STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

TRINITY TOWERS PRESERVATION ASSOCIATES, LLLP,

Petitioner,

v.

FHFC CASE NO. 2012-024UC
Application No. 2011-205C

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 June 8, 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(2), Florida Administrative Code.

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

Trinity Towers Preservation Associates, LLLP, ("Petitioner") timely submitted its 2011 Universal Cycle Application ("Application") to Florida Housing Finance Corporation ("Florida Housing") to compete for an allocation of

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
Wilma M Harrell /DATE: 6/8/12

competitive housing credits under the Housing Credit (HC) Program administered by Florida Housing.

Petitioner timely filed its Petition, pursuant to Sections 120.569 and 120.57(2), Florida Statutes, (the "Petition") challenging Florida Housing's scoring of its 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. Petitioner, in its Election of Rights, elected an informal proceeding, and in lieu of attending an informal hearing to be held in Tallahassee, elected to submit a written statement. Petitioner and Florida Housing entered into a joint stipulation of facts and exhibits in which the parties agreed that Florida Housing's designated hearing officer would issue her recommended order in this matter based on the Petitioner's written statement and Florida Housing's response to the written statement.

Florida Housing's designated Hearing Officer for this matter was Diane D. Tremor.

Petitioner elected to rely on its previously filed Petition as its written statement. Florida Housing timely filed a "Response to Petitioner's Written Statement in Lieu of Hearing."

After consideration of the facts and exhibits stipulated by the parties in the joint stipulation and the arguments presented by the parties in their written

statements, the Hearing Officer issued a Recommended Order. A true and correct copy of the Recommended Order is attached hereto as "Exhibit A." The Hearing Officer recommended that a Final Order be entered concluding that Petitioner's application failed to demonstrate the threshold requirement of Site Control.

RULING ON THE RECOMMENDED ORDER

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

ORDER

In accordance with the foregoing, it is hereby 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 Petitioner's application is upheld, and that Petitioner's application failed to demonstrate the threshold requirement of Site Control. The Petition is DISMISSED.

DONE and ORDERED this 8th day of June, 2012.

FLORIDA HOUSING FINANCE CORPORATION

By: _____
Chair

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, Esq.
Shutts & Bowen LLP
201 South Biscayne Blvd.
1500 Miami Center
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

TRINITY TOWERS PRESERVATION ASSOCIATION, LLLP,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

FHFC Case No. 2012-024UC
Application No. 2011-205C

_____/

RECOMMENDED ORDER

This proceeding was conducted pursuant to Sections 120.569 and 120.57(2), Florida Statutes, by duly designated Hearing Officer Diane D. Tremor. In lieu of attending an informal hearing in Tallahassee, Florida, Petitioner elected to submit a written statement and elected to rely on its previously filed Petition Requesting Informal Hearing as its written statement.

APPEARANCES

For Petitioner:

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

For Respondent:

Robert J. Pierce
Assistant General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Ste. 5000
Tallahassee, FL 32301-1329

STATEMENT OF THE ISSUES

There are no disputed issues of material fact. The issue for determination in this proceeding is whether Petitioner's application met threshold requirements regarding Site Control.

PRELIMINARY STATEMENT

The parties have stipulated to the admission into evidence of Joint Exhibits 1 through 7. The Petitioner's Petition Requesting Informal Hearing attaches four exhibits. Exhibit 4 is a document which was not stipulated to, was not submitted by Petitioner as a part of its Application, and was not attached to the Notice of Alleged Deficiencies received in evidence as Joint Exhibit 6. Accordingly, Respondent's objection to that document is sustained. Joint Exhibit 1 is a Joint Stipulation of Facts and Exhibits. That document basically describes the application process and the circumstances regarding the scoring of Petitioner's application with regard to the issues in dispute. The Joint Stipulation of Facts and Exhibits (Joint Exhibit 1) is attached to this Recommended Order as Attachment A, and the facts recited therein are incorporated in this Recommended Order.

As noted above, Petitioner elected to rely on its Petition Requesting Informal Hearing as its written statement. The Respondent filed a "Response to Petitioner's Written Statement in Lieu of Hearing." These documents have been fully considered by the undersigned.

FINDINGS OF FACT

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

1. The Petitioner, Trinity Towers Preservation Associates, LLLP, submitted Application Number 2011-205C in Florida Housing's 2011 Universal Cycle seeking $1,197,727 in annual federal tax credits to help finance the development of a 162-unit apartment complex in Melbourne, Brevard County, Florida, known as Trinity Towers South. (Joint Exhibit 1)

2. Part III.C.2 of the 2011 Universal Application Instructions require an applicant, as a threshold matter, to demonstrate Site Control through documentation provided at Exhibit 27 of the applicant's application. The required documentation includes either a qualified contract, a deed or certificate of title or a lease; any attachments or exhibits referenced in such document; and a legal description of the development site. (Instructions, pages 57-58)

3. In response to this requirement, Petitioner submitted, as Exhibit 27 of its initial application, a December 5, 2011 Purchase and Sale Agreement between Trinity Towers South, Inc., the seller, and Trinity Towers Preservation Associates, LLLP (Petitioner), as buyer. (Joint Exhibit 2)

4. In its preliminary scoring of Petitioner's application, Florida Housing

concluded that Petitioner failed to meet threshold requirements with regard to Site Control because the Purchase and Sale Agreement was incomplete. Florida Housing's preliminary scoring notes: "Although a page labeled Exhibit A, Legal Description, is included in the Agreement, the page is blank. No legal description was provided in the Application." (Joint Exhibit 3)

5. In response to this preliminary scoring, Petitioner submitted a Cure attaching a revised Exhibit 27. This revised Exhibit includes the same December 5, 2011 Purchase and Sale Agreement between Trinity Towers South, Inc., and the Petitioner, and includes an Exhibit A containing the legal description of the property. (Joint Exhibit 4)

6. Subsequent to the submission of Petitioner's Cure documentation, a competing applicant filed a Notice of Alleged Deficiencies ("NOAD"). The NOAD makes reference to the Purchase and Sale Agreement provided by Petitioner in its Cure documentation, and states that "[a] search of the title records for the described property" reveals that the seller does not own the described premises, but instead has only a leasehold interest in the property." The NOAD attaches a copy of a Lease Agreement dated March 15, 1979. (Joint Exhibit 6) That Lease Agreement contains the same legal description of the "leased premises" as contained in the legal description of the property attached as Exhibit A to the

Purchase and Sale Agreement submitted as the Cure in Petitioner's Exhibit 27. (Joint Exhibit 4)

7. In its final scoring of Petitioner's application, Florida Housing concluded that Petitioner failed to meet threshold requirements for Site Control. The reasoning given for that determination is the Lease Agreement dated March 15, 1979 supplied in the NOAD submitted by a competing applicant. Florida Housing concluded that based upon that Lease Agreement, "Trinity Towers South, Inc., does not own the property described in Ex. A to the Purchase and Sale Agreement but rather leases the property . . ." and that the existence of this Lease "calls into question" the seller's ownership of the property "and its ability to sell it to the Applicant." (Joint Exhibit 5, page 3)

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. Because Florida Housing determined that Petitioner was ineligible for funding due to failure to meet a threshold requirement, Petitioner's substantial interests are affected by Florida Housing's proposed agency action.

The issue for determination in this proceeding is whether Petitioner met threshold requirements regarding Site Control. More specifically, the issue is

whether Petitioner's Cure documents regarding Site Control created an inconsistency that justifies a determination of failure to meet threshold requirements on a basis not previously identified in Florida Housing's preliminary scoring, a Notice of Potential Scoring Errors ("NOPSE") or Florida Housing's decision regarding a NOPSE.

The Universal Application Package or UA 1016 (Rev. 2-11), which includes the application forms and the Application Instructions, is adopted by Rule 67-48.004(1)(a), Florida Administrative Code. As pertinent to the issues in this case, the Application Instructions, at Part III.C.2, require Applicants, as a threshold matter, to demonstrate Site Control pursuant to the requirements set out in that portion of the Instructions. Among the requirements contained in the Instructions is the requirement that if the owner of the subject property is not a party to the qualified contract, all documents evidencing intermediate contracts or conveyances of any kind must be submitted in their entirety and must contain certain elements identified in the Instructions. (Instructions, pages 57-58)

Also pertinent to issues in this case are Florida Housing's Rules governing the application process and scoring of applications. Rule 67-48.004(6), Florida Administrative Code, allows an applicant the opportunity to Cure its application in response to Florida Housing's preliminary scoring and its decisions regarding NOPSEs submitted by competing applicants. Thereafter, competing applicants

have the opportunity to submit a NOAD regarding Cure materials submitted by another applicant. Rule 67-48.004(7), Florida Administrative Code. Rule 67-48.004(9) addresses the final scoring by Florida Housing. In pertinent part, that Rule states that "no Application shall fail threshold or receive a point reduction as a result of any issues not previously identified" in preliminary scoring, a NOPSE or Florida Housing's decision regarding a NOPSE. The same rule contains an exception which states:

> However, inconsistencies created by the Applicant as a result of information provided pursuant to subsections 6 [Cure materials] and (7) [NOADs] above will still be justification for rejection of the Application, threshold failure, or reduction of points, as appropriate.

Rule 67-48.004(9), Florida Administrative Code.

To demonstrate Site Control, Petitioner submitted in its initial Application, as Exhibit 27, a Purchase and Sale Agreement. The page in that Agreement entitled "Exhibit A Legal Description" was blank. This deficiency was brought to Petitioner's attention by Florida Housing's preliminary scoring, and Petitioner submitted, as a Cure, the missing legal description referenced on page 1 of the Purchase and Sale Agreement. A NOAD was submitted addressing the Petitioner's Exhibit 27, explaining that "a search of the title records" for the property described in the Purchase and Sale Agreement reveals that the Seller does not own the property, but has only a leasehold interest granted by the owner, the

Board of County Commissioners of Brevard County. A copy of the Lease Agreement was attached to the NOAD. Thereafter, Florida Housing determined that Petitioner failed to meet threshold regarding Site Control because the Seller in the Purchase and Sale Agreement did not own the property purporting to be sold to the Petitioner.

It is Petitioner's position in this case that Florida Housing erred in accepting the NOAD because NOADs are limited to issues raised in Cure materials, and Petitioner's Cure materials (basically, the legal description of the property which is the subject of the Purchase and Sale Agreement) created no new issue and no inconsistency with any other item in Petitioner's application. Accordingly, claims Petitioner, Florida Housing was prohibited from determining a threshold failure based on an issue (the Seller's legal ownership of the property purportedly being sold to Petitioner) not previously raised prior to the submission of Petitioner's Cure documents. Alternatively, Petitioner argues the legal effect of the Lease Agreement between its Seller in the Purchase and Sale Agreement and the Board of County Commissioners of Brevard County, and points out that the Lease Agreement could be assigned. As noted above, neither the Lease Agreement nor any assignment of that Agreement was provided in Petitioner's initial application or its Cure materials.

Petitioner's assertion that the legal description of the property which was the subject of the Purchase and Sale Agreement produced by Petitioner to evidence its control of the project site did not create an inconsistency or any new issues cannot be accepted. As pointed out by Respondent, the missing legal description is the very information that makes possible inquiry into the ownership of that property. The legal description was provided for the first time on Cure and, as a result, that was the first opportunity to inquire into ownership of the property purportedly being sold in the Purchase and Sale Agreement. An Applicant may not withhold required information (the legal description was required to make the Purchase and Sale Agreement complete), and then claim that the information later supplied creates no additional issue regarding threshold conditions. It simply may not be maintained that the ownership of the property was not placed in issue as a result of Petitioner's Cure.

In fact, the submittal of the legal description enabled the discovery of the fact that the same property was the subject of a Lease Agreement, and that Petitioner's "Seller" did not own the property sought to be conveyed in the Purchase and Sale Agreement. That Lease Agreement bears the same legal description of the property as contained in the legal description submitted as Petitioner's Cure document, and names Petitioner's "Seller" as the Tenant and a third party, the Board of County Commissioners of Brevard County, Florida, as the

Landlord. (Joint Exhibit 6) The legal description supplied as a Cure did in fact create an inconsistency with the Purchase and Sale Agreement because it evidenced that the seller did not own the property that was the subject of that Agreement. Moreover, it evidenced that the owner of the property was not a party to the Purchase and Sale Agreement, and the Application Instructions provide that, in such situations, all intermediate documents must contain certain specified elements. Petitioner's failure to provide the Lease Agreement prevented Florida Housing from making that determination of compliance.

Petitioner's arguments regarding the effect of the Lease Agreement between its Seller and a third party, as well as the potential assignability of that Lease Agreement, cannot be accepted. Contrary to the Application Instructions, Petitioner did not submit that Lease Agreement as part of its demonstration of Site Control and cannot now rely upon that document to persuade Florida Housing that its Seller in the submitted document (the Purchase and Sale Agreement) owned the property purporting to be sold.

In summary, Florida Housing properly determined, after consideration of documentation submitted by Petitioner's Cure and a competing applicant's NOAD, that Petitioner's application failed to demonstrate Site Control, a threshold item. Its scoring decision is entirely consistent with its rules, including the Application Instructions. Even if Petitioner's arguments with regard to the effect of the Lease

Agreement upon its Seller's legal ability to convey the project site were correct (a determination which cannot be made on this record), Petitioner failed to comply with the Application Instructions with regard to the submission of the documentation required to demonstrate Site Control.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that a Final Order be entered concluding that Petitioner's application failed to demonstrate the threshold requirement of Site Control.

Respectfully submitted this 23rd day of May, 2012.

DIANE D. TREMOR
Hearing Officer for Florida Housing
Finance Corporation
Sundstrom, Freidman & Fumero, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

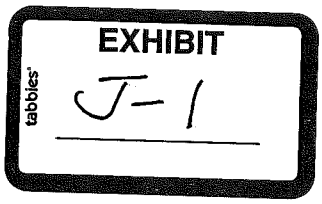
Copies furnished to:

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

Robert J. Pierce
Assistant General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Ste. 5000
Tallahassee, FL 32301-1329

NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

In accordance with Rule 67-48.005(3), 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.



STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

TRINITY TOWERS PRESERVATION ASSOCIATES, LLLP,
Petitioner,

vs.

FHFC CASE NO.: 2012-024UC

Application No.: 2011-205C

FLORIDA HOUSING FINANCE CORPORATION,
Respondent.
_____/

JOINT STIPULATION OF FACTS AND EXHIBITS

Petitioner, TRINITY TOWERS PRESERVATION ASSOCIATES, LLLP, ("Petitioner"), and Respondent, FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing"), by and through undersigned counsel, submit this stipulation in connection with the above styled informal proceedings and agree to the findings of fact and to the admission of the exhibits described below.

THE PARTIES

1. Petitioner is a Florida limited liability limited partnership with its address at 40 Court St., Suite 700, Boston, MA 02108, and is in the business of providing affordable rental housing units.

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, F.S.

BACKGROUND

3. 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.

4. 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.

5. 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

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

resulted in a denial of Florida Housing funding to the challenging applicant.

PETITIONER'S APPLICATION AND SCORING ISSUES

6. The Petitioner timely submitted its application for financing in Florida Housing's 2011 Universal Cycle. The Petitioner, pursuant to Application No.: 2011-205C applied for $1,197,727 in annual federal tax credits[2] to help finance the development of its project, a 162-unit apartment complex in Melbourne, Brevard County, Florida, known as Trinity Towers South.

7. To achieve threshold, an applicant in the 2011 Universal Cycle must demonstrate site control pursuant to the requirements set out in Part III. C. 2. of the Application Instructions. The required documentation evidencing site control must be provided at Exhibit 27 to the applicant's application.

8. Petitioner's original application included at Exhibit 27 a Purchase and Sale Agreement between Trinity Towers South, Inc., (as seller) and the Petitioner (as buyer). ***(Exhibit J-2)***

[2] The United States Congress has created a program, governed by Section 42 of the IRC, by which federal income tax credits are allotted annually to each state on a per capita basis to help facilitate private development of 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 IRC requirements. 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 construct and operate specific multi-family housing projects. The applicant entity then sells 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 below-market-rate rents that are affordable to low-income and very-low-income tenants. Pursuant to section 420.5099, F.S., Florida Housing is the designated "housing credit agency" for the state of Florida and administers Florida's tax credit program under its Housing Credit (HC) Program. Through the HC Program, Florida Housing allocates Florida's annual fixed pool of federal tax credits to developers of affordable housing under its annual Universal Cycle application process.

9. Florida Housing identified the following deficiency relevant to these proceedings in its preliminary scoring summary of the Petitioner's application dated 1/19/2012 ***(Exhibit J-3)***:

3T	III.	C.	2.	Site Control	The Purchase and Sale Agreement provided to demonstrate site control is incomplete. Although a page labeled Exhibit A, Legal Description, is included in the Agreement, the page is blank. No legal description was provided in the Application.	Preliminary	

10. The Petitioner timely submitted a cure in response to this scoring deficiency consisting of a Purchase and Sale Agreement between Trinity Towers South, Inc., (as seller) and the Petitioner (as buyer), including Exhibit A containing the legal description. ***(Exhibit J-4)***

11. Florida Housing scored the Petitioner's application and issued its final scoring summary dated 3/27/2012 ***(Exhibit J-5)*** in which it concluded, based on evidence provided in a NOAD filed by a competing applicant ***(Exhibit J-6)***, that the Petitioner failed to demonstrate site control as required by the applicable Application Instructions:

4T	III.	C.	2.	Site Control	As a cure for Item 3T, the Applicant provided a copy of the December 5, 2011 Purchase and Sale Agreement between Trinity Towers South, Inc. (Seller) and Trinity Towers Preservation Associates, LLLP (Buyer), including Ex. A, legal description, and all other exhibits. Based on evidence provided by a NOAD, Trinity Towers South, Inc., does not own the property described in Ex. A to the Purchase and Sale Agreement but rather leases the property from the Board of County Commissioners of Brevard County, Florida, pursuant to a March 15, 1979 Lease Agreement between Trinity Towers South, Inc. (Tenant) and the Board of County Commissioners of Brevard County, Florida (Landlord). The existence of this Lease calls into question Trinity Towers South, Inc.'s ownership of this property and its ability to sell it to the Applicant. As a result, the Applicant has failed to demonstrate site control as required in Part III.C.2. of the 2011 Universal Application Instructions.	Final	

12. As a result of the noted site control failure, Florida Housing determined that the Petitioner's application failed to achieve threshold.

PETITIONER'S ELECTION TO SUBMIT WRITTEN STATEMENT IN LIEU OF ATTENDING HEARING; TIME FOR SUBMITTING WRITTEN STATEMENT AND RESPONSE

13. The Petitioner timely filed its Petition contesting Florida Housing's scoring of its application regarding the threshold failure. Petitioner, in its Election of Rights, elected an informal proceeding, and in lieu of attending an informal hearing to be held in Tallahassee, elected to submit a written statement and documentary evidence. **(Exhibit J-7)** Petitioner and Florida Housing stipulate and agree that Florida Housing's designated hearing officer may issue her or his recommended order in this matter based on the following procedure. In lieu of a hearing, Petitioner shall submit a written statement and Florida Housing shall submit a written response to the written statement. Petitioner has elected to rely on its previously filed Petition as its written statement. Florida Housing shall submit its written response to the Petitioner's Petition no later than close of business on Thursday, May 17, 2012.

OFFICIAL RECOGNITION OF RULES

14. 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.

15. 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

16. 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:

Exhibit J-1: This Joint Stipulation of Facts and Exhibits.

Exhibit J-2: Purchase and Sale Agreement between Trinity Towers South, Inc., (as seller) and the Petitioner (as buyer) submitted at Exhibit 27 to Petitioner's original application.

Exhibit J-3: Preliminary scoring summary of Petitioner's application dated 1/19/2012.

Exhibit J-4: Purchase and Sale Agreement between Trinity Towers South, Inc., (as seller) and the Petitioner (as buyer) submitted by Petitioner on cure, including Exhibit A containing the legal description.

Exhibit J-5: Final scoring summary of Petitioner's application dated 3/27/2012.

Exhibit J-6: Portion of NOAD filed by Application Number 2011-129C directed to Petitioner's site control cure.

Exhibit J-7: Petitioner's Election of Rights.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted this 9th day of May, 2012.

By: _____

Gary J. Cohen
Florida Bar No. 353302
Shutts & Bowen LLP
201 South Biscayne Blvd.
1500 Miami Center
Miami, Florida 33131
Telephone: (305) 347-7308
Facsimile: (305) 347-7808
GCohen@shutts.com
Attorney for Petitioner

By: _____

Robert J. Pierce
Florida Bar No. 0194048
Assistant General Counsel
Florida Housing Finance
Corporation
227 North Bronough Street
Suite 5000
Tallahassee, Florida 32301-1329
Telephone: (850) 488-4197
Facsimile: (850) 414-6548
Robert.Pierce@floridahousing.org
Attorney for Respondent