

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

RIVERSIDE VILLAGE PARTNERS, LTD.,  
2003-159BS,

Petitioner,

v.

CASE NO.: 2003-046  
FHFC Application No. 2003-159BS

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

\_\_\_\_\_ /

**PETITION FOR FORMAL ADMINISTRATIVE PROCEEDINGS**

Pursuant to Sections 120.569 and 120.57(1), Fla. Stat., and Rules 28-106.201 and 67-48.005(1), Fla. Admin. Code, Petitioner RIVERSIDE VILLAGE PARTNERS, LTD. ("Riverside") hereby requests a formal administrative proceeding on Florida Housing Finance Corporation's proposed rejection of Riverside's application for Multifamily Mortgage Revenue Bonds, State Apartment Incentive Loan, and non-competitively awarded federal low income housing tax credits. Application No. 2003-159BS, and the proposed scoring of said application, in the Year 2003 Universal Application cycle. In support of this petition, Riverside states as follows:

**Parties**

1. The agency affected is the Florida Housing Finance Corporation ("FHFC"), 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. FHFC has assigned Application No. 2003-159BS to this matter.

2. The Petitioner is Riverside Village Partners, Ltd., (“Riverside”) whose address is 1551 Sandspur Road, Maitland, Florida 32751. For purposes of this proceeding, Riverside’s address is that of its undersigned attorney M. Christopher Bryant, Oertel, Fernandez & Cole, P.A., 301 S. Bronough Street, 5th Floor, Tallahassee, Florida 32301 (P. O. Box 1110, Tallahassee, Florida 32302-1110), Telephone: (850) 521-0700, Facsimile: (850) 521-0720.

**Substantial Interests Affected**

3. Riverside has proposed the construction of a 34-unit multi-family, townhouse-construction housing development in Tarpon Springs, Pinellas County, Florida. Riverside has proposed to set aside up to 100% of the units for residents making 60% or less of Area Median Income for a period of 50 years, depending on which program or programs Riverside is selected for funding in. Riverside has projected its total development costs to be \$6,400,703. Riverside proposes to finance \$3,205,000 of these development costs through a loan from FHFC of the proceeds of the issuance of tax-exempt Multifamily Mortgage Revenue Bonds (“MMRB”). Riverside also seeks a State Apartment Incentive Loan (“SAIL”) from FHFC in the amount of \$1.6 million. Further, if Riverside were to receive its requested allocation of MMRB, it would be entitled to an award of federal low income housing tax credits (“housing credits”) distributed by FHFC on a non-competitive basis. Riverside sought an annual allocation of \$173,503 in non-competitive housing credits for a 10-year period. Riverside proposed to sell these credits in order to generate \$1,279,172 in equity during the construction period, and \$1,421,302 in equity as part of the permanent financing of the development.

4. As explained more fully in this Petition, Riverside’s substantial interests are affected by FHFC’s proposed rejection and scoring of its application in this competitive application process. Currently, Riverside’s application has been rejected, for reasons more fully explained in this Petition,

and has been assigned a score of 61 points. Riverside believes that, if it prevails on the threshold rejection issue, its score would increase to 66 points for the same reason. If Riverside's application for MMRB, SAIL, and non-competitive housing credits is rejected, Riverside will be unable to construct the proposed development.

### **Background**

5. FHFC allocates several forms of financing for affordable housing, including Housing Credits, State Apartment Incentive Loans ("SAIL"), and Multi-Family Mortgage Revenue Bonds ("MMRB"). Applicants compete for the award of these forms of financing, which provide more favorable financial terms than would be available through conventional financing sources. In exchange for the receipt of such financing from FHFC, applicants enter into long-term agreements to set aside all or a portion of the residential units within such developments to low income residents, and, depending on the requirements of the particular program, may also be required to limit the rents charged to such residents.

6. All three of the above-named forms of financing (Housing Credits, SAIL loans, and MMRB) were combined into a single "Universal Application Cycle" for 2003. Financing for any of these programs is sought through the use of a joint Universal Application form. SAIL and Housing Credit applicants are subject to FHFC Rule Chapter 67-48, Fla. Admin. Code, while MMRB applicants are subject to FHFC Rule Chapter 67-21, Fla. Admin. Code. The Universal Application form is incorporated by reference into FHFC's rules, as are exhibit forms to be used with the applications, and a 90-page document entitled Universal Application Instructions, designated UA1016 (revised 4-03).

7. Applicants in the Universal Application Cycle are scored on the various components of their applications, such as development features and amenities, greater numbers of units set aside, resident programs, and local government support. The maximum score that can be assigned to a Universal Application is 66 points.

8. One of the features of the application that is scored is an applicant's commitment to set aside units in the proposed development as "affordable" for a period of greater than the required minimum affordability period. This is found at Part III, Section E, Subsection 3 of the application. Generally, applicants for MMRB, SAIL and housing credits are required to set aside units as affordable rental units for minimum periods of time, which varies depending upon the type of financial assistance sought. Applicants who commit to setting aside units as affordable for a period in excess of 30 years receive additional points towards their score, depending on the total length of time of their commitment, up to 5 points for applicants who select an affordability period of 50 or more years.

9. Further, because of the potential for so many applicants to achieve a "perfect" score of 66 points (and over 125 of the 150 or so Universal Application applicants currently pending have a "perfect score" of 66), FHFC designed its scoring and ranking system to include a series of "tie-breakers." One of the tie-breakers used by FHFC in this year's Universal Application Cycle involves the assignment of points based on the proximity of the development to certain off-site features, and to other FHFC financed developments serving the same demographic group. The maximum tie-breaker score a development can achieve is 7.5.

### **Nature of the Controversy**

10. Riverside timely submitted its 2003 Housing Credit application to FHFC on April 8, 2003. FHFC preliminarily reviewed and scored the 2003 Universal Application Cycle applications, including Riverside's. In its application, Riverside indicated, at Part III, Section E, Subsection 3, that it committed to set aside units for a total of 50 years; a copy of that page (page 16) of the printed-out copy of Riverside's application is attached as Exhibit A. On or about May 13, 2003, FHFC notified all applicants of the preliminary threshold responsiveness, scoring, and tie-breaker score determinations on their applications. FHFC informed Riverside that its application did not meet the required "threshold" responsiveness requirements, due to the Application not containing evidence as to the status of its site plan approval or plat approval by the local government; FHFC designated this alleged basis of threshold failure as Item #1T. FHFC also informed Riverside, by way of a document labeled Universal Scoring Summary, that its score was 62 points (out of an available 66 points), and that its tie-breaker points totaled 4.25. The basis for Riverside preliminarily receiving only 62 of the available 66 scoring points is that the Riverside application, as initially submitted, did not include documents verifying that the local government has affordable housing incentive in place; FHFC labeled this point loss issue as Item #10S.

11. On or about the same date that FHFC provided Riverside its preliminary Universal Scoring Summary, it was also posted on FHFC's web site, at [www.floridahousing.org](http://www.floridahousing.org). A copy of that Universal Scoring Summary as posted on the web site, and dated 5/12/2003, is attached hereto as Exhibit B. As noted in the preceding paragraph, the Scoring Summary stated that the Application did not meet threshold requirements, that its substantive score was 62 points, and that its tie-breaker score was 4.25 points.

12. Subsequent to the issuance of “preliminary” scores in May, 2003, all applicants were provided the opportunity to notify the FHFC of possible scoring errors in other applications. Another applicant filed a Notice of Possible Scoring Error (“NOPSE”) against Riverside, contending that Riverside’s application should be rejected for a variety of reasons. The primary argument advanced by the NOPSE filer was that, in the judgment of the NOPSE filer, the proposed Development relied on a “suspect financing scheme” that would not work. The NOPSE filer also asserted, without any basis, that the Applicant was representing the Development to others as “eventual home ownership opportunities,” and that the Development would thus be “inconsistent with the purposes of the SAIL program” since the SAIL program allegedly exists only for rental housing. A copy of the NOPSE against Riverside raising these issues is attached hereto as Exhibit C.

13. Following the submission of NOPSEs, FHFC issued a subsequent Universal Scoring Summary, on or about June 9, 2003. This Scoring Summary was also posted on FHFC’s web site, and a copy of the posted Scoring Summary for Riverside, dated 6/9/2003, is attached hereto as Exhibit D. The June 9 Scoring Summary again showed that the Riverside application did not satisfy threshold responsiveness requirements; that the application would receive a score of only 57.0 points if it was not rejected; and that the application would receive 4.25 total tie-breaker points if it was not rejected. As shown on Page 2 of Exhibit D, FHFC cited as its reason for Riverside’s threshold failure the following:

The proposed Development does not satisfy the minimum Development requirements stated in Rule 67-21.006, F.A.C. The Development is not a multifamily residential rental property comprised of buildings or structures each containing four or more dwelling units. Further, the Applicant has a present plan to convert

the Development to a use other than as an affordable residential rental property.

FHFC indicated on the June 9 Scoring Summary that this threshold failure item, designated #2T, was created as the result of a NOPSE. However, the only NOPSE filed against this Development that the Development did not assert that the Development design did not satisfy the MMRB program rules, in Chapter 67-21, concerning number of units per building. The NOPSE also did not state that the Applicant “has a present plan to convert the Development to a use other than as an affordable residential rental property.”

14. The Scoring Summary also cited the following reason for the Application not being awarded 5 points for a commitment to an affordability period of 50 years:

The Applicant committed to an affordability period of 50 years in its Application. Florida Housing has subsequently received information from the Applicant stating that if the Development is funded, the Applicant intends to request a waiver from the Board of Directors to relieve it of its 50 year commitment in lieu of a conversion of the units to home ownership. The Universal Application and Universal Application Instructions require Applicants to make an “irrevocable” commitment to set aside units for 50 or more years to be eligible for 5 points. Since the Applicant intends to seek relief from this commitment, the Applicant is not awarded these 5 points. As stated at Part III.E.3. of the Application, no points are awarded for an affordability period of less than 31 years.

This point loss item, designated Item #6S, is also designated as being created as the result of a NOPSE. However, the only NOPSE filed against this Development did not seek the loss of any points, and expressly raised only threshold issues, not scoring issues.

15. Pursuant to Rule 67-48.004(6), Fla. Admin. Code, Riverside took the opportunity to provide additional documentation to FHFC to address its alleged failure to pass threshold and to achieve a score of 66 points. This additional documentation is generally referred to as a “cure.”

Riverside's cure included documentation on the threshold issue of local government site plan approval status (Item #1T on the Scoring Summary), and on the scoring issue of local government affordable housing incentives (Item #10S on the Scoring Summary). Riverside's cure also included documentation addressing threshold issues of the number of units per building and the alleged "present plan" to convert the Development to a use other than as affordable residential rental property, which issues FHFC had collectively designated as Threshold Item #2T. The cure explanation and documentation responding to the "present plan to convert" threshold issue is attached hereto as Exhibit E. Finally, the Applicant included cure documentation addressing the loss of points for an "affordability period" allegedly less than 31 years (scoring item #6S); that cure explanation and documentation is attached hereto as Exhibit F.

16. On or about July 21, 2003, FHFC released "final" Universal Scoring Summaries for all applicants. (Although designated "final," the scoring summaries are accompanied by points of entry to request formal or informal administrative hearings.) FHFC's final Universal Scoring Summary for Riverside, dated 07/18/2003, which was received by Riverside via overnight delivery on July 22, 2003, is attached hereto as Exhibit G.

17. FHFC's final scoring summary for Riverside reflects that the application does not meet FHFC's threshold requirements, has a "final" substantive score of 61 points (out of 66 possible), and has a final tie-breaker score of 4.25 points. (Riverside does not contest its tie-breaker score of 4.25.) Specifically, FHFC reversed its preliminary threshold failure assertion concerning a local government verification of site plan approval status (Item 1T); reversed the preliminary loss of 4 points concerning local government verification of affordable housing incentives (Item 10S); and reversed the threshold failure issue raised by NOPSE concerning the number of units in each



residential building (portion of Item 2T). However, the 7/18/2003 Scoring Summary continued to assert the loss of 5 points for an affordability period of less than 31 years (Item 6S). In addition to the reason for such point loss listed on the 06/09/2003 Scoring Summary as item 6S, the 7/18/2003 Scoring Summary added the following “Additional Application Comment,” designated item 3C:

Applicant attempted to cure item 6S. However, as identified in Item 3T, the Applicant has a present plan to convert the Development to a use other than affordable rental property. Therefore, the period of affordability Applicant has committed to cannot be determined.

The Scoring Summary indicates that this additional reason for point loss was created as a result of “final” scoring.

18. Finally, the 7/18/2003 Scoring Summary continued to assert a threshold failure based on an alleged “plan to convert the Development to a use other than an affordable residential rental property.” This last threshold issue, which FHFC redesignated as Threshold Item #3T in the 7/18/2003 Final Scoring Summary, reads as follows:

Rule 67-21.006, F.A.C., requires that an Applicant certify that Applicant shall have no present plan to convert the Development to any use other than the use as affordable residential rental property. This Applicant has a plan to convert the Development to a use other than an affordable residential rental property.

19. Item #6S on the NOPSE scoring summary states that information concerning the Applicant’s alleged intent to request a waiver of a 50-year affordability period was received “from the Applicant.” Such information exists nowhere in the Applicant’s application. FHFC has had a consistent, long-standing policy of limiting its review of an application to information contained “within the four corners” of the Application.

20. Presumably, the “information obtained from the Applicant” referred to in the scoring summary refers to a letter written by an officer and principal of The CED Companies, a family of Florida-based business entities that have developed, constructed, and managed about 28,000 dwelling units in over 130 affordable housing developments in ten states, including almost 75 such developments completed or under construction in Florida. That letter was not signed on behalf of this Applicant, Riverside Village Partners, Ltd., or on behalf of the Developer of this Development, Sandspur Housing Partners, Ltd. That letter was not a part of any Application, and was not submitted as a part of the Application process. Rather, this letter, addressed to the Executive Director of FHFC, was in response to other developers and applicants who conducted a behind the scenes campaign, outside of the authorized application process, to discredit this Applicant and its Developer. The CED letter discussed in detail policy reasons why FHFC should consider revising its various funding program rules to allow for conversion of MMRB/SAIL financed rental developments to home ownership in certain situations.

21. The letter did not identify any particular proposed development by name or application number. It did name several counties as examples of counties which have received few or no FHFC-financed developments, as well as several “high median income” small and medium counties in which such a proposal, if allowed by FHFC, would appear to work from a financial standpoint, in terms of debt service coverage, MMRB and SAIL financing limitations, and loan-to-value ratios.

22. Further, and most significantly, the letter never stated a current intent to seek relief from a 50-year affordability period, or to seek authorization to convert to home ownership. Rather, the letter stated:

Even though FHFC did not amend the scoring to allow for equivalent points for a conversion to a home ownership plan in lieu of a 50-year extended affordability period, we felt we could make a viable case to the FHFC Board to ask for this relief with a strong rent-to-own program for the tenants. We intended to request this in the future, during the compliance period, for the Board's consideration in light of the concept of the "American" dream of home ownership.

(Emphasis added.) The letter contains no statement of either present plans or intended future action; it only identified the action that the author and his affiliated companies had intended to pursue.

23. Finally, even if an Applicant, at some time in the future, sought to convert an MMRB/SAIL rental development to home ownership, there would be more than just FHFC's policies to contend with. A development financed with tax-exempt bonds (such as MMRB) for at least 50% of its total development costs is entitled to an award of non-competitively awarded housing credits; generally, all or virtually all MMRB applicants, as well as those Developments financed with tax-exempt bond issues from local housing finance authorities, structure their financing so as to qualify for non-competitive HC. Such non-competitive HC is awarded in an annual amount of roughly 4% of eligible development costs for a period of 10 years, and the sale of that future stream of "4% HC" can generate as much as 20% to 25% of the total financing for a development.

24. However, the Internal Revenue Service regulations for the HC program contain a "recapture" provision, that authorize the IRS to take back housing credits if a development does not honor its affordable housing commitment for at least 15 years. A recapture of credits would be disastrous for investors who acquired such credits, for the syndicator who purchased them from the applicant and sold them to investors, and for the applicant who initially received (and sold) the

credits. Thus, to the extent a competitor or FHFC alleges that an applicant has a “present plan” to convert an affordable rental property to ownership, any such “present plan” for a development that received housing credits would not be feasible at least until the end of the 15-year recapture period. Any conversion attempted soon after a development received its funding, or soon after it was constructed and placed in service, is so extremely problematic that any implication that such conversion (even if possible) is imminent is misleading and absurd.

25. FHFC now attempts to punish an applicant for another person having presented a cogent, well-supported policy discussion as to how FHFC could improve its programs to help reach the goal of home ownership. Although Riverside and its principals are voluntary participants in FHFC’s funding programs, they have not surrendered their constitutional right to free speech, as well as their right to suggest to the government, through its designated agency (FHFC), that there are better ways to accomplish their mutual goals of providing affordable housing. For FHFC to punish an Applicant for such an exercise of rights by another person is reprehensible.

#### **Notice**

26. Riverside received notice via Federal Express delivery on Tuesday, July 22, 2003, of FHFC’s scoring of the Riverside MMRB/SAIL/non-competitive HC application. This Petition is being accompanied by a completed Election of Rights form indicating Riverside’s intention to file a Petition for Formal Administrative Proceedings within twenty-one days of its July 22 receipt of notice of the scoring of its application. A copy of the Election of Rights form is attached hereto as Exhibit H. Pursuant to Rule 67-48.005(1), Fla. Admin. Code, this Petition is being filed within twenty-one days of Riverside’s receipt of the July 21, 2003 memorandum forwarding its score.

### **Disputed Issues of Material Fact**

27. Riverside has initially identified the following disputed issues of material fact, which it reserves the right to supplement as additional facts become known to it:

(A) Whether Riverside has a plan to convert the Development to a use other than affordable residential rental property. Riverside contends that it does not.

(B) Whether Riverside has irrevocably committed to an affordability period of 50 years in its application. Riverside contends that it has.

(C) Whether FHFC impermissibly relied on information outside of the “four corners” of the application, and outside of the NOPSE and NOAD process, to conclude that Riverside has a “present plan” to convert the Development to a use other than affordable residential rental property. Riverside contends that FHFC did so.

(D) Whether FHFC’s reliance on information outside of the application to determine that Riverside has a present plan to convert the Development to a use other than residential rental property is arbitrary, capricious, and unlawful. Riverside contends that it is.

(E) Whether FHFC’s determination that Riverside has a present plan to convert the Development to a use other than affordable residential rental property had any reasonable basis in law and fact at the time that position was asserted by FHFC. Riverside contends that it did not.

### **Concise Statement of Ultimate Facts**

28. Riverside alleges as ultimate facts that it has no present plan to convert its Development to a use other than affordable residential rental property; and that it has committed in its application to an affordability period of 50 years. FHFC’s proposed rejection of the Riverside application, and

the proposed loss of 5 points for the Applicant's affordability period commitment, should be overturned.

**Relief Sought and Law Entitling Applicant to Relief**

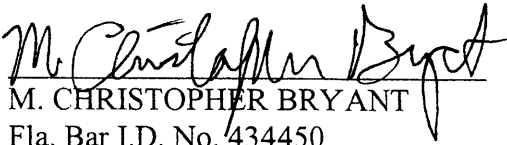
29. Riverside seeks entry of Recommended and Final Orders reversing FHFC's proposed threshold failure determination, accepting Riverside's application as responsive, and awarding it 5.0 points for its 50 year affordability period commitment. Riverside is entitled to this formulation of FHFC's action by Chapter 120, Fla. Stat., including but not limited to Sections 120.569 and 120.57(1); and Rule Chapters 28-106, 67-21 and 67-48, Fla. Admin. Code.

30. Riverside is also entitled to this relief by prior agency practice and precedent prohibiting FHFC's reliance on information outside of the "four corners" of the application. FHFC has historically and consistently refused to consider information from outside of an applicant's own submission in processing that application. FHFC has made rare exceptions to that policy, such as for information posted by a local government on its web site, or other information similar to what might be judicially noticeable under the Florida Evidence Code, but no such exceptions apply here. FHFC's attempt to use a distorted and clearly erroneous interpretation of a policy discussion letter that is not even from the Applicant to reject an application and reduce its score violates this long-standing "four corners" policy.

31. Riverside specifically requests that this petition be promptly forwarded to the Division of Administrative Hearings within fifteen days of its filing, as required by Section 120.569(2)(a), Fla. Stat., for assignment of an administrative law judge, and the conduct of formal administrative proceedings. Riverside also seeks such other relief as is just and proper, including but not limited to the award of attorney's fees and costs pursuant to Section 57.111, Fla. Stat., in that FHFC's

proposed rejection of the Riverside application, and the proposed loss of 5 “affordability period commitment” points, has no reasonable basis in law and fact and is contrary to the clear, unambiguous, and uncontroverted assertion by Riverside of its commitment to an affordability period of 50 years as affordable residential rental property.

FILED and SERVED this 12<sup>th</sup> day of August, 2003.

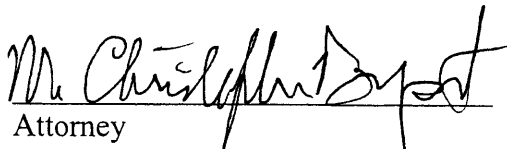
  
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Attorneys for Petitioner  
RIVERSIDE VILLAGE PARTNERS, LTD.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing has been filed by HAND-DELIVERY with the Corporation Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, this 12<sup>th</sup> day of August, 2003.

  
Attorney

MCB/dg/2624-33  
2624-33RiversidePetition.Pld

**INDEX OF EXHIBITS TO PETITION OF  
RIVERSIDE, 2003-159BS**

Exhibit A	Page 16 of Riverside's application, submitted April 8, 2003
Exhibit B	Universal Scoring Summary for Riverside, dated May 12, 2003
Exhibit C	Notice of Possible Scoring Error filed against Riverside
Exhibit D	Universal Scoring Summary for Riverside, dated June 9, 2003
Exhibit E	Cure submitted by Riverside on "present plan to convert" threshold issue (Item #2T)
Exhibit F	Cure submitted by Riverside on "affordability period" scoring issue (Item #6S)
Exhibit G	"Final" Universal Scoring Summary for Riverside, dated July 22, 2003
Exhibit H	Election of Rights Form





(2) Percentage of ADDITIONAL HOME-assisted units: \_\_\_\_\_ %

(Divide number shown in b.(1) by a.(4) and round percentage to two decimal places)

(3) Is the minimum number of HOME-assisted units required, as shown at a.(5), plus the additional HOME-assisted units, as shown at b.(1), either equal to or less than the total number of units in the Development?

Yes  No

c. Total Set-Aside Percentage: \_\_\_\_\_ %

(add a.(6) and b.(2) and round percentage to two decimal places)

d. Summary of HOME-Assisted Units:

(1) Low HOME Rent Units \_\_\_\_\_

(2) High HOME Rent Units \_\_\_\_\_

(3) Total HOME-Assisted Units \_\_\_\_\_

3. Affordability Period for MMRB, SAIL, HOME and HC Applications:

Applicant irrevocably commits to set aside units in the proposed Development for a total of  
50 years.

## F. Resident Programs

1. Qualified Resident Programs for Non-Elderly and Non-Homeless Developments  
(Maximum 6 Points)

a. Welfare to Work or Self-Sufficiency Programs (1 point)

Identify the program and the contact person:

Name of Welfare to Work or Self-Sufficiency Program:  
WorkNet Pinellas

Name of Contact Person:  
Bonnie Moore

Telephone Number:  
(727) 524-4344

Address:  
Street: 4525 140th Avenue North

City: Clearwater State: FL Zip Code: 33762

b. Homeownership Opportunity Program:

(1) Financial Assistance with Purchase of a Home (2 points)

OR (for HC Applicants Only)

(2) Financial Assistance with Purchase of a Unit in the Development (1 point)

c. After School Program for Children (3 points)

d. First Time Homebuyer Seminars (1 point)

e. Literacy Training (2 points)

f. Job Training (2 points)

2. Qualified Resident Programs for Homeless Developments - SRO and Non-SRO  
(Maximum 6 Points)

a. The following resident programs are available for SRO Developments only:

(1) Staffed kitchen/Cafeteria (3 points)

(2) Daily Activities (3 points)

## 2003 MMRB, SAIL & HC Scoring Summary

As of: 05/12/2003

File # 2003-159BS

Development Name: Riverside Village

As of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit	SAIL Request Amount as Percentage of Development Cost	Is SAIL Request Amount Equal to or Greater than 10% of Total Development Cost?
05 - 12 - 2003	62	N	4.25	\$141,323.53	33.71%	Y
Preliminary	62	N	4.25	\$141,323.53	33.71%	Y
NOPSE	0	N	0		0	
Final	0	N	0		0	
Post-Appeal	0	N	0		0	

**Scores:**

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
Optional Features & Amenities									
1S	III	B	2.a.	New Construction	9	9	0	0	0
1S	III	B	2.b.	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
2S	III	B	2.c.	All Developments Except SRO	12	12	0	0	0
2S	III	B	2.d.	SRO Developments	12	0	0	0	0
3S	III	B	2.e.	Energy Conservation Features	9	9	0	0	0
Set-Aside Commitments									
4S	III	E	1.b.	Commitment to Serve Lower AMI	5	5	0	0	0
5S	III	E	1.c.	Total Set-Aside Commitment	3	3	0	0	0
6S	III	E	3.	Affordability Period	5	5	0	0	0
Resident Programs									
7S	III	F	1.	Programs for Non-Elderly & Non-Homeless	6	6	0	0	0
7S	III	F	2.	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
7S	III	F	3.	Programs for Elderly	6	0	0	0	0
8S	III	F	4.	Programs for All Applicants	8	8	0	0	0
Local Government Support									
9S	IV		a.	Contributions	5	5	0	0	0
10S	IV		b.	Incentives	4	0	0	0	0

## 2003 MMRB, SAIL & HC Scoring Summary

As of: 05/12/2003

File # 2003-159BS Development Name: Riverside Village

**Reason(s) Scores Not Maxed:**

Item #	Reason(s)	Created As Result of	Rescinded as Result of
10S	Applicant failed to include completed and signed Local Government Verification of Affordable Housing Incentives Forms.	Preliminary	

**Threshold(s) Failed:**

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	1	Site Plan or Plat Approval	The Applicant failed to provide the applicable property completed and executed Local Government Verification form - Status of Site Plan Approval or Status of Plat Approval.	Preliminary	

**Proximity Tie-Breaker Points:**

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Post-Appeal
1P	III	A	11.b.(1)	Grocery Store	1.25	1.25	0	0	0
2P	III	A	11.b.(2)	Public School	1.25	1.25	0	0	0
3P	III	A	11.b.(3)	Medical Facility	1.25	0	0	0	0
4P	III	A	11.b.(4)	Pharmacy	1.25	0	0	0	0
5P	III	A	11.b.(5)	Public Bus Stop or Metro-Rail Stop	1.25	1	0	0	0
6P	III	A	11.c.	Proximity to Developments on FHFC Development Proximity List	3.75	0.75	0	0	0

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

Item #	Reason(s)	Created As Result of	Rescinded as Result of
6P	Tie-Breaker Measurement Point plots between .5 and 1 mile of Weston Oaks, a Development on the List which serves the same demographic group.	Preliminary	



**UNIVERSAL APPLICATION  
NOTICE OF POSSIBLE SCORING ERRORS  
REQUEST FOR REVIEW FORM**

Notice of Possible Scoring Error(s) regarding Application No 2003- 159BS  
(one Application number per notice)

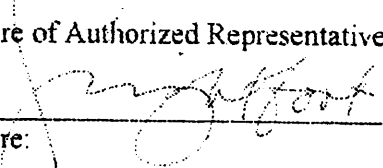
Part/Section/Subsection			Number of Issues For Review
I		Exhibit 1	1
V	B		1
Total Number of Issues For Review			2

**TRACKING NO:**

**148**

Submitted by Authorized Representative for Application Number 2003- 101CS

Signature of Authorized Representative for above-designated Application:

Signature: 

Gwen Lightfoot  
Print Name:

All notices must be submitted in accordance with Rule Chapters 67-48.004(4) and 67-21.003(4) and should contain enough information for staff to evaluate them. This will include, but may not be limited to, a detailed description of the issue being identified and the action requested, such as reduction of score or rejection of the Application. Attach additional pages if necessary. All notices should be submitted in typewritten form.

**NOTICE OF POSSIBLE SCORING ERROR**

**2003-159BS  
Riverside Village  
Pinellas County**

Specific cites:

Part V.B.

Exhibit 1

Section 420.5087, Florida Statutes

Rule 67-48.002(111)

Rule 67-48.004(13)(a)

Rule 67-48.004(13)(b)

Rule 67-48.012(2)(f)

**TRACKING NO:**

**148**

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Florida Housing should reject this Application because the proposed development would be inconsistent with the purposes of the SAIL program and cannot conceivably be completed and operated within the budget submitted to the Corporation, and because the Application fails threshold. The proposed development would be 34 units of 4 bedroom/2.5 bath townhouses that imagines a funding scheme that is so outside the range of reasonableness that Florida Housing's rules require you to reject the Application. Florida Housing must also reject the Application because it proposes a development that is inconsistent with the purposes of the SAIL program and does so by means of an Application that is internally inconsistent with itself.

Florida Housing Must Examine Suspect Financing Schemes

Rule 67-48.004(13)(a) & (b) requires Florida Housing to reject any Application for which "The Development is inconsistent with the purposes of the SAIL . . . Program[.]" or "The Applicant fails to achieve the threshold requirements as detailed in these rules, the applicable Application, and Application instructions[.]" Exhibit 1 to the Application (adopted by rule 67-48.002(111)) requires the Applicant to certify "that the proposed Development can be completed and operating within the development schedule and budget submitted to the Corporation," and to certify and warrant the "truthfulness and completeness of the Application."

When read together, these rules require Florida Housing to reject any Application that does not propose a development that could be built or operated on the terms included in the Application. These rules also require Florida Housing to reject any Application that contains representations that are not true or that becomes incomplete when inaccurate or misleading information is stricken.

Accordingly, an Applicant may not satisfy the Application's requirements merely by submitting a set of documents that has something in every necessary blank and some sort of exhibit behind every relevant tab. The information and proposals in a submitted Application must be based in reality. Florida Housing is obligated, when it receives a timely filed NOPSE, to evaluate the substance of an Application.

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For example, an Application for a development that was clearly beyond any permissible density for that zoning designation must be rejected by the Corporation, with an opportunity for the Applicant to demonstrate sufficient facts at DOAH to establish that the proposal in the Application is reasonable and possible. Likewise, an Application that depends on financing components that are outside the range of reasonableness must be rejected by the Corporation, with an opportunity for the Applicant to prove the viability of the proposed Development at DOAH.

When Florida Housing rejects an Application that appears unrealistic to complete and operate within the development schedule and budget submitted to the Corporation, Florida Housing protects the integrity of the competitive processes. Rejecting such an Application ensures that scarce resources are allocated in a manner that best comports with the Florida Legislature's intent that dollars be used quickly and efficiently to build affordable housing where it is needed. Rejecting such an Application prevents gamesmanship by developers who tie up allocation in hopes of releasing it to another proposed development or in hopes of holding it until the start of the next Application period to ensure that competitive developments cannot be built and smaller developers are driven from the process.

Protecting the integrity of Florida Housing's competitive processes in this way does not require Florida Housing to scrutinize or underwrite during scoring every pro forma submitted in every Application. It does, however, require that Florida Housing analyze those for which a question is raised during the NOPSE and NOAD process (as applicable).

Protecting the integrity of the process also does not require Florida Housing to prematurely perform the complete credit underwriting analysis of an Application. All it requires is that Florida Housing apply the information at its disposal and exercise its professional judgment to determine whether the claims in an Application fall within a range of reasonableness. If the proposed development requires reliance on unreasonable financial presumptions, then Florida Housing must reject the Application. If the Applicant then wishes to assert that the proposed transaction works, will underwrite, will close, and will be viable, then it should be required to do so under oath at DOAH, and subject itself to potential later actions for material misrepresentation.

**MMRB Financing Will Not Work for this Proposed Development**

The Application that is the subject of this NOPSE would propose to use tax-exempt mortgage revenue bonds for a 34-unit development. Even after an obscenely excessive request of \$47,058 in SAIL funds for each of those units, this transaction simply will not work. There is a reason that Florida Housing rarely closes bond transactions of fewer than 200 units. The economics do not work. Bond financing is a comparatively shallow subsidy with high fixed costs and little margin for error on rents or expenses. Everyone



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in the industry knows that proposed developments must be of a size that the fixed costs can be spread across a greater number of units, those units must be able to capture sufficiently high rents that more stringent debt service requirements can be achieved, and vacancy percentages must be kept to a minimum.

Beyond the historical difficulties, bond financed transactions have gotten more and more difficult to do in recent years. Florida Housing has not been able to use all of its tax-exempt bond volume cap in recent years because fewer and fewer proposed developments will work in today's economic environment. It does not appear that Florida Housing has closed a bond transaction for a development this small in many years (if ever). The Application that is the subject of this NOPSE will not break that trend.

**The Proposed Financing Structure for this Development is Riddled with Flaws**

Without belaboring the complete financial analysis here, there are several key points in the proposed financing structure of which Florida Housing should take note:

(1) Every one of the 34 units in this proposed development is 4 bedroom, 2.5 bath. Not only does Florida Housing show the greatest vacancy rates in its units with 3 and 4 bedrooms, the lack of any diversity in unit type will limit the marketability of the units, increase the lease up time, and likely contribute to greater vacancy factors.

(2) The Term Sheet/Letter of Interest for Construction and Permanent Loan (Exhibit 55) by which the Applicant alleges the availability of credit enhancement mandates a financial structure for this proposed development that is so outside the range of reasonableness that Florida Housing must disqualify the Application as a sham. Specifically, the loan will be required to underwrite at a 1.20 minimum debt service coverage ratio, with a 30-year amortization, and a 6.50% underwriting rate. When Florida Housing assumes reasonable operating expenses of \$4000 per unit (still a conservative assumption given the large families that 4-bedroom units are likely to attract and the increased expenses that tend to follow developments with a lot of children living there), this transaction would barely make a 0.67 debt service coverage ratio.

(3) Reducing the amount of the bonds to create manageable debt service coverage (if it were even possible), would require the development to fail the 50% test, thereby eliminating the possibility of receiving non-competitive 4% tax credits and providing yet another reason that the financing structure collapses.

(4) Rule 67-48.012(2)(f) requires that a SAIL loan have a debt service coverage ratio that is at least 1.10. The ratio for this proposed development is barely 0.67. That difference is so dramatic that Florida Housing is obligated to recognize this Application as the sham that it is and reject it now.

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Florida Housing Should Not Allow this Application to Undermine the Funding Priorities in the SAIL Statute and Rules

If this Application were only requesting bond financing, there would be little damage done to Florida Housing's competitive processes if you took no action now and allowed the transaction to fail during underwriting or allowed the Applicant to withdraw this Application as it has done with so many others over the past several years. But this Application also requests SAIL funds. Allowing this sham transaction that is inconsistent with the purposes of SAIL to receive an allocation of SAIL funds during the October 9-10, 2003, Board meeting would do irreparable harm to other Applicants in the process and to the Corporation's ability to protect the scarce SAIL funding during the 2004 legislative session.

The SAIL statute and Florida Housing's rules adopt priorities for how SAIL funds will be allocated among counties and demographic groups. Those priorities are violated and the fundamental allocation system gets undermined when an Application receives funding during the October Board meeting and then fails to close. The allocation that the Applicant received and then returned, either voluntarily or because the proposed development fails credit underwriting, gets distributed in a way that ignores the priorities of the SAIL program that the legislature established in section 420.5087 and that are reflected throughout rule chapter 67-48.

An Applicant that receives SAIL funding during the October board meeting gets to control how that money will actually be used by having the option to return the money after the Board meeting and having the funds flow to a proposed development that is not selected based on geographic or demographic targeting objectives or by holding the money until the next cycle opens, preventing the scarce dollars from being used to create affordable housing today. When an Applicant is permitted to do either of those things, the public policy mandates for the program break down and Florida Housing's ability to satisfy the intent of the legislature is damaged.

Therefore, merely having a SAIL Application fail during credit underwriting does not protect the integrity of the process. Allowing a sham Application to tie up SAIL funding and then have the opportunity to return it to the Corporation for possible funding of other Applications by that same Applicant makes a mockery of the process. To protect the integrity of the SAIL program and comply with the legislature's targeting requirements, Florida Housing must reject a clearly insufficient Application now, and not wait for the credit underwriting process to run its inevitable course. If there is a credible question about the legitimacy of a SAIL Application, Florida Housing should force the Applicant to prove its Application at DOAH. If the administrative law judge finds in the Applicant's favor, and the Board enters a final order adopting that recommended order, then no Application that should have been funded would have been denied and Florida Housing would have done its part to protect the integrity of this legislatively granted program.

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**The Inadequate Financing Structure Causes this Application to Fail Threshold**

In addition to the requirement of rule 67-48.004(13)(a) that Florida Housing reject the Application, 67-48.004(13)(b) requires the same result. Financing documents that are not credible cannot be treated as properly filed. Without a legitimate method of making a proposed development work within Florida Housing's rules, the Application must be treated as having failed threshold.

**The Applicant is Requesting an Excessive Amount of Subsidy, Making the Proposed Development Inconsistent with the Purposes of the SAIL Program**

Florida Housing also should disqualify this Application for another reason based on rule 67-48.004(13)(a). The Applicant seeks an amount of SAIL subsidy per unit that is so excessive that it is inconsistent with the purposes of the SAIL program and would be such a misuse of those scarce funds by Florida Housing that it could further jeopardize the continued availability of State Housing Trust Fund dollars from the legislature.

This Application is requesting \$47,058 per unit in SAIL subsidy. It appears that during 2002, no Application that Florida Housing funded came even close to such an abusive request. Only four developments from last year were awarded funding of more than \$15,000 per unit in SAIL subsidy. Three of those were submitted by Heritage Affordable Development, Inc. and one was by Housing for Rural, Inc. Even then, three of those were awarded less than \$21,000 per unit. The largest SAIL subsidy per unit that Florida Housing had to report to legislative staff appears to have been \$25,641.03.

**Because the Proposed Development would be Townhouses for Ownership, it is Inconsistent with the Purposes of the SAIL Program**

Another reason that this Application is inconsistent with the purposes of SAIL is that section 420.5087 created the State Apartment Incentive Loan Program to help create affordable apartment homes. This Application is for townhouse that it appears that the developer is representing as eventual home ownership opportunities. The attached article from the April 18, 2003, *St. Petersburg Times* describes the rent-to-own program that this same developer promised for Application 2003-161BS. It is our belief that the developer has been promoting the current Application to local governments and others in the affordable housing community as creating a similar program. Part of Applicant's justification to the affordable housing community in requesting such an excessive amount of subsidy is that the units that they would be building are single family homes intended for homeownership. Allowing SAIL to be abused as the Applicant proposes would be inconsistent with the purposes of the program.

**The Applicant is Attempting to Mislead Florida Housing and Local Government**

Beyond the disconnect between the rent-to-own program that the Applicant intends and the fundamental purposes of the SAIL statute, this Application is internally inconsistent as to the set-aside period that is promised and the actual intent of the proposed development, and funding this development would do further harm to Florida Housing's relationship with local government. In its effort to get full points for the proposed

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development, the Applicant has promised Florida Housing that it will set aside the units as affordable rental units for the next 50 years. At the same time the Applicant is promising that tenants will be able to buy the homes. Unless the Applicant is intending a lease-to-own program with a requirement that the unit stay rental housing for the first 50 years of the tenant's occupancy (an absurd premise), the promises are mutually exclusive.

It is this type of saying anything to get the deal that has created some of Florida Housing's problems with local government. A developer will go to a community and promise the impossible to get enough local government action to get this deal today. When the inevitable happens and the development becomes something different than the developer promised, Florida Housing gets blamed. If Florida Housing were to award SAIL funds to this Application and a miracle happened and the proposed Development were actually built, Florida Housing would once again be accused of breaking a promise that someone else made.

For all of these reasons, Florida Housing should reject this Application.

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## Developer proposes rent-to-own housing

Each of the 43 townhouses would rent for \$800 a month to low- and moderate-income families in Port Richey.

By ALEX LEARY, Times Staff Writer

© St. Petersburg Times, published April 18, 2003

PORT RICHEY -- A Maitland company wants to develop 43 single-family homes on vacant land at Washington Street and Broadway Avenue, just inside the city limits.

Intended for low- and moderate-income families, Broadway Village would offer a rent-to-own option, with a portion of the monthly payment serving as equity -- a fairly untested concept in Florida.

If approved and followed by a second phase of approximately 30 homes, the complex would represent the most substantial residential development in Port Richey in recent years.

Sandspur Housing Partners, which has submitted preliminary plans to the city, said construction could begin as early as spring 2004, with units ready that fall.

The company has a contract to buy 32 acres off Washington Street now owned by Port Richey Village Inc. Including the land, valued at about \$1.5-million, the first phase would cost \$7.4-million.

Unattached to each other, the two-story townhouses would have four bedrooms, three baths and a garage.

They would rent for \$800 a month and be available to families earning between roughly \$18,000 and \$40,000, said Scott Culp, executive vice president of the CED Companies, affiliated with Sandspur.

The homes would remain rental properties for 15 years to meet tax-exempt bond financing obligations with the Florida Housing Finance Corp., Culp said.

After two years, a person could begin to build equity in the home, though Culp did not know exactly how much of the rent would be set aside. The payoff would be in about 30 years.

Housing experts said the rent-to-own concept is rare and has demonstrated mixed results elsewhere. "It is not in itself a bad program, but it can be done really poorly," said Harold Simon, executive director of the National Housing Institute in New Jersey.

"It can give people an opportunity to understand what it means to be a homeowner" and works as forced savings, Simon said. But, he said, the program needs to be backed up with financial counseling, which can be as simple as saving for future repairs.

Marvin Rose, a Tampa Bay area housing analyst, questioned the appeal of the program, given the availability of

low-cost home financing. It might be cheaper and more expedient to get a mortgage directly, he said.

Culp said the advantage of Broadway Village is that a young family would not have to come up with a down payment. "We're hoping this is a new idea used throughout the state."

City Manager Vince Lupo said it was too early to comment on the merit of the proposal or predict how much property tax the development would generate. First, the project has to make it through planning and zoning.

Part of the property already is zoned PUD, or planned unit development. But that zoning would have to be "amended" to reflect the new use, Lupo said.

Sandspur Housing Partners is not new to Pasco. The company had plans to build and manage 216 subsidized, low-income apartments at Little and Trouble Creek roads in New Port Richey, but the project failed under neighborhood opposition in 2002.

-- Alex Leary covers the city of Port Richey. He can be reached in west Pasco at 869-6247, or toll-free at 1-800-333-7505, ext. 6247. His e-mail address is [leary@spetimes.com](mailto:leary@spetimes.com).

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## 2003 MMRB, SAIL & HC Scoring Summary

As of: 06/09/2003

File # 2003-159BS

Development Name: Riverside Village

As of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit	SAIL Request Amount as Percentage of Development Cost	Is SAIL Request Amount Equal to or Greater than 10% of Total Development Cost?
06 - 09 - 2003	57	N	4.25	\$141,323.53	33.71%	Y
Preliminary	62	N	4.25	\$141,323.53	33.71%	Y
NOPSE	57	N	4.25	\$141,323.53	33.71%	Y
Final	0	N	0		0	
Post-Appeal	0	N	0		0	

**Scores:**

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
1S	III	B	2.a.	Optional Features & Amenities					
				New Construction	9	9	9	9	0
1S	III	B	2.b.	Rehabilitation/Substantial Rehabilitation					
				All Developments Except SRO	9	0	12	0	0
2S	III	B	2.c.	SRO Developments	12	12	12	0	0
2S	III	B	2.d.	Energy Conservation Features					
				Set-Aside Commitments	12	0	0	0	0
3S	III	B	2.e.	Commitment to Serve Lower AMI					
				Total Set-Aside Commitment	9	9	9	9	0
4S	III	E	1.b.	Affordability Period					
				Resident Programs	5	5	5	5	0
5S	III	E	1.c.	Programs for Non-Elderly & Non-Homeless					
				Programs for Homeless (SRO & Non-SRO)	3	3	3	3	0
6S	III	E	3.	Programs for Elderly					
				Programs for All Applicants	5	5	5	0	0
7S	III	F	1.	Local Government Support					
				Contributions	6	6	6	6	0
7S	III	F	2.	Incentives					
					6	0	0	0	0
7S	III	F	3.						
					6	0	0	0	0
8S	III	F	4.						
					8	8	8	8	0
9S	IV		a.						
					5	5	5	5	0
10S	IV		b.						
					4	0	0	0	0



## 2003 MMRB, SAIL & HC Scoring Summary

As of: 06/09/2003

File # 2003-159BS

Development Name: Riverside Village

**Reason(s) Scores Not Maxed:**

Item #	Reason(s)	Created As Result of	Rescinded as Result of
6S	The Applicant committed to an affordability period of 50 years in its Application. Florida Housing has subsequently received information from the Applicant stating that if the Development is funded, the Applicant intends to request a waiver from the Board of Directors to relieve it of its 50 year commitment in lieu of a conversion of the units to homeownership. The Universal Application and Universal Application Instructions require Applicants to make an "irrevocable" commitment to set aside units for 50 or more years to be eligible for 5 points. Since the Applicant intends to seek relief from this commitment, the Applicant is not awarded these 5 points. As stated at Part III.E.3. of the Application, no points are awarded for an affordability period of less than 31 years.	NOPSE	
10S	Applicant failed to include completed and signed Local Government Verification of Affordable Housing Incentives Forms.	Preliminary	

**Threshold(s) Failed:**

Item #	Part Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	1 Site Plan or Plat Approval	The Applicant failed to provide the applicable property completed and executed Local Government Verification form - Status of Site Plan Approval or Status of Plat Approval.	Preliminary	
2T			Program Requirements	The proposed Development does not satisfy the minimum Development requirements stated in Rule 67-21.006, F.A.C. The Development is not a multifamily residential rental property comprised of buildings or structures each containing four or more dwelling units. Further, the Applicant has a present plan to convert the Development to a use other than as an affordable residential rental property.	NOPSE	

**Proximity Tie-Breaker Points:**

Item #	Part Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Post-Appeal
1P	III	A	11.b.(1) Grocery Store	1.25	1.25	1.25	0	0
2P	III	A	11.b.(2) Public School	1.25	1.25	1.25	0	0
3P	III	A	11.b.(3) Medical Facility	1.25	0	0	0	0
4P	III	A	11.b.(4) Pharmacy	1.25	0	0	0	0
5P	III	A	11.b.(5) Public Bus Stop or Metro-Rail Stop	1.25	1	1	1	0
6P	III	A	11.c. Proximity to Developments on FHFC Development Proximity List	3.75	0.75	0.75	0	0

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

Item #	Reason(s)	Created As Result of	Rescinded as Result of
6P	Tie-Breaker Measurement Point plots between .5 and 1 mile of Weston Oaks, a Development on the List which serves the same demographic group.	Preliminary	



## 2003 CURE FORM

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

This Cure Form is being submitted with regard to Application No. 2003-159BS and pertains to:

Part III Section A Subsection 5 Exhibit No. \_\_\_\_\_ (if applicable)

The attached information is submitted in response to the 2003 Universal Scoring Summary because:

- I. Preliminary Scoring and/or NOPSE scoring resulted in the imposition of a failure to achieve maximum points, a failure to achieve proximity tie-breaker points selected, and/or failure to achieve threshold relative to this form. Check applicable item(s) below:

	2003 Universal Scoring Summary	Created by:	
		Preliminary Scoring	NOPSE Scoring
<input type="checkbox"/> Reason Score Not Maxed	Item No. _____ S	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Reason Threshold Failed	Item No. <u>2</u> T	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (MMRB/SAIL/HC Applications Only)	Item No. _____ P	<input type="checkbox"/>	<input type="checkbox"/>

**OR**

- II. Other changes are necessary to keep the Application consistent:

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

Brief Statement of Explanation regarding  
Application 2003 -- 159BS

Provide a separate brief statement for each Cure or NOAD

According to FHFC's NOPSE scoring, the "The proposed Development does not satisfy the minimum Development requirements stated in Rule 67-21.006, F.A.C. The Development is not a multifamily residential rental property comprised of buildings or structures each containing four or more dwelling units. Further, the Applicant has a present plan to convert the Development to a use other than as an affordable residential rental property". Therefore, the Applicant is submitting the attached page of the application which has been stamped "revised" (which revises the number of buildings) to replace that page which was submitted in the originally filed application, in order to meet FHFC's Program Requirements.

The Applicant also disputes the statement in the Corporation's explanation of Threshold Failure, Item 2T, that "Further, the Applicant has a present plan to convert the Development to a use other than as an affordable residential rental property".

The Applicant assumes that this statement, as with the statement in Scoring Item 6S, refers to an alleged intent on the part of the Applicant to seek relief from Florida Housing's Board of Directors of a 50 year affordability requirement in order to pursue "a conversion of the units to home ownership."

The Applicant should not be deemed to have failed threshold program

requirements. Even if the Applicant had made a statement that it intended to request a waiver from the Florida Housing Board of Directors of the 50-year affordability period, that alleged intent of the Applicant is meaningless unless and until the Florida Housing Board grants the waiver. Until such time at the Florida Housing Board grants a waiver, the Applicant is obligated to honor the 50-year affordability period commitment of 50 years as stated at Part III, Section E, Subsection 3 of its application.

The decision as to whether to someday relieve this applicant of the 50-year affordability period to which it has committed in its application is for the Board to make, not Florida Housing staff. It is presumed by the Applicant that at such time that any such request would come before the Board, the Board would evaluate the request in light of all appropriate factors, including the commitments of the Applicant at the time it applied for and obtained financing to construct the project. If, in the Board's judgment (but not staff's), it was determined that relieving the Applicant of the 50-year affordability obligation would be unjust, inequitable, or for any other articulated reason inappropriate, then the Board could choose not to relieve the Applicant of that obligation, and the Applicant would continue to be bound by its 50-year affordability commitment.

The Applicant Certification and Acknowledgement form, at Exhibit 1 to this Application, contains the Applicant's acknowledgement of and agreement to abide by "the applicable Florida Statutes and administrative rules, including but not

limited to, Rule Chapters 67-21 and/or 67-48, Florida Administrative Code." The Applicant's signature binds the Applicant and all Financial Beneficiaries "to this Certification and warranty of truthfulness and completeness of the Application."  
With such a clear statement that the Applicant warrants the representations in the Application, which would include the 50 year affordability period commitment at Part III, Section E, Subsection 3, it is unreasonable and arbitrary for FHFC to ignore that warranty and instead choose to rely on information that the Applicant may ask the FHFC Board's permission in the future, to be relieved of a commitment in order to promote home ownership.

It simply cannot be said that the Applicant "has a present plan to convert the Development to a use other than as an affordable residential rental property," as stated by FHFC staff Threshold Failure Item 2T. As explained above, the Applicant cannot "convert" the Development to a use other than affordable residential rental property for 50 years without the FHFC Board's express consideration of and consent to such a "conversion." Unless and until the Board gave such approval, the Development would remain affordable residential rental property. There is no basis to reject the Application.

In summary, it is not only highly speculative of Florida Housing staff to assume that this Applicant will not abide by the 50-year commitment, it is presumptive of staff to usurp the Board's role to make such a judgment at any such time in the future when relief from that obligation might be sought. The Application as submitted

contains the Applicant's commitment to operate the Development as affordable residential rental property for 50 years, and the Applicant should be deemed to have satisfied threshold requirements.

If "Yes", what amount of historic housing credits will the Development receive?

\$ \_\_\_\_\_

(4) Is the Applicant applying for housing credits for eligible Rehabilitation expenses?

Yes  No

If "Yes", answer questions (a) and (b) below.

(a) Will the Rehabilitation cost as a percentage of the adjusted basis of each building be equal to or greater than 10%?

Yes  No

(b) What is the estimated qualified basis per set-aside unit within one 24-month period for the building(s) being Rehabilitated?

\$ \_\_\_\_\_

3. Development Category

- New Construction (where 50% or more of the units are new construction)
- Acquisition and New Construction (Acquisition plus 50% or more of the units are new construction) - Available for HOME Applications Only
- Rehabilitation/Substantial Rehabilitation (where less than 50% of the units are new construction)
- Acquisition and Rehabilitation/Substantial Rehabilitation

4. Development Type

- Garden Apartments
- Townhouses
- High-Rise (A building comprised of 7 or more stories)
- Single Family
- Duplexes/Quadrplexes
- Mid-Rise with Elevator
- Single Room Occupancy (SRO)
- Other - Specify \_\_\_\_\_

5. Number of buildings with dwelling units:

8 \_\_\_\_\_

6. Total number of units:

34 \_\_\_\_\_

7. Provide a Development Summary behind a tab labeled "Exhibit 23".

8. Unit Mix:

	# of Bedrooms per Unit	# of Baths per Unit	# of Units per Bedroom Type
4	2.5		34
_____			
_____			
_____			
_____			
_____			

9. Previous Underwriting

a. Has this Development been underwritten previously by any Credit Underwriter under contract with Florida Housing Finance Corporation?

REVISED





## 2003 CURE FORM

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

This Cure Form is being submitted with regard to Application No. 2003- 159BS and pertains to:

Part III Section E Subsection 3 Exhibit No \_\_\_\_\_ (if applicable)

The attached information is submitted in response to the 2003 Universal Scoring Summary because:

- I. Preliminary Scoring and/or NOPSE scoring resulted in the imposition of a failure to achieve maximum points, a failure to achieve proximity tie-breaker points selected, and/or failure to achieve threshold relative to this form. Check applicable item(s) below:

	2003 Universal Scoring Summary	Created by:	
		Preliminary Scoring	NOPSE Scoring
<input checked="" type="checkbox"/> Reason Score Not Maxed	Item No. <u>6</u> S	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Reason Threshold Failed	Item No. _____ T	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (MMRB/SAIL/HC Applications Only)	Item No. _____ P	<input type="checkbox"/>	<input type="checkbox"/>

**OR**

- II. Other changes are necessary to keep the Application consistent:

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

Brief Statement of Explanation regarding  
Application 2003 – 159BS

Provide a separate brief statement for each Cure or NOAD

Scoring Item 6S: Part III, Section E, Subsection 3

On its 2003 MMRB, SAIL and HC Scoring Summary dated 06/09/2003 for  
Riverside Village, Application No. 2003-159BS, FHFC stated the following as a  
reason that the score for this development was not a maximum score:

6S: The Applicant committed to an affordability period of 50 years in its  
Application. Florida Housing has subsequently received information from the  
Applicant stating that if the Development is funded, the Applicant intends to request  
a waiver from the Board of Directors to relieve it of its 50-year commitment in lieu  
of a conversion of the units to homeownership. The Universal Application and  
Universal Application Instructions require Applicants to make an "irrevocable"  
commitment to set-aside units for 50 or more years to be eligible for 5 points. Since  
the Applicant intends to seek relief from this commitment, the Applicant is not  
awarded these 5 points. As stated at Part III.E.3. of the Application, no points are  
awarded for an affordability period of less than 31 years.

The scoring summary indicates that this reason for loss of 5 points for the  
affordability period was created as a result of a NOPSE.

The Applicant should not lose the 5 points for the affordability period. Even if the Applicant had made a statement that it intended to request a waiver from the Florida Housing Board of Directors (the "Board") of the 50-year affordability period, that alleged intent of the Applicant is meaningless unless and until the Board grants the waiver. Until such time as the Board grants a waiver, the Applicant is obligated to honor the 50-year affordability period commitment of 50 years as stated at Part III, Section E, Subsection 3 of its Application.

The decision as to whether to someday relieve this Applicant of the 50-year affordability period to which it has committed in its Application is for the Board to make, not Florida Housing staff. It is presumed by the Applicant that at such time that any such request would come before the Board, the Board would evaluate the request in light of all appropriate factors, including the commitments of the Applicant at the time it applied for and obtained financing to construct the project. If, in the Board's judgment (but not staff's), it was determined that relieving the Applicant of the 50-year affordability obligation would be unjust, inequitable, or for any other articulated reason inappropriate, then the Board could choose not to relieve the Applicant of that obligation, and the Applicant would continue to be bound by its 50-year affordability commitment.

The Applicant Certification and Acknowledgement form, at Exhibit 1 to this Application, contains the Applicant's acknowledgement of and agreement to abide by "the applicable Florida Statutes and administrative rules, including but not

limited to, Rule Chapters 67-21 and/or 67-48, Florida Administrative Code." The Applicant's signature binds the Applicant and all Financial Beneficiaries" to this Certification and warranty of truthfulness and completeness of the Application."  
With such a clear statement that the Applicant warrants the representations in the Application, which would include the 50 year affordability period commitment at Part III, Section E, Subsection 3, it is unreasonable and arbitrary for FHFC to ignore that warranty and instead choose to rely on information that the Applicant may ask the Board's permission, in the future, to be relieved of a commitment in order to promote home ownership.

Further, even if the Applicant had expressed an intent to seek relief from the Board from the 50 year affordability period commitment, that does not render the Applicant's commitment to such affordability period "revocable;" it is still an "irrevocable" commitment. "Revocation" implies unilateral rescission by one party—in this case the Applicant. See Mark Realty, Inc. v. Rogness, 418 So.2d 373 (Fla. 5th DCA 1982). (A unilateral contract with a real estate broker is subject to a unilateral revocation by the property owner, but if the contract is a bilateral contract with the broker which neither party has a power of revocation.) But there is no suggestion that the Applicant has ever indicated an intent to unilaterally rescind or "revoke" the 50 year affordability commitment. Even Florida Housing staff, in the NOPSE scoring summary for this development, only states that the Applicant has indicated an intention to seek relief from the 50 year affordability period.

If this Application is funded, then the Applicant is obviously bound by what is in essence a bilateral contract: FHFC's agreement to fund the Development in exchange for the Applicant's agreement to construct and manage it as represented in the Application. The representations are in turn embodied in a Land Use Restriction Agreement, that could only be modified, if at all, with the consent of the Board. If Florida Housing's Board grants such relief, it is not a revocation by the Applicant; it is a cancellation of that obligation by Florida Housing. Unless and until Florida Housing's Board of Directors granted such a cancellation, the Applicant would be bound by the irrevocable commitment.

In short, it is not only highly speculative of Florida Housing staff to assume that this Applicant will not abide by the 50-year commitment, it is presumptive of staff to usurp the Board's role to make such a judgment at any such time in the future when relief from that obligation might be sought. The Application as submitted contains the Applicant's commitment to the 50 year affordability period, and the Applicant should receive 5 points for this commitment.



## 2003 MMRB, SAIL & HC Scoring Summary

As of: 07/18/2003

Development Name: Riverside Village

File # 2003-159BS

As of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit	SAIL Request Amount as Percentage of Development Cost	Is SAIL Request Amount Equal to or Greater than 10% of Total Development Cost?
07 - 18 - 2003	61	N	4.25	\$141,323.53	33.71%	Y
Preliminary	62	N	4.25	\$141,323.53	33.71%	Y
NOPSE	57	N	4.25	\$141,323.53	33.71%	Y
Final	61	N	4.25	\$141,323.53	33.71%	Y
Post-Appeal	0	N	0		0	

**Scores:**

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
1S	III	B	2.a.	Optional Features & Amenities	9	9	9	9	0
1S	III	B	2.b.	New Construction	9	9	0	0	0
2S	III	B	2.c.	Rehabilitation/Substantial Rehabilitation	12	12	12	12	0
2S	III	B	2.d.	All Developments Except SRO	12	0	0	0	0
3S	III	B	2.e.	SRO Developments	9	9	9	9	0
				Energy Conservation Features					
4S	III	E	1.b.	Set-Aside Commitments	5	5	5	5	0
5S	III	E	1.c.	Commitment to Serve Lower AMI	3	3	3	3	0
6S	III	E	3.	Total Set-Aside Commitment	5	5	5	5	0
				Affordability Period					
7S	III	F	1.	Resident Programs	6	6	6	6	0
7S	III	F	2.	Programs for Non-Elderly & Non-Homeless	6	0	0	0	0
7S	III	F	3.	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
8S	III	F	4.	Programs for Elderly	8	8	8	8	0
				Programs for All Applicants					
9S	IV		a.	Local Government Support	5	5	5	5	0
10S	IV		b.	Contributions	4	4	4	4	0
				Incentives					



## 2003 MMRB, SAIL & HC Scoring Summary

As of: 07/18/2003

File # 2003-159BS Development Name: Riverside Village

**Reason(s) Scores Not Maxed:**

Item #	Reason(s)	Created As Result	Rescinded as Result
6S	The Applicant committed to an affordability period of 50 years in its Application. Florida Housing has subsequently received information from the Applicant stating that if the Development is funded, the Applicant intends to request a waiver from the Board of Directors to relieve it of its 50 year commitment in lieu of a conversion of the units to homeownership. The Universal Application and Universal Application Instructions require Applicants to make an "irrevocable" commitment to set aside units for 50 or more years to be eligible for 5 points. Since the Applicant intends to seek relief from this commitment, the Applicant is not awarded these 5 points. As stated at Part III.E.3. of the Application, no points are awarded for an affordability period of less than 31 years.	NOPSE	
10S	Applicant failed to include completed and signed Local Government Verification of Affordable Housing Incentives Forms.	Preliminary	Final

**Threshold(s) Failed:**

Item #	Part Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	1	Site Plan or Plat Approval	Preliminary	Final
2T			Program Requirements	The proposed Development does not satisfy the minimum Development requirements stated in Rule 67-21.006, F.A.C. The Development is not a multifamily residential rental property comprised of buildings or structures each containing four or more dwelling units. Further, the Applicant has a present plan to convert the Development to a use other than as an affordable residential rental property.	NOPSE	Final
3T			Program Requirements	Rule 67-21.006, F.A.C., requires that an Applicant certify that Applicant shall have no present plan to convert the Development to any use other than the use as affordable residential rental property. This Applicant has a plan to convert the Development to a use other than an affordable residential rental property.	Final	

**Proximity Tie-Breaker Points:**

Item #	Part Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Post-Appeal
1P	III	A	11.b.(1)	1.25	1.25	1.25	1.25	0
2P	III	A	11.b.(2)	1.25	1.25	1.25	1.25	0
3P	III	A	11.b.(3)	1.25	0	0	0	0
4P	III	A	11.b.(4)	1.25	0	0	0	0
5P	III	A	11.b.(5)	1.25	1	1	1	0
6P	III	A	11.c.	3.75	0.75	0.75	0.75	0

## 2003 MMRB, SAIL & HC Scoring Summary

As of: 07/18/2003

File # 2003-159BS

Development Name: Riverside Village

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

Item #	Reason(s)	Created As Result of	Rescinded as Result of
6P	Tie-Breaker Measurement Point plots between .5 and 1 mile of Weston Oaks, a Development on the List which serves the same demographic group.	Preliminary	

**Additional Application Comments:**

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1C	III	E	3		Applicant attempted to cure item 6S. However, as identified in Item 3T, the Applicant has a present plan to convert the Development to a use other than affordable rental property. Therefore, the period of affordability Applicant has committed to cannot be determined.	Final	



**ELECTION OF RIGHTS**

Application Number: 2003- 159BS Development Name: Riverside

1.  I do not desire a proceeding.
2.  I elect an informal proceeding to be conducted in accordance with Sections 120.569 and 120.57(2), Florida Statutes. In this regard I desire to (Choose one):
- submit a written statement and documentary evidence; or
- attend an informal hearing to be held in Tallahassee.

Note: Rule 28-106.301, Florida Administrative Code, requires Applicant to submit a petition in a prescribed format. (attached)

3.  I elect a formal proceeding at the Division of Administrative Hearings. This option is available only if there are disputed issues of material fact.

Note: Applicant must submit an appropriate petition in accordance with Rule 28-106.201, Florida Administrative Code. (attached)

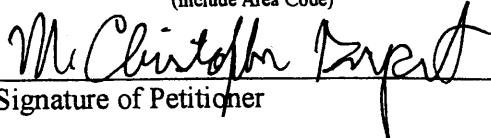
Following are my top eight preferences, in order from 1-8 (with 1 being my first choice, etc.) for scheduling my informal hearing. All formal hearings will be scheduled by the Division of Administrative Hearings.

Hearing Dates:	A.M.	P.M.
August 28, 2003		
September 2, 2003		
September 3, 2003		
September 4, 2003		
September 5, 2003		

Hearing Dates:	A.M.	P.M.
September 8, 2003		
September 9, 2003		
September 10, 2003		
September 11, 2003		

Please fax a Hearing Schedule to me at this number: \_\_\_\_\_  
(include Area Code)

DATE: August 12, 2003

  
\_\_\_\_\_  
Signature of Petitioner

Name: M. Christopher Bryant  
Oertel, Fernandez & Cole, P.A.

Address: 301 S. Bronough Street, 5th Floor  
P. O. Box 1110 (32302-1110)  
Tallahassee, FL 32301

Fax: (850) 521-0720

Phone: (850) 521-0700

(include Area Code)

**TO PRESERVE YOUR RIGHT TO A PROCEEDING, YOU MUST RETURN THIS FORM WITHIN TWENTY-ONE (21) DAYS OF RECEIPT OF THIS NOTICE TO THE FLORIDA HOUSING FINANCE CORPORATION AT THE ADDRESS INDICATED IN THE NOTICE OF RIGHTS. TO FACILITATE THE SCHEDULING OF HEARINGS, THIS FORM MAY BE SUBMITTED PRIOR TO FILING A PETITION.**

**ELECTION OF RIGHTS**

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