STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

EVERNIA PLACE PARTNERS, LP,

Petitioner,

v.

FHFC Case No.: 2012-040UC
Application No. 2011-165C

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 December 7, 2012. The matter for consideration before this Board is a recommended order pursuant to Section 120.57(2), Florida Statutes, and Rule 67-48.005(5), Florida Administrative Code.

After a review of the record and otherwise being fully advised in these proceedings, this Board finds:

Evernia Place Partners, LP ("Petitioner") timely submitted an application in the 2011 Universal Cycle seeking an allocation of low income housing tax credits to help fund its proposed development. Petitioner was notified by Respondent, Florida Housing Finance Corporation ("Florida Housing") of its final ranking on or about June 8, 2012.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
Della M Harrell /DATE 12/7/2012

Petitioner was not funded and another Application, No. 2011-061C ("Village Square") was funded instead. There was insufficient housing credit allocation to fund Petitioner after Village Square was funded. Petitioner timely filed a Petition for Administrative Hearing under Sections 120.569 and 120.57(2), Florida Statutes, challenging Florida Housing's final ranking of its 2011 Universal Cycle Application and the scoring of the Village Square Application.

Petitioner timely filed a Petition for Administrative Hearing under Sections 120.569 and 120.57(2), Florida Statutes, challenging Florida Housing's final ranking of its 2011 Universal Cycle Application and the scoring of the Village Square Application. Florida Housing reviewed the Petition pursuant to Section 120.569(2)(c), Florida Statutes, and determined that the Petition did not raise disputed issues of material fact. An informal hearing was held in this case on August 21, 2012, in Tallahassee, Florida, before Florida Housing's designated Hearing Officer, Diane D. Tremor. Following the hearing, Petitioner and Respondent timely filed Proposed Recommended Orders.

After reviewing the Proposed Recommended Orders, the Hearing Officer requested additional legal argument on the issue of Scattered Sites, which the parties provided. On October 25, 2012, the Hearing Officer issued a Recommended Order, finding that Florida Housing incorrectly scored the Village Square Application with regard to the Scattered Sites and the listing of the

Principals of Developer issues, and upheld all other contested scoring issues. Accordingly the Hearing Officer recommends that Florida Housing adopt a Final Order funding Petitioner's application. A copy of the Recommended Order is attached hereto as "Exhibit A." No written argument regarding the Recommended Order has been filed by either party.

RULING ON THE RECOMMENDED ORDER

The Board finds that the findings of fact and the conclusions of law of the Recommended Order are reasonable and appropriate under the circumstances.

ORDER

In accordance with the foregoing, it is hereby found and 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 Florida Housing's final scoring of the Village Square Application was incorrect, and that Petitioner's application Number 2011-165C is eligible for low income housing tax credits from the next available allocation. The Petition is AFFIRMED.

DONE and ORDERED this 7th day of December, 2012.

FLORIDA HOUSING FINANCE CORPORATION

By: _____
Chair

Copies to:

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General Counsel
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Tallahassee, FL 32301

Kevin Tatreau
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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

EVERNIA PLACE PARTNERS, LP,

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FHFC Case No. 2012-040UC
Application No. 2011-165C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

RECOMMENDED ORDER

Pursuant to notice and Sections 120.569 and 120.57(2), Florida Statutes, the Florida Housing Finance Corporation, by its duly designated Hearing Officer, Diane D. Tremor, held an informal hearing in the above captioned proceeding in Tallahassee, Florida on August 21, 2012.

APPEARANCES

For Petitioner:

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Tallahassee, Florida 32301

For Respondent:

Hugh R. Brown
Deputy General Counsel
Florida Housing Finance Corporation
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STATEMENT OF THE ISSUES

There are no disputed issues of material fact. The overall issue for determination in this proceeding, as more particularly described below, is whether Respondent Florida Housing Finance Corporation properly scored Application No. 2011-061 ("Village Square").

PRELIMINARY STATEMENT

At the informal hearing, the parties stipulated to the admission into evidence of Joint Exhibits 1 through 10. Petitioner's Exhibits 1 through 3 and Respondent's Exhibit 1 were also received into evidence. The parties entered into and submitted a Prehearing Stipulation containing Facts and Exhibits. That document basically describes the application process and the circumstances regarding the scoring of Petitioner's and Village Square's applications with regard to some of the issues in dispute. The Prehearing Stipulation is attached to this Recommended Order as Attachment A, and the facts recited therein are incorporated in this Recommended Order.

Subsequent to the informal hearing, the parties timely submitted their Proposed Recommended Orders. After consideration of those documents, as well as the exhibits and oral arguments presented at the informal hearing, it appeared that there were disputed issues of material fact involving the issue of whether the Development Site designated by Village Square consisted of Scattered Sites, an

issue raised by Petitioner in this proceeding. Accordingly, the undersigned entered an Order to Show Cause on September 4, 2012, directing the parties to show cause why this matter should not be transmitted to the Division of Administrative Hearings for the conduct of a formal administrative hearing pursuant to Section 120.57(1), Florida Statutes. After a telephonic motion hearing and the submission of additional written argument on the Scattered Site issue, it is determined that the parties have agreed to the relevant facts on this issue and that its resolution involves an interpretation of the rules which govern the 2011 application requirements.

FINDINGS OF FACT

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

1. The Petitioner, Evernia Place Partners, LP, submitted Application Number 2011-165C in Florida Housing's 2011 Universal Cycle seeking federal tax credits to help finance the construction of an 84-unit affordable housing apartment complex in West Palm Beach, Florida, named Evernia Place. Petitioner's Application received a final score of 79 out of a possible 79 points, 6 out of 6 Ability to Proceed tie-breaker points and 31.5 out of 37 Proximity tie-breaker points. This score would have placed Petitioner in the funding range but for

Florida Housing's scoring of Application 2011-061C submitted by Village Square. (Attachment A)

Scattered Sites

2. Part III, Section (A)(2)(c) of the Universal Application requires Applicants to answer the question: "will the Development consist of Scattered Sites?" If the answer is "yes," Applicants are required to provide the address, total number of units, and the latitude and longitude coordinates for each of the Scattered Sites on an Exhibit 19. A Scattered Site is defined in Rule 67-48.002(105), Florida Administrative Code, in relevant part, as "a Development site that . . . is comprised of real property that is not contiguous. . .. Real property is contiguous if the only intervening real property interest is an easement, provided the easement is not a roadway or street." With regard to Ability to Proceed tie-breaker points, Applicants are required to address the status of site plan or plat approval, appropriate zoning and the availability of electricity, water, sewer and roads for all of the Scattered Sites if the proposed development consists of Scattered Sites. These matters must be addressed as they exist on or before the Application Deadline. (Universal Application Instructions, pages 55-60) These are threshold items. If properly submitted with the initial application, the Applicant is entitled to receive 1.0 point for each of the required 6 forms as Ability to Proceed tie-breaker points. If not properly submitted with the initial

application, but properly "cured" during the application process, the Applicant is entitled to receive only ½ point for each of the 6 forms. (Application Instructions, pages 55 and 56)

3. Village Square did not indicate that its Development was comprised of Scattered Sites and did not submit an Exhibit 19. In Florida Housing's initial scoring, Village Square was awarded the full 6 Ability to Proceed tie-breaker points. (Joint Exhibit 3)

4. Various Notices of Possible Scoring Error ("NOPSE") were filed by competing applicants regarding Village Square's Development Site as constituting Scattered Sites and the failure of Village Square to provide sufficient evidence of its Ability to Proceed with regard to each of the Scattered Sites. The competing applicants attached documentation demonstrating that Village Square's Development Site, as of the Application Deadline, is bisected by a road, thereby making the site a Scattered Site as defined by Rule 67-48.002(106). Florida Administrative Code. (Joint Exhibits 4, 5 and 6)

5. Florida Housing disagreed with the NOPSEs and did not rescind Village Square's 6 Ability to Proceed tie-breaker points. (Joint Exhibit 8) While acknowledging that Village Square's Development Site appears to meet the definition of Scattered Sites as of the date of the filing of Village Square's application, Florida Housing relies upon a preliminary site plan submitted by

Village Square elsewhere in its Application showing that Village Square's proposed Development Site, when built, will eliminate the existing road and will therefore not be a Scattered Site.

Site Plan Approval

6. In order to demonstrate Ability to Proceed, Applicants are required to submit, as an Exhibit 26, a form entitled "Local Government Verification of Status of Site Plan Approval for Multifamily Developments." The person who executes the form is required to verify the status of site plan approval by choosing one of three printed options on the form. The first option is that a final site plan was approved before the Application Deadline. The second option, in relevant part, is that either preliminary or conceptual site plan approval has been issued or that preliminary or conceptual site plan approval is not provided by the applicable jurisdiction, that final site plan approval is required and has not yet been issued, but the site plan has been reviewed. The third option is that the Development is rehabilitation without any new construction and does not require additional site plan approval. The form submitted as Exhibit 26 by Village Square was executed by the Planning & Zoning Director of Delray Beach and the second option was marked on the form. (Joint Exhibit 1)

7. NOPSEs were filed regarding Village Square's Exhibit 26, and included a Staff Report from the Planning & Zoning Board demonstrating that a

conditional use request was made to allow an increase in density and that the Planning & Zoning Board Staff had recommended approval with 34 conditions. (Joint Exhibit 7)

8. Florida Housing did not agree with the allegations of the NOPSE and did not change the score or impose a threshold failure on the Village Square Application regarding Exhibit 26. (Joint Exhibit 8)

Zoning Approval

9. To demonstrate that its proposed project is consistent with the applicable zoning category as of the Application Deadline, Village Square submitted its Exhibit 32, entitled "Local Government Verification that Development is Consistent with Zoning and Land Use Regulations." This completed Form indicates that the zoning designation for the referenced Development site is RM and that the number of units allowed for that site is 144. (Joint Exhibit 2)

10. A NOPSE was filed regarding Village Square's Exhibit 32. The NOPSE asserts that the RM Zoning designation allows for only 12 units per acre and that Village Square had requested an increase in density for the entire project of 13.91 dwelling units per acre. Attached to the NOPSE was the same Planning & Zoning Board Staff Report as referenced above, showing that an increase in

density had been requested and recommending that it be granted upon 34 conditional use requirements being satisfied. (Joint Exhibit 7)

11. Florida Housing did not agree with the allegations of the NOPSE and did not change the score or impose a threshold failure on the Village Square Application regarding the Zoning Form (Exhibit 32) issue. (Joint Exhibit 8)

Local Government Support

12. In order to receive points for a Local Government Contribution to its proposed Development, as permitted by Part IV of the Application Instructions, Village Square submitted an Exhibit 36, entitled "Local Government Verification of Contribution-Grant." That form is required to be executed by, among others, "the chief appointed official (staff) responsible for such approvals." Village Square's Exhibit 36 was executed by Lula Butler, "Director, Community Improvement." It certifies that Delray Beach committed $100,000.00 as a grant for its use solely for assisting its proposed development, that the source of the grant is "City of Delray Beach, tax collections" and that the name of the government contact is "Diane Colonna." (Petitioner's Exhibit 2)

13. NOPSEs were filed regarding Village Square's Exhibit 36. The NOPSEs asserted that the source of the grant is through the City of Delray Beach Tax Collections and the Community Redevelopment Agency, and that Ms. Lula Butler, Director of Community Improvement, had no authority to execute that

Exhibit. Documentation was provided in the NOPSEs that Lula Butler is the Director of the Community Improvement Department and that the Neighborhood Services Division within that Department is "responsible for the administration, management and implementation of Federal, State and local grant-funded programs that benefit the low, very low and moderate-income households within the City." The NOPSE documentation also demonstrates that a representative of Village Square requested an extension of the grant for $100,000.00, that this request was made to the Executive Director of the Community Redevelopment Agency (CRA), and that the Executive Director of the CRA is Diane Colonna, the person listed as the "Government Contact" on Village Square's Exhibit 36. (Petitioner's Exhibit 2)

14. Florida Housing did not agree with the allegations of the NOPSEs regarding Village Square's Exhibit 36 and did not change the score or impose a threshold failure on the Village Square application. (Joint Exhibit 8)

Principles of the Developer

15. Part II(A)(3) of the Universal Application Instructions require Applicants to disclose on an Exhibit 9 the Principals for the Applicant and for each Developer. Rule 67-48.002(91), Florida Administrative Code, defines the term "Principal" as any general partner, any limited partner, any manager or member and/or any officer, director or shareholder of an Applicant or Developer, as well as

"any officer, director, shareholder, manager, member, general partner or limited partner of" "any general partner or limited partner," "of any managing partner or member" and "of any shareholder" of a Developer.

16. Village Square's revised Exhibit 9 lists the following as the Principles of the Developer:

Roundstone Development, LLC, a Nevada limited liability company

Clifton E. Phillips, President
Craig E. Landess, Vice President

Members:
Clifton E. Phillips
HRS Holdings, LLC
Realty Advisors, LLC

17. A Notice of Alleged Deficiency ("NOAD") was filed regarding Village Square's revised Exhibit 9, asserting that it failed to identify the officers, directors of members HRS Holdings, LLC and Realty Advisors, LLC (Petitioner's Exhibit 3)

18. Florida Housing accepted Village Square's revised Exhibit 9.

CONCLUSIONS OF LAW

Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Chapter 67-48, Florida Administrative Code, the Informal Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding. Due to Florida Housing's scoring of the Village Square Application, Petitioner was ranked outside the

funding range. As such, Petitioner's substantial interests are affected and Petitioner has standing to challenge Florida Housing's scoring of the Village Square application and its ranking decisions in this proceeding.

The issues for determination in this proceeding are whether Florida Housing correctly scored Village Square's application with regard to Scattered Sites, Site Plan Approval, Appropriate Zoning, Local Government Support, and an identification of the Principals of the Developer. These issues will be more specifically discussed below.

Scattered Sites

The parties agree and the evidence supports the factual finding that as of the Application Deadline date, the Development Site identified by Village Square was bisected by a street or road, thus constituting a Scattered Site within the meaning of Florida Housing's Rule 67-48.002(105), Florida Administrative Code. The parties also agree that documentation exists demonstrating that when Village Square's development or project is completed, the existing street or road will be eliminated. Thus, the issue of whether Florida Housing correctly scored Village Square's application is dependent upon a legal interpretation of Florida Housing's rules and statutes governing the 2011 Universal Application Cycle. Specifically, the issue is whether an Applicant is required to identify the status of its Development Site as it exists on the date it submits its application, or whether the status of a Development

Site is to be determined by what it will look like when the project is fully developed.

It is Florida Housing's position that based upon the wording of the Application Instructions (such as the wording on page 17 which makes reference to a "proposed" Development) and the definition of "Project" in Section 420.503(33), Florida Statutes, as "any work or improvement located or to be located in the state", it properly interpreted the law governing this issue by examining the Development Site as it will exist after construction. While Florida Housing's position on this matter is well argued, its acceptance would require a disregard of other requirements in the Application, Application Instructions and the rules which govern the application process.

For example, there are certain items that must be identified and included in the initial Application, and that cannot be revised, corrected or supplemented after the Application Deadline. These items include the site for the Development. Rule 67-48.004(14), Florida Administrative Code. Thus, an Applicant must properly identify its Development Site as of the Application Deadline, and, if the site as it exists on that date consists of "Scattered Sites", as defined by rule, the address and number of units proposed for each scattered site must be identified. (Application Instructions, page 17). While a "cure" may be submitted to correctly identify a site as a scattered site, there are consequences in the form of a reduction in the number

of Ability to Proceed tie-breaker points for an initial misrepresentation. Moreover, Applicants are required to provide evidence that an environmental site assessment has been performed for all of the Scattered Sites, and that site plan approval, appropriate zoning, and available electricity, water, sewer and roads are existent as of the Application Deadline for each Scattered Site. (Application Instructions, pages 55 – 60) This can only occur if the Scattered Sites are identified as the property exists on the date of the Application Deadline.

After a careful consideration of the arguments raised by Petitioner and Florida Housing regarding the Scattered Site issue, it is concluded that Florida Housing's position and scoring of the Village Square Application does not constitute a reasonable interpretation of the rules and statutes which govern this issue. If a Development Site were to be evaluated only in terms of what the project will look like after it is completely built, there would be no purpose in requiring that certain items, such as the availability of electricity, water, sewer and roads, be demonstrated as of the Application Deadline and with regard to each Scattered Site. The case of CEC Timber Trace, LLC v. Florida Housing Finance Corporation, Final Order No. 2007-030UC (September 21, 2007), is distinguishable in that it involved a totally different scoring criterion.

Site Plan Approval and Appropriate Zoning

Petitioner makes the same argument with regard to both Exhibit 26 (status of site plan approval) and Exhibit 32 (zoning approval) of the Village Square Application. That argument is that these executed forms should not have been accepted because the representations contained therein are conditioned upon the satisfaction of 34 conditions recommended in a Planning & Zoning Board Staff Report and it was not demonstrated that those conditions had been satisfied as of the Application Deadline. There is nothing in Respondent's rules and Petitioner has cited no authority for the proposition that conditions placed upon a proposed Development can be grounds to reject a representation of zoning approval or a representation of the status of site plan approval. Indeed, the Planning & Zoning Board Staff Report demonstrates that Village Square's site plan was reviewed, and that is all that is required by Exhibit 26. There is simply no prohibition against the placement of conditions upon site plan approval (indeed, final site plan approval itself is not required) or upon a finding of consistency with a local government's zoning classifications. Likewise, there is no requirement that all conditions must be satisfied as of the date of the Application Deadline. The fact that conditions are placed upon a particular use or to justify an increase in density does not mean that the property is not properly zoned for that use. See, Harris Cove Partners, Ltd. v.

Florida Housing Finance Corporation, Final Order No. 2004-033UC (October 14, 2004).

Local Government Support

Petitioner urges that Village Square's Exhibit 36 should not have been accepted by Florida Housing because the form was not executed by the "source" of the $100,000.00 grant. The form itself does not require that it be executed only by the "source" of the funds. Instead, it requires that it be executed by the "chief appointed official (staff) responsible for such approvals." Petitioner presented no evidence that Lula Butler, Director of Community Improvement, had not been given responsibility with regard to the approval of the $100,000 commitment to the Village Square Development. Instead, Petitioner's own Exhibit 2 demonstrates that a Division within the Department of Community Development, for which Lula Butler is its Director, is responsible for the administration, management and implementation of local grant-funded programs that benefit low, very low and moderate-income households within the City. There is nothing in the evidence to demonstrate that Lula Butler was not the proper staff person appointed or authorized to execute the form evidencing a local government grant, and Florida Housing properly accepted Village Square's Exhibit 36.

Principals of the Developer

The issue of a proper listing of Village Square's Principals of its Developer must be resolved with reference to Florida Housing's Rule 67-48.002(91), Florida Administrative Code, which defines "Principal" as:

> (i) any general partner of an Applicant or Developer, any limited partner of an Applicant or Developer, any manager or member of an Applicant or Developer, any officer, director or shareholder of an Applicant or Developer,
> (ii) any officer, director, shareholder, manager, member, general partner or limited partner of any general partner or limited partner of an Applicant or Developer,
> (iii) any officer, director, shareholder, manager, member, general partner or limited partner of any manager or member of an Applicant or Developer, and
> (iv) any officer, director, shareholder, manager, member, general partner or limited partner of any shareholder of an Applicant or Developer.

That rule appears to require a two-tier listing of Principals. The first tier requires a listing of any general partner, limited partner, manager or member and/or any officer, director or shareholder of an Applicant or a Developer. The second tier requires a listing of any officer, director, shareholder, manager, member, general partner or limited partner of those identified in the first tier. Village Square's listing of the Principals of its Developer was thus deficient in that it did not identify the Principals of its "members" HRS Holdings, LLC and Realty Advisors, LLC as required by Rule 67-48.002(91)(iii), Florida Administrative

Code. Accordingly, the Village Square Application was inappropriately scored in that regard.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that a Final Order be entered holding that Florida Housing erroneously scored the Village Square Application with regard to Scattered Sites (and thus the corresponding Ability to Proceed items) and with regard to the listing of the Principals of Village Square's Developer, and awarding Petitioner, Evernia Place Partners, LP, its requested funding from the next available allocation.

Respectfully submitted this 25th day of October, 2012.

Diane D. Tremor

DIANE D. TREMOR
Hearing Officer for Florida Housing
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NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

In accordance with Rule 67-48.005(6), Florida Administrative Code, Applicants 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, excluding the caption and certificate of service. 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. five (5) calendar days from the date of issuance of the Recommended Order. 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.

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PREHEARING STIPULATION

Petitioner, Evernia Place Partners, LP ("Petitioner" or "Evernia"), and Respondent, Florida Housing Finance Corporation ("Florida Housing"), by and through undersigned counsel, submit this stipulation for purposes of expediting the informal hearing scheduled for August 21, 2012, in Tallahassee, Florida, and agree to the findings of fact and to the admission of the exhibits described below.

THE PARTIES

1. Petitioner is a Florida limited partnership with its address at 5604 PGA Boulevard, Suite 100, Palm Beach Gardens, Florida 33418 and is in the business of providing affordable rental housing units in the State of Florida.

2. Florida Housing is a public corporation, with its address at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32310, 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. Section 420.504, Fla. Stat.

Attachment A

STIPULATED FACTS

The Parties stipulate to the following Findings of Fact.

BACKGROUND

1. Florida Housing administers various affordable housing programs including the following:

(a) Housing Credit (HC) Program pursuant to Section 42 of the Internal Revenue Code and Section 420.5099, F.S., under which Florida Housing is designated as the Housing Credit agency for the state of Florida within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code, and Rule Chapter 67-48, F.A.C.; and

(b) HOME Investments Partnerships (HOME) Program pursuant to Section 420.5089, F.S., and Rule Chapter 67-48, F.A.C.

2. The 2011 Universal Cycle Application, through which affordable housing developers apply for funding under the above-described affordable housing programs administered by Florida Housing, together with Instructions and Forms, comprise the Universal Application Package or UA1016 (Rev. 2-11) adopted and incorporated by Rule 67-48.004(1)(a), F.A.C.

3. Because the demand for HC and HOME funding exceeds that which is available under the HC Program and HOME Program, respectively, qualified affordable housing developments must compete for this funding. To assess the relative merits of proposed developments, Florida Housing has established a competitive application process known as the Universal Cycle pursuant to Rule Chapter 67-48, F.A.C. Specifically, Florida Housing's application process for the 2011 Universal Cycle, as set forth in Rule 67-48.001-.005, F.A.C., involves the following:

a. the publication and adoption by rule of a "Universal Application Package," which applicants use to apply for funding under the HC and HOME Programs administered by Florida Housing;

b. the completion and submission of applications by developers;

c. Florida Housing's preliminary scoring of applications (preliminary scoring summary);

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 (NOPSE scoring summary) 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 was deemed to have failed to satisfy threshold or 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 (final scoring summary) to applicants of any resulting change in their scores;

i. an opportunity for applicants to challenge, by informal or formal administrative proceedings, Florida Housing's evaluation of any item in their own application for which the applicant was deemed to have failed to satisfy threshold or received less than the maximum score;[1]

j. final scores, ranking of applications, and award of funding to successful applicants, including those who successfully appeal the adverse scoring of their application; and

k. an opportunity for applicants to challenge, by informal or formal administrative proceedings, Florida Housing's final scoring and ranking of competing applications where such scoring and ranking resulted in a denial of Florida Housing funding to the challenging applicant.

[1] This proceeding is the subject of such a challenge.

4. At the completion of (a) through (j) of this process a Final Score is assigned to each Application. Based on these Final Scores, and a series of Tie Breakers, Applications are then ranked. Funds are awarded to applicants starting with applicable preferences and set asides and the highest scoring applicants, until the available funds are exhausted. Applicants compete for funds against other applicants in large part based upon tie-breaker points and limitations to the number of units to be funded in each county.

PETITIONER'S APPLICATION AND SCORING ISSUES

5. On December 6, 2011, Evernia applied to Florida Housing for funding pursuant to the Low Income Housing Tax Credit Program (LIHTC). The purpose of the requested funds was to supplement the construction of an 84 unit affordable housing apartment complex in West Palm Beach, Florida, named Evernia Place.

6. Based on a review of Florida Housing's Final Ranking dated June 8, 2012, Evernia received a final score of 79 out of a possible 79 points for its application. Evernia received 6 out of 6 Ability-To-Proceed and 31.5 out of 37 Proximity Tie-Breaker points, and was deemed to have passed threshold. This score would have placed Evernia in the funding range "but for" Florida Housing's scoring of another Application, #2011-061C ("Village Square").

7. As an applicant for funds allocated by Florida Housing, Evernia's substantial interests are adversely affected by the scoring decisions made regarding competing Applications, as described in paragraph 6 above.

SCORING OF APPLICATION #2011-061C

Scattered Sites

8. The Universal Application at Part III asks an applicant to provide information concerning the proposed development. Specifically, at Part III, Section (A)(2)(c), the

Application requires the Applicant to disclose "whether the proposed development will consist of "Scattered Sites." "Scattered Sites" is defined at Rule 67-48.002(105), Fla. Admin. Code as follows:

> (105) "Scattered Sites," as applied to a single Development, means a Development site that, when taken as a whole, is comprised of real property that is not contiguous (each such non-contiguous site within Scattered Site Development, a "Scattered Site"). For purposes of this definition "contiguous" means touching at a point or along a boundary. Real property is contiguous if the only intervening real property interest is an easement, provided the easement is not a roadway or street.

9. In its preliminary scoring, Florida Housing did not consider the Village Square proposed Development to consist of Scattered Sites, and scored the Village Square Application accordingly.

10. Subsequently, competing Applicants filed NOPSEs against the Village Square Application alleging that the proposed Development site consisted of Scattered Sites, as defined by the 2011 Universal Cycle Application Instructions, and that the address provided for the proposed Development was thereby incorrect and that the various Ability To Proceed/infrastructure forms submitted by Village Square were thereby invalid.

11. After reviewing the NOPSE, Florida Housing issued a NOPSE Scoring Summary reflecting that Florida Housing disagreed with the NOPSE and did not consider the proposed Village Square Development to consist of Scattered Sites.

12. As Florida Housing did not penalize the Village Square Application on the issue of Scattered Sites, no Cure or NOAD was filed concerning the Scattered Sites issue.

Site Plan Approval

13. The Universal Application at Part III Section (C.) requires an applicant to provide information concerning the Ability To Proceed with the proposed development. Included in this threshold requirement is information concerning the status of site plan or plat approval.

14. In response to this requirement Village Square submitted Local Government Verification of Status of Site Plan Approval for Multifamily Developments form as Exhibit 26 ("Site Plan Form") and the second option on the form:

> The above-referenced Development is new construction or rehabilitation with new construction and (i) this jurisdiction provides either preliminary site plan approval or conceptual site plan approval which has been issued, or (ii) site plan approval is required for the new construction work; however, this jurisdiction provides neither preliminary site plan approval nor conceptual site plan approval, nor is any other similar process provided prior to issuing final site plan approval. Although there is no preliminary or conceptual site plan approval process and the final site plan approval has not yet been issued, the site plan, in the zoning designation stated above, has been reviewed.
>
> The necessary approval/review was performed on or before the Application Deadline for the 2011 Universal Application Cycle (as stated on the FHFC Website https://apps.floridahousing.org/StandAlone/FHFC_ECM/ContentPage.aspx?PAGE=-238) by _____.
> (Legally Authorized Body*)

15. The Site Plan Form submitted by Village Square indicates the "Legally Authorized Body" to be the "Planning & Zoning Department."

16. The validity of the Site Plan Form described above was challenged in a NOPSE filed by a competing Applicant alleging that certain Conditional Use requests applied to the proposed Development.

17. Florida Housing did not agree with the allegations of the NOPSE and did not change the score nor impose a threshold failure on the Village Square Application regarding the Site Plan Form issue.

18. As Florida Housing did not penalize the Village Square Application on the issue of the Site Plan Form, no Cure or NOAD was filed concerning the Site Plan Form issue.

Zoning Approval

19. Also in response to Ability To Proceed requirements of the Application, Village Square submitted Local Government Verification that Development is Consistent with Zoning and Land Use Regulation form ("Zoning Form") at Exhibit 32, indicating that the proposed Development would consist of 144 units.

20. The validity of the Zoning Form described above was challenged in a NOPSE filed by a competing Applicant alleging that certain Conditional Use requests applied to the proposed Development.

21. Florida Housing did not agree with the allegations of the NOPSE and did not change the score nor impose a threshold failure on the Village Square Application regarding the Zoning Form issue.

22. As Florida Housing did not penalize the Village Square Application on the issue of the Zoning Form, no Cure or NOAD was filed concerning the Zoning Form issue.

STIPULATED CONCLUSIONS OF LAW

1. Petitioner has standing to bring this administrative proceeding, pursuant to Rule 67-48.005, Fla. Admin. Code.

2. The Honorable Hearing Officer has jurisdiction over the parties to and subject matter of this proceeding.

3. Petitioners herein challenge an action by the Florida Housing Finance Corporation, a public instrumentality and agency of the State of Florida pursuant to Sections 120.52 and 420.504(2), Florida Statutes.

4. Petitioner bears the burden of proof in these proceedings by a preponderance of the evidence.

5. The 2011 Universal Cycle Instructions, Application, Exhibits and Forms are rules under Section 120.52, Fla. Stat. and are incorporated by reference in Rule 67-48.004(1)(a), Fla. Admin. Code.

6. The 2011 Universal Cycle Instructions, Application, Exhibits, Forms and Rule Chapter 67-48, Fla. Admin. Code, are the rules that govern all issues herein.

OFFICIAL RECOGNITION OF RULES

1. The parties request the Honorable Hearing Officer take official recognition (judicial notice) of Rule Chapter 67-48, Fla. Admin. Code, as well as the incorporated Universal Application Package or UA1016 (Rev. 2-11) which includes the forms and instructions.

2. The parties stipulate, subject to arguments on the grounds of relevance, to the official recognition of any Final Orders of the Florida Housing Finance Corporation and to any Rules promulgated by the Florida Housing Finance Corporation, including past and present versions of the Universal Cycle Application, Instructions, and any forms and exhibits attached thereto or incorporated by reference therein.

EXHIBITS

The parties offer the following joint exhibits into evidence and stipulate to their authenticity, admissibility and relevance in the instant proceedings, except as noted below:

J-1: Exhibit 26 to Application #2011-061C (Village Square) submitted for initial scoring.

J-2: Exhibit 32 to Application #2011-061C (Village Square) submitted for initial scoring.

J-3: Preliminary Scoring Summary Report for Application #2011-061C (Village Square) dated January 19, 2012.

J-4: NOPSE Tracking #451 filed against Application #2011-061C (Village Square) regarding Scattered Sites issue regarding Development Address.

J-5: NOPSE Tracking #543 filed against Application #2011-061C (Village Square) regarding Scattered Sites issue regarding infrastructure/Ability To Proceed.

J-6: NOPSE Tracking #543 filed against Application #2011-061C (Village Square) regarding Site Plan Form issue.

J-7: NOPSE Tracking #543 filed against Application #2011-061C (Village Square) regarding Zoning Form issue.

J-8: NOPSE Scoring Summary Report for Application #2011-061C (Village Square) dated February 22, 2012.

J-9: Final Scoring Summary Report for Application #2011-061C (Village Square) dated March 27, 2012.

J-10: Final Ranking Scoring Summary Report for Application #2011-061C (Village Square) dated June 8, 2012.

Respectfully submitted this 21st day of August, 2012.

By: _____

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