 mile from the site with the most units, or a combination of both. As a result, points were awarded only for those selected features and amenities that are unit-specific.	NOPSE
5S	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. Therefore, the Development Location on the Applicant Notification to Special Needs Household Referral Agency form should reflect all of the Scattered Sites. Because the form is incomplete, the proposed Development is not eligible for Special Needs points.	NOPSE
10S	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. Therefore, the Development Location on the Local Government Verification of Contribution - Fee Waiver form should reflect all of the Scattered Sites. Because the form is incomplete, the proposed Development is not eligible for any points for Local Government Contributions.	NOPSE
11S	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. Therefore, the Development Location on the Local Government Verification of Affordable Housing incentives forms (Exhibits 47, 48, 49 and 50) should reflect all of the Scattered Sites. Because the forms are incomplete, the proposed Development is not eligible for any points for Local Government Incentives.	NOPSE

15. Florida Housing also determined that the RST Application failed threshold requirements, stating:

4T	III	A	2.b	Scattered Sites	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites (see subsection 67-48.002(108), F.A.C.). The Applicant failed to correctly answer the question at Part III.A.2.b. of the Application.	NOPSE
5T	III	C	1	Site Plan Approval / Plat Approval	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites (see subsection 67-48.002(108), F.A.C.). The 2009 Universal Application Instructions require that site plan approval be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although site plan approval has been demonstrated for the site located at 8721 Park Boulevard, it has not been demonstrated for the other site(s).	NOPSE
7T	III	C	3.a	Availability of Electricity	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. The 2009 Universal Application Instructions require that evidence of the availability of electricity be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of the availability of electricity has been demonstrated for the site located at 8721 Park Boulevard, it has not been demonstrated for the other site(s).	NOPSE
8T	III	C	3.b	Availability of Water	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. The 2009 Universal Application Instructions require that evidence of the availability of water be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of the availability of water has been demonstrated for the site located at 8721 Park Boulevard, it has not been demonstrated for the other site(s).	NOPSE
9T	III	C	3.c	Availability of Sewer	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. The 2009 Universal Application Instructions require that evidence of the availability of sewer be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of the availability of sewer has been demonstrated for the site located at 8721 Park Boulevard, it has not been demonstrated for the other site(s).	NOPSE

10T	III	C	3.d	Availability of Roads	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. The 2009 Universal Application Instructions require that evidence of the availability of roads be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of the availability of roads has been demonstrated for the site located at 8721 Park Boulevard, it has not been demonstrated for the other site(s).	NOPSE
11T	III	C	4	Zoning	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. The 2009 Universal Application Instructions require that evidence of appropriate zoning be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of appropriate zoning has been demonstrated for the site located at 8721 Park Boulevard, it has not been demonstrated for the other site(s).	NOPSE
12T	III	A	2.b	Scattered Sites	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites (see subsection 67-48.002(106), F.A.C.). The Applicant failed to provide the required information for each of the Scattered Sites at Exhibit 20, as required by the 2009 Universal Application Instructions.	NOPSE
13T	III	C	5	Environmental Site Assessment	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites (see subsection 67-48.002(106), F.A.C.). The 2009 Universal Application Instructions require that evidence of appropriate environmental site assessment be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of appropriate environmental site assessment has been demonstrated for the site located at 8721 Park Boulevard, it has not been demonstrated for the other site(s).	NOPSE

16. With respect to the “scattered sites” issue, Florida Housing provided the following additional comment:

In its cure materials for Items 2S, 5S, 10S, 11S, 4T 5T, 7T, 7T through 13T, 1A through 6A, 1P, 2P, 5P and 6P, the Applicant provided an affidavit from a licensed surveyor and various documents in an effort to demonstrate that the proposed Development site is not divided by the utility easement. However, documentation and an affidavit from two (2) licensed surveyors provided by a NOAD support the original determination that the site is divided by an easement and thus meets the definition of Scattered Sites.

17. Florida Housing also determined that RST failed to achieve selected ability to proceed tie-breaker points:

1A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for site plan approval. See Item 5T above.	NOPSE
2A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of electricity. See Item 7T above.	NOPSE
3A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of water. See Item 8T above.	NOPSE
4A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of sewer. See Item 9T above.	NOPSE
5A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of roads. See Item 10T above.	NOPSE
6A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for evidence of appropriate zoning and land use. See Item 11T above.	NOPSE

18. Finally, Florida Housing determined that RST failed to achieve selected proximity tie-breaker points:

1P	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. Per subsection 67-48.002(115), F.A.C., if a Development consists of Scattered Sites, the Tie-Breaker Measurement Point must be located on the parcel with the most units. Because the Applicant did not provide information for each of its Scattered Sites at Exhibit 20, FHFC is unable to verify that the Tie-Breaker Measurement Point is on the site with the most units. Therefore it is impossible to measure the distance between it and the other services.	NOPSE
1P	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. Because the Yes/No box was not checked within the Surveyor Certification form certifying that part of boundary of each parcel of the Scattered Sites is within 1/2 mile of the Tie-Breaker Measurement Point, the form could not be scored.	NOPSE
2P	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. Because the Yes/No box was not checked within the Surveyor Certification form certifying that part of boundary of each parcel of the Scattered Sites is within 1/2 mile of the Tie-Breaker Measurement Point, the form could not be scored.	NOPSE
2P	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. Per subsection 67-48.002(115), F.A.C., if a Development consists of Scattered Sites, the Tie-Breaker Measurement Point must be located on the parcel with the most units. Because the Applicant did not provide information for each of its Scattered Sites at Exhibit 20, FHFC is unable to verify that the Tie-Breaker Measurement Point is on the site with the most units. Therefore it is impossible to measure the distance between it and the other services.	NOPSE
5P	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. Per subsection 67-48.002(115), F.A.C., if a Development consists of Scattered Sites, the Tie-Breaker Measurement Point must be located on the parcel with the most units. Because the Applicant did not provide information for each of its Scattered Sites at Exhibit 20, FHFC is unable to verify that the Tie-Breaker Measurement Point is on the site with the most units. Therefore it is impossible to measure the distance between it and the other services.	NOPSE
5P	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. Because the Yes/No box was not checked within the Surveyor Certification form certifying that part of boundary of each parcel of the Scattered Sites is within 1/2 mile of the Tie-Breaker Measurement Point, the form could not be scored.	NOPSE

8P	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. Because the Yes/No box was not checked within the Surveyor Certification form certifying that part of boundary of each parcel of the Scattered Sites is within 1/2 mile of the Tie-Breaker Measurement Point, the form could not be scored.	NOPSE
8P	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. Per subsection 67-48.002(115), F.A.C., if a Development consists of Scattered Sites, the Tie-Breaker Measurement Point must be located on the parcel with the most units. Because the Applicant did not provide information for each of its Scattered Sites at Exhibit 20, FHFC is unable to verify that the Tie-Breaker Measurement Point is on the site with the most units and therefore it was impossible to measure the distance between it and other existing Developments on the Proximity List.	NOPSE

19. On or before December 28, 2009, RST submitted a Petition for Review pursuant to Sections 120.569 and 120.57(2), Florida Statutes.

20. The sole issue raised by the petition was the determination by Florida Housing during the Universal Cycle scoring process that RST's development site "is divided by one or more easements and thus meets the definition of Scattered Sites" in rule 67-48.002(106). As noted in the charts above, the determination that RST consists of scattered sites resulted in RST failing threshold requirements and achieving a total score of 46 with 0 ability to proceed tie-breaker points when final scores were issued on December 3, 2009. Had Florida Housing not found that RST consisted of scattered sites, all threshold requirements would have been met and RST would have achieved a total score of 70, and six ability to proceed tie-breaker points, as well as 7.50 proximity tie-breaker points.

21. Florida Housing determined that the utility easement did not divide the RST Development site within the meaning of the "scattered sites" definition of Rule 67-48.002(106). Thus, RST is entitled to 70 total points, 6 ability to proceed tie-breaker points, and 7.50 proximity tie-breaker points. Additionally, RST has satisfied all threshold requirements.

STIPULATED CONCLUSIONS OF LAW

1. 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.

2. Florida Housing is statutorily authorized to institute a competitive application process for the allocation of Tax Credits and has done so through Rules 67-48.004 and 67-48.005, Florida Administrative Code.

3. An agency's interpretation of its own rules will be upheld unless it is clearly erroneous, or amounts to an unreasonable interpretation. *Legal Envtl. Assistance Found., Inc., v. Board of County Comm'rs of Brevard County*, 642 So. 2d 1081 (Fla 1994); *Miles v. Florida A*

and M Univ., 813 So. 2d 242 (Fla. 1st DCA 2002). This is so even if the agency's interpretation is not the sole possible interpretation, the most logical interpretation, or even the most desirable interpretation. *Golfcrest Nursing Home v. Agency for Health Care Admin.*, 662 So. 2d 1330 (Fla. 1st DCA 1995).

STIPULATED DISPOSITION

RST has met all threshold requirements and is entitled to 70 total points, 6 ability to proceed tie-breaker points, and 7.50 proximity tie-breaker points.

Respectfully submitted this 15th day of January 2010.

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