BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORORATION

TIGER BAY OF GAINESVILLE, LTD.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

Agency Case No.: Application No. 2004-107C

PETITION REQUESTING INFORMAL HEARING AND THE GRANT OF THE RELIEF REQUESTED

Pursuant to §§120.569 and 120.57, Florida Statutes ("FS"), Rule 67-48.005, Florida Administrative Code ("F.A.C.") and Rule 28-106.301, Florida Administrative Code ("F.A.C."), Petitioner, Tiger Bay of Gainesville, Ltd. ("Petitioner") requests an informal hearing regarding the scoring by Florida Housing Finance Corporation ("FHFC") of the Housing Credit ("HC") Application No. 2004-107C ("Application") filed by Blitchton Station, Ltd. ("Applicant") for the proposed development referred to within such Application as Blitchton Station (the "Apartment Complex"), and to then grant the relief requested herein. In support of this Petition, Petitioner states as follows:

PRELIMINARY STATEMENT

1. Petitioner has applied for an allocation of HC from FHFC in the 2004 competitive application cycle for HC (the "2004 Cycle"). HC is a scarce resource; in the 2004 Cycle, FHFC had available for allocation approximately $$30,387,750 of HC; approximately 78 applicants (requesting in the aggregate approximately $83,884,974 of HC) applied in the 2004 Cycle.

FHFC has developed a Universal Application which must be submitted in order to compete for HC. Applicants applying for HC are advised by FHFC to closely review the Universal Application Instructions ("Instructions") and Rule 67-48, F.A.C. when completing and submitting such applications to FHFC.

2. The Universal Application and Instructions set forth the manner in which competitive applications are scored and ranked. The current form of application and instructions have not been substantially changed since 2002; FHFC has accumulated substantial experience in scoring and ranking competitive applications for HC such as those submitted in the 2004 Cycle. Due to the substantial number of applications filed and the quality of such applications, it is frequently difficult to differentiate between competing applications. FHFC has, over the years, insisted upon strict application of its rules in order to differentiate between competitive applications and achieve fair final scoring results. In the instant case, FHFC has failed to uniformly and strictly apply its own rules, resulting in an unfair ranking result to Petitioner.

3. In the instant case, Blitchton Station, Ltd. ("Applicant") submitted an application for HC, and Petitioner submitted a competing application. In the scoring of Applicant's Application No. 2004-107C ("Application"), FHFC ultimately failed to strictly apply its rules. Petitioner filed a Notice of Alleged Deficiency ("NOAD") which pointed out the errors contained in Applicant's Application, and FHFC agreed. However, as permitted under the FHFC rules, Applicant requested and received an informal hearing regarding to the scoring of its application. Under FHFC's rules and practices, Petitioner was not permitted to participate in Applicant's informal hearing. The hearing officer in the informal hearing entered a recommended order in favor of Applicant and against FHFC, and FHFC subsequently adopted such recommended order as a final order notwithstanding its own clear rules and directions to the

contrary.

4. The effect of FHFC's adoption of the recommended order as a final order was to cause Applicant to be funded and to cause Petitioner's application to fall out of the funding range; had FHFC not received and adopted the recommended order as a final order, Petitioner's application would have prevailed and been in the funding range and would have received HC. Petitioner was (by virtue of FHFC's rules and practices) not permitted to participate in the informal hearing, and FHFC (unaided by Petitioner) lost such hearing.

5. Under FHFC's rules, Petitioner is now afforded the opportunity of a "post-final ranking appeal", which hearing is of dubious utility. While FHFC's rules offer the "opportunity" of a post-final ranking appeal, such "opportunity" is deficient in the instant case (constitutionally and otherwise) for the following reasons. First, by denying Petitioner the opportunity to participate in Applicant's pre-final ranking informal appeal, the delay of Petitioner's right of appeal until after final rankings are adopted guarantees (presuming Petitioner is successful in its appeal) funding of the wrong application (Blitchton Station); the operation and effect of FHFC's "post-final ranking" appeal rule is that the scoring and funding of the applicant (Blitchton Station, Ltd.) whose application was erroneously scored remains undisturbed, and the applicant filing such "post-final ranking appeal" (Petitioner) is (if successful) awarded HC from the next year's funding cycle. Second, the remedy provided by the "post-final ranking appeal" is inadequate when applied to the facts of this case. Petitioner is given the opportunity to have an informal appeal at a level (before an informal hearing officer) lower than that (FHFC Board of Directors) which has already decided the very same issue in the very same case (i.e., the scoring of Blitchton Station's application, which is once again being challenged, due to Petitioner's exclusion from the earlier proceedings).

6. Notwithstanding the foregoing procedural inadequacies, Petitioner is filing this Petition alleging the following: (a) FHFC erroneously failed to disqualify such application (for failing to meet the threshold requirement of "site control") when an exhibit to a real estate purchase contract was missing, notwithstanding the clear directives of the Instructions and Rule 67-48, F.A.C. to the contrary; (b) FHFC erroneously permitted Applicant's "back to back" real estate purchase contract structure (a purchase contract between the true owner of the property and Mr. John Curtis, coupled with a contract between Mr. Curtis and the Applicant Blitchton Station, Ltd.) to qualify as a "qualified contract" and satisfy the threshold requirement of "site control", notwithstanding that such "back to back" contract structure denies the Applicant the remedy of specific performance which FHFC requires as condition of finding a "qualified contract"; and (c) FHFC erred in determining that Applicant had procured the requisite $100,000 of "local government contribution" necessary to maximize points for its Application, despite clear evidence to the contrary that the maximum amount of local government contribution available under the applicable City of Ocala ordinance was an amount less than $100,000.

7. If FHFC properly applies its rules and administrative procedures, Petitioner should prevail here and receive funding.

AGENCY AFFECTED

8. The name and address of the agency affected is Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The agency's file or identification number with respect to the application which is the subject matter of this Petition is Application No. 2004-107C.

PETITIONER

9. The Petitioner is Tiger Bay of Gainesville, Ltd., a Florida limited partnership. The address of Petitioner is 20725 S.W. 46th Avenue, Newberry, Florida 32669, telephone

number (352) 472-7773. Petitioner's representative is Gary J. Cohen, Esq., Shutts & Bowen, LLP, 201 South Biscayne Boulevard, Suite 1500, Miami, Florida 33131, telephone number (305) 347-7308.

PETITIONER'S SUBSTANTIAL INTERESTS

10. Petitioner's substantial interests are affected as follows:

(a) Petitioner has applied for an allocation of Federal Low-Income Housing Tax Credits ("HC") under the HC Program. The HC Program is set forth in §42 of the Internal Revenue Code of 1986, as amended, and it awards developers and investors a dollar for dollar reduction in income tax liability through the allocation of tax credits in exchange for the construction of affordable rental housing units. FHFC is the agency designated by the United States Treasury to administer the allocation of HC in the State of Florida.

(b) An HC application is comprised of numerous forms which request information of each applicant. FHFC adopted the forms by reference in Rule 67-48.002(9), F.A.C.

(c) The HC application offers a maximum score of 66 points. The Universal Application Instructions ("Instructions") to the Universal Application provide that, in the event of a tie among competing applications receiving 66 points, a series of tie-breakers will be utilized to rank such applications. Generally (in descending order), an application in "Group A" prevails over an application in "Group B"; an application with a greater amount of "proximity tie-breaker points" (7.5 being the maximum) prevails over an application with fewer "proximity tie-breaker points"; and finally, an application with a lower lottery number prevails over an application with a higher lottery number. In scoring applications, FHFC determines whether certain threshold requirements have been met; failure to satisfy any of the "threshold requirements" gives rise to rejection of an application. One of the threshold requirements is demonstration by an applicant

of "site control" by providing a "qualified contract" (a real estate purchase contract containing certain prescribed provisions). The Instructions provide that "The required documentation, including any attachments or exhibits (emphasis added), must be provided...". After adoption of tentative rankings based upon final scores and application of the foregoing tie-breaker procedures, FHFC then applies the "set-aside unit limitation" ("SAUL") rules in order to achieve final rankings. Under the SAUL rules, when an application is tentatively selected for funding, the total number of affordable housing units committed to in that application are credited towards meeting the SAUL for the county in which the proposed development is located. Generally, once a county's SAUL is met (by virtue of applications being selected for funding containing a total number of set-aside units equal to or exceeding the SAUL for the county in which those developments are located), no further applications for developments in that county will be selected for funding until applications in other counties are first selected for funding.

(d) On or about March 31, 2004, Petitioner submitted to FHFC an HC Application for the 2004 funding cycle ("2004 Cycle"). The application was submitted in an attempt to assist in the financing of the construction of a 96 unit apartment complex in Gainesville, Florida. Petitioner's HC application was assigned Application No. 2004-109C.

(e) Petitioner's Application No. 2004-109C was scored by FHFC in accordance with the provisions of §420.5099 FS, and Rule 67-48, F.A.C. By letter and scoring summary dated July 9, 2004, FHFC advised Petitioner that its final post-appeal score was 66 points, that Petitioner's application had met all threshold requirements, that Petitioner's application was classified into "Group A", and that Petitioner's application had received 7.5 "proximity tie-breaker points". See letter and final July 8, 2004 scoring summary attached as Exhibit "A".

(f) At the conclusion of the FHFC scoring of the application ("Application") filed by Blitchton Station, Ltd. ("Applicant"), FHFC advised Applicant (on or about July 9, 2004) that its final score (prior to appeals permitted pursuant to Rule 67-48.005(2), F.A.C.) was 66 points, that Applicant's Application was classified into "Group A", that Applicant's Application had received 6.25 "proximity tie-breaker points", and that Applicant's Application had failed the threshold requirement of "Site Control" due to the failure of Applicant to provide a complete real estate purchase contract; reference was made to an exhibit to the real estate purchase contract submitted by the Applicant as a part of its "cure" documentation that was not attached. See Item 1C in the final July 8, 2004 scoring summary for Applicant attached as Exhibit "B".

(g) Applicant contested its final score by filing a petition with FHFC pursuant to Rule 67-48.005(2), F.A.C. An informal hearing was conducted pertaining to the issues of (i) "proximity tie-breaker points" and (ii) the aforementioned missing exhibit to the real estate purchase contract. On September 13, 2004, the hearing officer (David E. Ramba) entered his Recommended Order in favor of Applicant awarding 7.5 "proximity tie-breaker points" and finding that Applicant had satisfied the threshold requirement of "Site Control" notwithstanding the missing exhibit to the real estate purchase contract. The Recommended Order was adopted by FHFC as a Final Order at its meeting on October 14, 2004. See Recommended Order attached as Exhibit "C" and final rankings dated October 14, 2004 identifying Applicant as being funded as the third ranked applicant in the "Front Porch Florida Community" set-aside attached as Exhibit "D".

(h) In the 2004 Universal Application Cycle, $3,000,000.00 in HC was set aside for applicants competing in the "Front Porch Florida Community" set-aside. Seven

applicants (including Petitioner and Applicant) submitted applications in the "Front Porch" set-aside competition (Petitioner's application 2004-109C; application number 2004-104C; application number 2004-143C; application 2004-141C; application number 2004-144C; application number 2004-142C; and Applicant's application number 2004-107C). Attached as Exhibit "E" is a table indicating the final scores and relative ranking (utilizing the above-described tie-breaking procedures and applying the SAUL rules) of the seven Front Porch applicants as adopted by FHFC at its October 14, 2004 meeting. As can be seen from the attached Exhibit "E" and the final 2004 Universal Application Cycle ranking issued October 14, 2004 (attached as Exhibit "D"), application numbers 2004-104C, 2004-143C and 2004-107C (Applicant's Application) were selected for funding, and no further applications were selected since there was not enough HC left to fund another application. Petitioner's application was ranked beneath Applicant's Application by virtue of Petitioner's application having a higher lottery number.

(i) Had FHFC not erred in the scoring of Applicant's Application, the rankings in the Front Porch competition would have been as set forth in the table attached as Exhibit "F". Application numbers 2004-104C and 2004-143C would have been ranked ahead of Petitioner, and Petitioner would have been funded as the third highest ranked applicant. Had Applicant's Application been scored correctly and found to have failed threshold, Petitioner's application would have been funded.

(j) The chronologic history of the scoring of Applicant's Application (discussed briefly in subsections (d) – (g) above) is as follows. Rule 67-48.004(4), F.A.C. permits competing applicants (such as Petitioner) to notify FHFC of possible scoring errors relative to another applicant's application (such as Applicant's Application) by submitting a

written Notice of Possible Scoring Error ("NOPSE"). Petitioner and applicant Goodbread Hills, Ltd. (Application No. 2004-1446C) filed NOPSE's against Applicant's Application on May 6, 2004. The NOPSE's alleged that FHFC erred in determining that Applicant's Application satisfied the threshold requirement of "site control". The NOPSE's noted that Applicant had submitted a contract for purchase and sale of the subject real estate between John M. Curtis, Trustee as the seller and the Applicant as the purchaser; however, the NOPSE's alleged that John M. Curtis, Trustee was not the owner of the subject real estate and as such Applicant had not demonstrated "site control".

(k) In its scoring summary dated May 24, 2004, FHFC agreed with Petitioner's NOPSE, stating that "Evidence provided in NOPSE calls into question the ability of John M. Curtis, Trustee, to lawfully convey the property", and determined that Applicant failed the threshold requirement of Site Control. See Item 5T in the May 24, 2004 scoring summary attached as Exhibit "G". In the May 24, 2004 scoring summary, FHFC also noted that the Applicant should not be awarded full points for its "local government contribution", since "the Applicant failed to provide the required explanation of how the fee waiver of $62,454.00 was calculated. Therefore, the fee waiver does not qualify as a Local Government contribution." See Item 9S in the May 24, 2004 Scoring Summary.

(l) Rule 67-48.004(6), F.A.C. permits applicants (such as Applicant) to "cure" their applications to correct deficiencies in their initial applications identified by FHFC, or to correct deficiencies in their applications identified by NOPSE's. Applicant filed "cure" documentation with FHFC on or about June 10, 2004. In its "cure" documentation, Applicant submitted an additional real estate purchase contract between Ms. Carla Denson (the true owner of the subject real estate) and John M. Curtis, Trustee, attempting to address the issue raised by

Petitioner in its NOPSE (and agreed with by FHFC in the May 24, 2004 Scoring Summary). Applicant submitted the additional real estate purchase contract in order to demonstrate that John M. Curtis, Trustee possessed the ability to lawfully convey the property to the Applicant, by virtue of Mr. Curtis' right to acquire the property from Ms. Denson. Applicant also submitted additional documentation detailing the manner in which $62,454.00 of building permit fees were waived by the City of Ocala, in response to FHFC's finding (in the May 24, 2004 scoring summary) that Applicant had failed to provide the required explanation of how the fee waiver of $62,454.00 was calculated.

(m) Rule 67-48.004(7), F.A.C. permits applicants (such as Applicant) to submit a Notice of Alleged Deficiency ("NOAD") identifying possible issues created by document revisions, additions, or both submitted by applicants (such as the Applicant) submitting "cure" documentation pursuant to Rule 67-48.004(6), F.A.C. discussed above. On or about June 18, 2004 Petitioner and applicant Goodbread Hills, Ltd. filed NOAD's against the "cure" documentation filed with respect to Applicant's Application. The NOAD's alleged that Applicant's "cure" documentation was deficient for the following reasons: (i) the contract between Ms. Denson (as seller) and John M. Curtis, Trustee (as purchaser) submitted as a "cure" was itself deficient and failed to satisfy the threshold requirement of "site control" because Exhibit B to such contract was missing in violation of the clear directives of the Instructions and Rule 67-48, F.A.C.; (ii) the submission of "back to back" contracts attempting to satisfy the threshold requirement of "site control" (that is, a contract from a property owner to a purchaser, coupled with a contract between such purchaser and an applicant such as Applicant) fails to meet the requirement of a "qualified contract" in the Instructions because such "back to back" structure fails to provide to the ultimate purchaser of the real estate (the Applicant) the remedy of

specific performance as is required in order to demonstrate the existence of a "qualified contract" and "site control" as required by the Instructions; and (iii) the "cure" documentation submitted by Applicant explaining the $62,454.00 of waived building permit fees, when compared to the amount of such fees owed under the applicable City of Ocala ordinance, overstated the amount of the total building permit fees initially chargeable (and subsequently waived) with respect to the proposed complex and, as a result, the amount of building permit fees available to be waived (when combined with the other forms of local government contribution provided by Applicant) resulted in a total local government contribution of less than $100,000.00, which is the minimum amount necessary in order to receive the full five (5) points for "local government contribution".

(n) As reflected on FHFC's scoring summary dated July 8, 2004 (attached as Exhibit "H"), FHFC agreed with a portion of the NOAD's, finding that Applicant's application continued to fail the threshold requirement of "site control" and stating (on page 3 of the scoring summary in Item 1C) that "The Applicant attempted to cure Item 5T by submitting an Agreement for Purchase and Sale of Real Property. However, this Agreement is deficient because the Applicant failed to provide a complete contract as section 6.2.4 of the Agreement for Purchase and Sale of Real Property between Carla Denson (as Seller) and John M. Curtis (as Buyer) refers to an Exhibit "B" that is not attached." FHFC apparently did not agree with the assertions in the NOAD's that Applicant's "local government contribution" should have been awarded less than the full 5 points, and apparently did not agree with the NOAD assertion that "back to back contracts" such as those submitted by Applicant in this case failed to satisfy the threshold requirement of "site control".

(o) Rule 67-48.004(9), F.A.C. provides that after consideration of NOPSE's, "cure" documentation and NOAD's FHFC shall transmit final scores to all applicants. This

requirement was met by virtue of FHFC mailing final scoring summaries on July 8, 2004; the final scoring summary for Applicant is attached as Exhibit "H". In the event an applicant wishes to contest its final score, it may file a petition with FHFC under Rule 67-48.005(2), F.A.C. If the petition does not raise a disputed issue of material fact, the hearing on the petition is conducted pursuant to Section 120.57(2), F.S. (an "informal hearing"). At the conclusion of such hearing, a recommended order is entered by the designated hearing officer which is then considered by the FHFC Board of Directors. On July 30, 2004, Applicant submitted a petition to FHFC, seeking a hearing to reverse FHFC's determination that the threshold requirement of site control had been failed because the contract between Ms. Denson and Mr. Curtis was missing an exhibit therefrom. An informal hearing was conducted, and a recommended order was entered in the case on September 13, 2004 finding that the contract between Ms. Denson and Mr. Curtis was not deficient, and determining that Applicant's application passed the threshold requirement of "site control". Such recommended order was adopted by FHFC at its meeting on October 14, 2004 as a final order. See attached Exhibit "C".

(p) Under Rule 67-48.005(4), F.A.C., following the entry of final orders in all petitions filed pursuant to Section 120.57(2), F.S., FHFC shall then issue final rankings. FHFC issued such final rankings at the October 14, 2004 meeting, and transmitted such final rankings to all applicants on October 15, 2004. Petitioner was not given the opportunity to participate or intervene in the informal hearing granted to Applicant which resulted in the above-described recommended and final orders; it is the policy of FHFC that no applicant or other person or entity is allowed to intervene in the appeal of another applicant. See last sentence of second paragraph of the memorandum dated July 9, 2004 from FHFC ("Final Scores and Notice of Rights") attached as Exhibit "I".

(q) Had FHFC correctly scored the Applicant's Application, FHFC would have determined (i) that the Applicant's Application was not entitled to the full award of five (5) points for local government contributions under Part IV.A. of the Universal Cycle Application, and (ii) that the Applicant's Application did not meet the threshold requirement of "site control" under Part III.C.2. of the Universal Cycle Application. Had FHFC scored Applicant's Application correctly, Petitioner's application would have been awarded an allocation of HC in the Front Porch Florida Community set-aside. But for FHFC's error in scoring Applicant's Application, Petitioner would have received an allocation of HC in the 2004 Cycle. If Petitioner is successful hereunder, Petitioner will be entitled to a binding commitment of $798,000.00 of HC from the 2005 HC authority, pursuant to Rule 67-48.005(7), F.A.C.

NOTICE OF AGENCY DECISION

11. Petitioner received notice of FHFC's scoring of its NOAD filed against Applicant (a copy of the final scoring summary for Applicant) by Federal Express delivery on or about July 9, 2004. See attached Exhibit "H". Petitioner received notice of the final scores and rankings and its Notice of Rights to file a post-appeal petition on or about October 18, 2004. See attached Exhibit "I". Neither the Notice of Rights nor the Universal Scoring Summary for Applicant's Application explained why the positions taken in the NOAD's filed by Petitioner and applicant Goodbread Hills, Ltd. (as to the invalidity of the "back to back contract" structure and as to the insufficiency of Applicant's local government contribution) were denied. In addition, neither the Notice of Rights nor the Universal Scoring Summary for Applicant's Application explained why Applicant's Application was ultimately determined to have met the threshold requirement of "site control", notwithstanding the missing exhibit to the real estate contract included as part of Applicant's "cure" package. Petitioner only became aware of the latter result by attending the

October 14, 2004 FHFC meeting at which the recommended order of Hearing Officer Ramba was adopted as a final order, effectively "de-funding" Petitioner's application.

12. Under Rule 67-48.004 and 67-48.005, F.A.C., a competing party (such as Petitioner) has no right to participate or affect the scoring of another applicant's application during the time period between the filing of NOAD's and the entry of final orders by FHFC. See the July 9, 2004 memorandum from FHFC attached as Exhibit "I" (last sentence of second paragraph). As such, Petitioner was unable to intervene or participate in the informal hearing on the application of Applicant Blitchton Station, Ltd., and Petitioner's substantial interest in procuring an allocation of HC was deprived without an opportunity to be heard.

13. Under Rule 67-48.005(5)(b) and (c), F.A.C., an applicant who wishes to challenge the final ranking or score of another applicant may do so in a "post-final ranking" appeal. If the contested issue involves an error in scoring, the contested issue must be one that (i) could not have been cured pursuant to Rule 67-48.004(14), F.A.C. (not the case here), or (ii) could have been cured, if the ability to cure was not solely within the applicant's control. With regard to "curable" issues, a petitioner must prove that the contested issue was not feasibly curable within the time allowed for cures in Rule 67-48.004(6), F.A.C. The petitioning applicant must also demonstrate that, but for the error in scoring, it would have been in the funding range at the time of final ranking. In the instant case, Petitioner may contest the final ranking of Applicant's Application under the foregoing Rule, since the matter at hand involves an error in scoring and the contested issues (although curable) were not curable solely within the Applicant's control. Neither the defect in the Applicant's local government contribution, the "back to back" structure of the Applicant's real estate contract, nor the missing exhibit to the real estate purchase contract to which Applicant was not a party was curable solely by the Applicant. As will be more fully

discussed below, the foregoing limitations on a petitioner's right to file an appeal against a competing applicant constitute impermissible limitations on a petitioner's right to be heard, where such petitioner is applying for a limited resource (such as an allocation of HC) to which more than one part has a potential claim. See Ashbacher Radio Corp. v. F.C.C., 326 U.S. 327 (1945).

14. The issues under consideration in this Petition (the scoring of the Applicant's building permit fee waiver from the City of Ocala, the scoring of Applicant's "back to back" real estate purchase contracts, and the scoring of Applicant's real estate contract documentation when missing an exhibit to one of the contracts) were not solely within Applicant's control to cure, particularly within the time frame allowed for cures in Rule 67-48.004(6), F.A.C. The only possible "cure" with respect to the building permit fee waiver would have been to amend the City of Ocala ordinance in order to increase the amount of the building permit fee waiver, which "cure" clearly was not solely within Applicant's control. With respect to the threshold requirement of "site control", since Applicant (Blitchton Station, Ltd.) was not a party to the underlying real estate contract between Carla Denson and John M. Curtis, Trustee, the missing exhibit to such contract could not be "cured" by Applicant since it was not a party thereto, and which in any event could not have been "cured" within the 9 calendar days after receipt by Applicant of a negative scoring decision by FHFC as required by Rule 67-48.004(6) and 67-48.005(5), F.A.C. Finally, cure of the "back to back" real estate contract structure utilized by Applicant in demonstrating "site control" was not solely within the control of Applicant; Ms. Denson (the property owner) would have had to agree to sell the property directly to the Applicant rather than through John M. Curtis, Trustee to cure such defect, which action was

clearly not within Applicant's control. As such, Petitioner has satisfied the prerequisites of Rule 67-48.005(5)(b) to a post-final ranking hearing pursuant to Rule 67-48.005(5)(d), F.A.C.

15. Petitioner was not permitted by FHFC to participate (see attached Exhibit "I"), and in fact was not invited to participate in Applicant's informal hearing before Hearing Officer Ramba.[1] Applicant's informal hearing involved the same facts as those discussed here, with respect to the missing exhibit to the real estate purchase contract between Carla Denson and John M. Curtis, Trustee. Petitioner had no opportunity to participate and, as a result, fell out of the funding range when the erroneous recommended order of the hearing officer was adopted by FHFC as a final order. Now, Petitioner has a post-final ranking "appeal"; however, such appeal (conducted through the informal hearing requested hereunder) is being conducted at the same level as the prior informal hearing before Hearing Officer Ramba who (when presented with the same facts as presented here), ruled in favor of Applicant, and FHFC adopted such finding as a final order. It may be necessary for Petitioner to be given a more realistic remedy than that which an informal hearing (the only remedy available under Rule 67-48, F.A.C. due to the lack of a material factual issue) can provide. Petitioner's concern is that FHFC's prior Board decision adopting Hearing Officer Ramba's recommended order has already occurred at a higher administrative level than that at which Petitioner is now allowed to participate. As such, FHFC has effectively already ruled against Petitioner on the very same facts and in the very same case before the hearing officer today. By Rule and FHFC action, Petitioner has been excluded from an earlier stage of these proceedings, although Petitioner had a legal, indeed a constitutional,

[1] The position of FHFC not allowing parties such as Petitioner to intervene and participate in informal hearings such as that as was conducted for Applicant Blitchton Station, Ltd., violates the doctrine of due process as set forth in Ashbacher v. Radio Corp. and Bio-Medical Applications of Clearwater, Inc. v. Department of Health and Rehabilitative Services, Office of Community Medical Facilities and Kidneycare of Florida, Inc., 370 So. 2d 19 (2nd DCA 1979), because such prohibition does not allow participation by all affected parties at a meaningful time and in a meaningful manner in determining the allocation of HC, which allocation is a limited resource to which more than one party has a potential claim.

right to participate earlier in such proceedings. This situation arises because Rule 67-48.005(5), F.A.C., as applied to the facts herein, denied Petitioner due process of law by allowing a determination adverse to Petitioner to be entered against Petitioner without Petitioner's participation and without a meaningful short-term or post-final ranking remedy.

16. The result of Rule 67-48.005, F.A.C. is that, when erroneous decisions are made and ultimately corrected by way of post-final ranking appeals (such as that filed by Petitioner hereunder), the operation of such Rule guarantees that an erroneously scored and ranked application (Applicant's Application) always gets funded, and the application which should have been funded (Petitioner's Application) receives funding from the following year's HC allocation. The funding of petitioners (such as Petitioner) out of next year's HC allocation creates a significant disadvantage to applicants applying for an allocation of HC in the succeeding year's cycle, since the amount of HC available in such year's cycle will be reduced by the amount allocated to parties such as Petitioner. This Rule/system does not comply with the constitutional mandates of Ashbacher Radio Corp. and Bio-Medical Applications of Clearwater, Inc.[2]

17. In the Notice of Rights, Petitioner was given until November 8, 2004 to file a petition.

ULTIMATE FACTS ALLEGED

The ultimate facts alleged by Petitioner, including the specific facts that Petitioner contend warrant a reversal of FHFC's action with respect to Applicant's Application, are as follows.

Missing Exhibit to Contract

[2] Petitioner is not suggesting that it should not be awarded the remedy sought under Rule 67-48.005(7) (an award of 2005 HC authority in the amount of $775,000.00); rather, Petitioner notes the foregoing deficiencies in the event Petitioner's remedy hereunder is inadequate or unavailable.

18. Applicant's Application indicated (in Exhibit 27 provided in its initial application and in its "cure" documentation) that it had satisfied the threshold requirement of "site control" by virtue of providing two real estate purchase contracts; the contract between John M. Curtis, Trustee and Applicant in the initial HC application (the "Curtis Contract") and a contract between Ms. Carla Denson and Mr. Curtis, Trustee provided in the "cure" documentation (the "Denson" Contract). Section 6.2.4 of the Denson Contract (copy attached as Exhibit "J") referenced three parcels of land comprising the subject property as depicted in Exhibit B to the Denson Contract; however, Exhibit B to the Denson Contract was not provided as part of the "cure" documentation (there is no dispute but that Exhibit B to the Denson Contract was not provided; see Recommended Order attached as Exhibit "C").

19. Pages 24 and 25 of the Universal Application Instructions ("Instructions") clearly set forth the requirements which must be met in order to satisfy the threshold requirement of site control. The second sentence of the Instructions to Part III C.2. (copy attached as Exhibit "K") clearly state that "The required documentation, including any attachments or exhibits (emphasis added), must be provided behind a tab labeled Exhibit 27." Rule 67-48.004(1), F.A.C., requires that "all Applications must be complete (emphasis added), legible and timely when submitted...". Rule 67-48.004(2), F.A.C. provides that "Failure to submit an Application completed in accordance with the Application Instructions and these rules will result in rejection of the Application or a score less than the maximum available in accordance with the Instructions in the Application and this rule chapter (emphasis added)." Rule 67-48.004(13)(b), F.A.C. provides that FHFC shall reject an application if, following the submission of the additional documentation (the "cure" documentation)... "The Applicant fails to achieve the threshold requirements as detailed in these rules, the applicable Application, and Application

Instructions... (emphasis added)". Rule 67-48.004(13)(c), F.A.C. provides that FHFC shall reject an application if, following the submission of the additional documentation (the "cure" documentation)... "The Applicant fails to file all applicable Application pages and exhibits which are provided by the Corporation and adopted under this Rule chapter... (emphasis added)."

20. It is not in dispute that Applicant failed to provide Exhibit B to the Denson Contract. Clearly, failure to provide such exhibit runs directly afoul of (i) page 24 of the Application Instructions, which requires that "The required documentation, including any attachments or exhibits (emphasis added), must be provided behind a tab labeled Exhibit 27", and (ii) Rule 67-48.004(13)(c), F.A.C. , which requires that the applicant must file all applicable Application pages and exhibits which are provided by FHFC and adopted under this Rule chapter. As found by FHFC in their final order in the case of Bear Lakes Acquisition, Ltd. v. Florida Housing Finance Corporation (FHFC Case No. 2002-021), Rule 67-48.004(13)(c), F.A.C. unequivocally requires that FHFC "shall reject" an application if an applicant fails to provide all required pages and exhibits as provided in its rules. In the Bear Lakes case (attached as Exhibit "L"), FHFC found (by adoption of its final order) that a recorded deed missing the final two pages of an exhibit to such deed resulted in disqualification and rejection of such application because the applicant failed to provide all required exhibits provided by FHFC.

21. Notwithstanding this seemingly clear directive contained in the Application Instructions, the accompanying clear dictates contained in Rule 67-48.004(1), (2) and (13)(b) and (c), F.A.C., prior FHFC final orders (the Bear Lakes order referenced above and several other FHFC orders described below) and the response of FHFC to Petitioner's NOAD in this matter, Hearing Officer David Ramba found in favor of Applicant in his recommended order dated

September 13, 2004. Hearing Officer Ramba made no mention or reference to the aforementioned excerpts from the Instructions or Rule 67-48 F.A.C.; instead, Hearing Officer Ramba's sole emphasis was placed upon the issue of whether Mr. Curtis had the "legal ability to convey the property to the Applicant". See Sections 9, 10, 11, 12, 13 and 15 (under the heading "Conclusions of Law")of Hearing Officer Ramba's recommended order attached as Exhibit "C". Hearing Officer Ramba determined that, since the information and documentation provided by Applicant established the ability of Mr. Curtis to convey the property pursuant to the real estate purchase contract, Applicant satisfactorily demonstrated site control.

22. The basis for Hearing Officer Ramba's decision is puzzling. Nowhere in his Recommended Order does Hearing Officer Ramba discuss the Application Instructions and Rule set forth herein by Petitioner. It appears that Hearing Officer Ramba mistakenly focused upon FHFC's scoring comment to Petitioner's NOPSE (see page 2 of the May 24, 2004 scoring summary attached as Exhibit "G", wherein FHFC stated in Item 5T that "Evidence provided in NOPSE calls into question the ability of John M. Curtis, Trustee to lawfully convey the property"). However, FHFC's subsequent determination (filed after consideration of Petitioner's NOAD) was that the threshold requirement of "site control" was failed based simply upon FHFC's finding that "... this Agreement is deficient because the Applicant failed to provide a complete contract as section 6.2.4 of the Agreement for Purchase and Sale of Real Property between Carla Denson (as Seller) and John M. Curtis (as Buyer) refers to an Exhibit B that is not attached." See Item 1C in July 8, 2004 Scoring Summary attached as Exhibit "H". That is, FHFC relied on the Instructions and Rule cited by Petitioner herein in finding against Applicant (and in favor of Petitioner's NOAD) due to a missing exhibit. Thus, it appears that Hearing Officer Ramba mistakenly and erroneously placed his emphasis on FHFC's earlier scoring

decision calling into question Mr. Curtis' ability to convey the property due to the fact that Mr. Curtis did not in fact own the property. That issue was resolved when Applicant submitted the Denson Contract in its "cure" documentation; at that time (and in response to Petitioner's NOAD), the basis for FHFC's scoring decision switched to the missing exhibit to the Denson Contract. Unfortunately, Hearing Officer Ramba's emphasis remained upon Mr. Curtis' ability to convey, which issue was no longer relevant. The basis of Hearing Officer Ramba's recommended order (that Mr. Curtis had the legal ability to convey the property and, as such, Applicant satisfactorily demonstrated site control; see pages 13 and 14 of the Recommended Order attached as Exhibit "C") are without legal justification or support. For purposes of discussion of this issue, Petitioner does not challenge Mr. Curtis' legal authority to convey the property; rather, simply put, Petitioner asserts that Applicant failed to follow the Application Instructions and Rule 67-48, F.A.C. in failing to attach all required attachments and exhibits. The requirements of the Application Instructions and Rule could not have been clearer, yet (a) Applicant failed to follow such requirements, and (b) Hearing Officer Ramba failed to even address these requirements in his recommended order.

23. Hearing Officer Ramba's decision is inconsistent with several other determinations by FHFC in prior application cycles and in the recently completed 2004 Application Cycle. Unfortunately, the Rule and practice of FHFC to exclude opposing participants such as Petitioner from the proceedings before Hearing Officer Ramba precluded Petitioner from arguing administrative agency decisions that were contrary to the decision Hearing Officer Ramba reached in his Recommended Order. Had Petitioner been allowed to argue those decisions, and point out the error of Hearing Officer Ramba's focus and approach,

Petitioner could have prevailed before Hearing Officer Ramba and the proper applicants would have received the allocation of 2004 HC.

24. "Stare Decisis is a 'core principal of our system of justice and it should be applied to administrative proceedings' ...". Plante v. Department of Business and Professional Regulation, 716 So. 2d 791-92 (Fla. 1st DCA 1998) (quoting Gessler v. Department of Business and Professional Regulation, 627 So. 2d 501, 503-4 (Fla. 4th DCA 1993)). In Plante, the agency was reversed for refusing to consider its prior penalty determinations, which were submitted by the individual facing punishment, as relevant guides for punishment in his case. In reversing, the 4th DCA stated: "We find that the appellant was entitled to rely on [agency] precedents...". Plante, 716 So. 2d 792. Here, the hearing officer, both in the prior proceeding and in the instant case, is required to follow agency precedent, which would have compelled rejection of Applicant's Application in the earlier proceeding and which compels Petitioner's award of 2005 HC authority here. The following FHFC precedents should have been applied by Hearing Officer Ramba and should be applied in the instant case.

25. In the aforementioned case of Bear Lakes Acquisition, Ltd. v. Florida Housing Finance Corporation (FHFC Case No. 2002-021), the applicant evidenced satisfaction of the "site control" requirement by submitting a recorded deed; however, the deed referenced (on its first page) an attached Exhibit A which contained the legal description. The attached Exhibit A (which contained the legal description) indicated (on the top of such page) that it constituted "page 1 of 3". As the result of a successful NOPSE, that applicant filed (as "cure" documentation) two additional pages marked "Exhibit A page 2 of 3" and "Exhibit A page 3 of 3"; both pages bore the statement "this page intentionally left blank" and neither page bore evidence of recordation in the official records of Palm Beach County as required by the

Instructions. For purposes of the informal hearing, FHFC and the applicant agreed and stipulated that applicant owned the entire site, and nothing in the last two pages of the exhibit negated or related in any manner to that applicant's rights to conduct development activities on the total site. The hearing officer found in its recommended order (as adopted by FHFC as a final order, copy attached as Exhibit "L" hereto) that "...as a matter of law that Rule 67-21.003(13), F.A.C. (the identical rule to Rule 67-48.004(13), F.A.C. except promulgated under the FHFC MMRB program) governs the resolution of this issue. That Rule unequivocally requires that FHFC 'shall reject' an application if an applicant fails to provide all required pages and exhibits as provided in its rules." In other words, the hearing officer found (and FHFC agreed in its final order) that, notwithstanding the agreement by all parties that the applicant owned the subject real estate and had the right to conduct development activities on the site, such application must be rejected as a matter of law due to failure to follow the Instructions and the Rule. The Rule applicable to the Bear Lakes case was identical to the Rule applicable in the instant case; unlike Hearing Officer Ramba, FHFC (by adoption of its final order) found correctly in Bear Lake that failure to follow the clear requirements of the Instructions necessary to establish satisfaction of the threshold requirement of "site control" and the Rule must result in rejection of an application, notwithstanding that the underlying intent/rationale of "site control" had arguably been met.

26. In Arbours at Madison, Ltd. v. Florida Housing Finance Corporation (FHFC Case No. 2004-035-UC), the hearing officer found (and FHFC agreed in its final order) that failure to provide all attachments to a commitment letter resulted in rejection of the subject application (see paragraph 40 of recommended order attached as Exhibit "M"). The Instructions at issue in that case (page 66 of the Instructions under Part V.D.), provided that "for a commitment letter to be considered as a firm commitment, all attachments must be included (emphasis added)". Such

Instruction is substantially identical to the requirement set forth on page 24 of the Instructions, requiring that "The required documentation, including any attachments or exhibits, must be provided... (emphasis added)".

27. In the recently concluded 2004 Application cycle, in at least five instances, FHFC approved (by adopting final rankings) findings that applicants failed the threshold requirement of site control by virtue of failing to included all exhibits and attachments to their real estate purchase contract. Such findings were not limited to cases in which the legal description was not attached; see, for example, FHFC scoring decisions (reflected on scoring summary sheets attached hereto as Exhibit "N") in application number 2004-019S (Exhibit "B" Deed Restrictions not attached to the warranty deed; Item 1T); application 2004-062C (Exhibit "G" to ground lease left blank; FHFC determined ground lease was incomplete; Item 1T); application number 2004-071C (Exhibit "B" referenced in body of purchase and sale contract not provided; Item 1T); application number 2004-135C (body of purchase and sale contract refers to Schedule 3.10 and schedule not provided; Item 2T); and application number 2004-147S (Exhibit "A" legal description and Exhibit "B" permitted exceptions not provided; Items 12T and 13T). In each instance, FHFC followed the clear requirement of the Instructions ("The required documents, including any attachments or exhibits, must be provided...") in determining that all such applications failed the threshold requirement of site control. In the Blitchton Station informal hearing before Hearing Officer Ramba, FHFC continued taking this approach; however, Hearing Officer Ramba determined differently and held against FHFC, creating (as a result) a legal inconsistency between FHFC's decision in the Blitchton Station case (arrived at by adoption of Hearing Officer Ramba's recommended order as a final order) and all of the aforementioned final orders and scoring decisions made and ratified by FHFC. It is Petitioner's belief that FHFC

adopted Hearing Officer Ramba's recommended order as a final order not because it felt such result was correct, but rather to avoid sending a message to the affordable housing development industry that FHFC would, when FHFC determined to do so, not follow recommended decisions rendered by hearing officers in informal hearings. Petitioner believes that FHFC adopted Hearing Officer Ramba's recommended order in order to avoid sending a message to the affordable housing development community that it would, in the right circumstances, "pick and choose" which recommended orders to accept and which recommended orders to reject, thereby damaging the confidence of the affordable housing community in the informal hearing process.

"Back To Back" Contract Structure

28. The NOAD submitted by applicant Goodbread Hills, Ltd. asserted that Applicant's "cure" (submission of the Denson Contract) should have failed the threshold requirement of site control for a more basic reason. FHFC has previously determined, in the case of "back to back" contracts (that is, a contract from a property owner to a purchaser, coupled with a contract between such purchaser and an applicant), that such structure fails to meet the requirement of a "qualified contract" for the reasons set forth below.

29. On page 24 of the Instructions, one of the requirements of a "qualified contract" is that the buyer's remedy for default on the part of the seller includes or is specific performance. The underlying rationale for this requirement is obvious; FHFC desires to insure that if it awards HC to an applicant and the seller of the property to such applicant defaults in its obligation to transfer the property, the applicant can force the seller (through the exercise of the remedy of specific performance) to sell the property to the applicant and utilize the HC. However, this underlying intent/goal is not met in the case of "back to back" contracts. In the event John M. Curtis, Trustee defaults under the Curtis Contract with Applicant, Applicant's remedy of specific

performance against John M. Curtis, Trustee is meaningless; it does not compel delivery of the property from Ms. Denson to the Applicant. Since Applicant is not "in privity" with Ms. Denson (the property owner), there can be no assurance that, in the event Ms. Denson determines not to convey the property to Mr. Curtis under the Denson Contract, that the Applicant will (through the exercise of its remedy of specific performance against Mr. Curtis) be able to compel Ms. Denson to convey the property to Mr. Curtis, who in turn would convey the property to Applicant. Applicant's remedy of specific performance against Mr. Curtis will not necessarily entitle Applicant to a remedy of specific performance against Ms. Denson, particularly when and if Mr. Curtis is in default under the Denson Contract with Ms. Denson.

30. Mr. Curtis is acting as trustee under the Denson Contract with Ms. Denson. However, the beneficiaries of the trust under which Mr. Curtis presumably acts are undisclosed. There can be no assurance that, in the event Applicant exercises its right of specific performance against Mr. Curtis as trustee, that the beneficiaries of the trust under which Mr. Curtis holds as trustee will direct Mr. Curtis to, in turn, enforce his rights to specific performance under the Denson Contract with Ms. Denson. In fact, Mr. Curtis as trustee has two options under the Denson Contract in the event of a default by Ms. Denson; either to seek specific performance or terminate and receive a refund of the deposit (see Section 16.2, page 11 and 12 of the Denson Contract attached as Exhibit "J").

31. For the foregoing reason, Applicant does not have the remedy of specific performance and the threshold requirement of site control has not been met since there is no "qualified contract". In the case of Application 2002-145BS (Tierra Bay), a NOPSE was filed challenging the "back to back" contracts submitted in that application. FHFC agreed with the NOPSE and found that the "back to back" contracts did not constitute valid "site control". In

that case, the applicant subsequently filed cure documentation attempting to assign the underlying contract directly to the applicant and rid itself of the "back to back" structure; however, such assignment was found to be defective as failing to assign all of the buyer's rights, title and interest in the underlying contract to the applicant. While that application ultimately failed due to the latter issue, FHFC found (prior to submission of the cure documentation) that the "back to back contact" failed to meet site control; the only NOPSE filed against that application with respect to the site control issue made the exact same arguments as are being made herein (see NOPSE and summary score sheets for Tierra Bay attached as Exhibit "O"). For the reasons set forth above, the "back to back" contract structure utilized by the Applicant should be found to fail the threshold requirement of site control.

Local Government Contribution

32. In its initial application, Applicant submitted a $62,454.00 fee waiver as Exhibit 43 to its initial application. Exhibit 43 requires that "no credit will be given for fee waivers unless the computations by which the total amount of each waiver is determined accompanies this verification form in the application." Applicant failed to include such computation and was not given any credit for the $62,454.00 fee waiver. In its "cure" documentation, Applicant submitted a memorandum from the City of Ocala Community Programs Development City Council agenda as evidence of the required computation of the fee waiver. The City Council agenda item indicated that, comprising the most significant part of the $62,454.00 fee waiver, was a waiver of $49,307.00 of building permit fees. See attached Exhibit "P". Petitioner filed a NOAD to Applicant's cure documentation.

33. Attached (as part of Exhibit "P") is a copy of the applicable building permit fee ordinance (Ordinance 5203) for the City of Ocala. Section 82-42 of that ordinance clearly states

that building permit fees equal $25.00 for each building permit issues (14 buildings referenced in Applicant's Application, for a base fee of $350.00), plus an additional fee of $0.45 for each $100.00 or major fractional part thereof of the cost of construction). In its application, Applicant indicated that the total cost of construction was $7,182,003.00, which would yield an additional building permit fee of $32,319.00 ($7,182,003 ÷ 100 x $0.45), added to the aforementioned $350.00 base fee for a total building permit fee owed of $32,669.00. Assuming (for discussion's sake) that the additional building permit fee is based on the total development cost reflected in Applicant's Application ($9,944,515.00), the additional building permit fee would be $44,750.00 ($9,944,515 ÷ 100 x $0.45), plus the $350.00 base fee for a total building permit fee of $45,100.00.

34. Applicant indicated a total building permit fee waiver of $49,307.00; however, at its maximum the building permit fee owed would have been $45,100.00. Utilizing the $45,100.00 figure for the building permit fees waiver results in total fees waived of $58,247.00; when combined with the present value of the deferred impact fees ($37,546.00), the total local government contribution ($95,793.00) is less than the $100,000.00 required to receive the full five (5) points for local government contribution. As such, Applicant's application should have received 4.79 of a possible 5 points for local government contribution, for a total score of 65.79 points, instead of 66 points.

RELEVANT RULES AND STATUTES

35. Rule 67-48, F.A.C. specifically incorporates the 2004 HC application and Instructions. The Instructions to Part III.C.2. of the application (specifically, page 24 of the Instructions) provide that, in order to demonstrate site control, "The required documentation, including any attachments or exhibits (emphasis added), must be provided...". Rule 67-48.004(1), F.A.C. provides that "All Applications must be complete (emphasis added), legible

and timely when submitted...". Rule 67-48.004(2), F.A.C. provides in part that "Failure to submit an Application completed in accordance with the Application Instructions and these rules will result in rejection (emphasis added) of the Application or a score less than the maximum available in accordance with the instructions in the Application and this Rule chapter". Rule 67-48.004(13)(b) and (c), F.A.C., provide in part that "The Corporation shall reject (emphasis added) an Application if, following the submission of the additional documentation, revised pages and other information as the Applicant deems appropriate as described in subsection (6) above: ...(b) the Applicant fails to achieve the threshold requirements as detailed in these Rules, the applicable Application, and Application Instructions; ...(c) The Applicant fails to file all applicable Application pages and exhibits (emphasis added) which are provided by the Corporation and adopted under this Rule chapter...". All of the above-mentioned Rules and Instructions pertain to the issue of the missing exhibit to the Denson Contract.

36. Rule 67-48, F.A.C. specifically incorporates the 2004 HC application. The Instructions to Part III.C.2.a. of the Application (specifically, page 24 of the Instructions) specifically requires that a "qualified contract" must provide that "...the buyer's remedy for default on the part of the seller includes or is specific performance...".

37. Rule 67-48.005, F.A.C. provides an applicant (such as Petitioner) with a point of entry to contest the ranking of any other application in the 2004 Cycle. That Rule (67-48.005(5)) requires an applicant (such as Petitioner) to demonstrate that the contested issue involves an error in scoring that, if curable, the ability to cure was not solely within the Applicant's control and was not feasibly curable within the time allowed for cures in Subsection 67-48.004(6). Petitioner has demonstrated that the contested issues were not within Applicant's control to cure, and certainly not within the time allowed for cures. Rule 67-48.005(5)(c), F.A.C. requires an

applicant (such as Petitioner) to allege facts in its petition sufficient to demonstrate that, but for the scoring error in the challenged application (Blitchton Station), an applicant (such as Petitioner) would have been in the funding range at the time FHFC provided the final ranking. Petitioner has demonstrated that, but for the error in the scoring of the Blitchton Station application, it would have prevailed and been funded in the Front Porch Florida Community HC set-aside.

38. Rule 67-48.005, F.A.C. fails to grant a meaningful remedy because (i) it excludes Petitioner as a party earlier in the proceedings, contrary to Ashbacher and Bio-Medical, and (ii) it only allows Petitioner to be a party provided certain requirements are met (the issue at hand, if curable, must not have been within applicant's sole ability to cure, for example), notwithstanding the fact that Petitioner has a constitutional due process right to participate.

39. Rule 67-48.005(7), F.A.C. provides that, if an applicant (such as Petitioner) ultimately obtains a final order that demonstrates that its application would have been in the funding range, but for the scoring error described in such petition, that such applicant will be provided the requested funding from the next available funding and/or allocation, whether in the current year or a subsequent year. The filing of a petition pursuant to Rule 67-48.004(5), F.A.C. does not stay FHFC's provision of funding to applicants per the final rankings issued by FHFC. As such, Petitioner does not contend at this point that Applicant should be denied an allocation of HC; rather, Petitioner contends that pursuant to the provisions of Rule 67-48.005(7), F.A.C. Petitioner should be awarded either an allocation of 2004 HC or a binding commitment for 2005 HC.

RELIEF SOUGHT

40. The specific action which Petitioner seeks is (a) a procedurally adequate remedy

for its case described herein, and (b) a determination that (i) Applicant should have failed the threshold requirement of "site control" by reason of the missing exhibit to the Denson Contract and/or the "back to back" contract structure utilized by Applicant, and (ii) Applicant should not have been awarded the full five (5) points for a valid "local government contribution" with respect to the City of Ocala waived building permit fees, and that FHFC erred in failing to reduce the score of the Applicant's Application to reflect the fact that such application had received less than the $100,000 of local government contribution necessary to receive the full five (5) points for that section. Petitioner further requests a determination that, but for the error in the scoring of the Applicant's Application, that Petitioner's application would have prevailed and been successful in the Front Porch Florida Community set-aside and funded in the 2004 Cycle. Finally, Petitioner requests a determination that FHFC provide the funding requested by Petitioner in its 2004 HC application either from available 2004 HC allocation authority, or to provide a binding commitment of HC authority from the 2005 Cycle.

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WHEREFORE, Petitioner respectfully requests a determination that:

1. FHFC erred in scoring the Blitchton Station application, and should have disqualified such application for failure to satisfy the threshold requirement of site control;

2. FHFC erred in scoring the Blitchton Station application, and should have awarded less than five (5) points for its local government contribution;

3. But for the error in scoring of the Blitchton Station application, Petitioner's application would have prevailed and been funded with a 2004 HC allocation in the amount of $798,000.00; and

4. Petitioner's application be awarded an allocation of either 2004 HC authority and/or a binding commitment for 2005 HC authority totalling $798,000.00.

Respectfully submitted

By: _____

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CERTIFICATE OR SERVICE

I HEREBY CERTIFY that an original and one copy of the foregoing have been filed with Florida Housing Financing Corporation, Attention: Corporation Clerk, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301 on this 8th day of November, 2004.

By: Gary J. Cohen
Gary J. Cohen, Esq.

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