STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

DR. KENNEDY HOMES, LTD.

Petitioner,

vs.

FHFC CASE NO.: 2009-073UC
Application No. 2009-144C
2009 Universal Cycle

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

CONSENT AGREEMENT

Petitioner Dr. Kennedy Homes, Ltd. ("Dr. Kennedy") and Respondent, Florida Housing Finance Corporation ("Florida Housing"), by and through undersigned counsel, hereby present the following Consent Agreement:

APPEARANCES

For Petitioner:

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For Respondent:

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PRELIMINARY STATEMENT

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

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

STIPULATED FINDINGS OF FACT

1. Dr. Kennedy is a Florida not-for-profit limited partnership with its address at 2950 SW 27th Avenue, Suite 200, Miami, Fl, 33133, and is in the business of providing affordable rental housing units.

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

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

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

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

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

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

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

a. the publication and adoption by rule of an application package;

b. the completion and submission of applications by developers;

c. Florida Housing's preliminary scoring of applications;

d. an initial round of administrative challenges in which an applicant may take issue with Florida Housing's scoring of another application by filing a Notice of Possible Scoring Error ("NOPSE");

e. Florida Housing's consideration of the NOPSEs submitted, with notice to applicants of any resulting change in their preliminary scores;

f. an opportunity for the applicant to submit additional materials to Florida Housing to "cure" any items for which the applicant received less than the maximum score;

g. a second round of administrative challenges whereby an applicant may raise scoring issues arising from another applicant's cure materials by filing a Notice of Alleged Deficiency ("NOAD");

h. Florida Housing's consideration of the NOADs submitted, with notice to applicants of any resulting change in their scores;

i. an opportunity for applicants to challenge, via informal or formal administrative proceedings, Florida Housing's evaluation of any item for which the applicant received less than the maximum score; and

j. final scores, ranking, and allocation of funding to successful applicants, as well as those who successfully appeal through the adoption of final orders.

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

9. On or about August 20, 2009, Dr. Kennedy and others submitted applications for financing in Florida Housing's 2009 funding cycle. Dr. Kennedy (Application #2009-144C) applied for $2,150,720 of Tax Credit equity funding to help finance the construction of a 132-unit affordable apartment complex in Fort Lauderdale, Broward County, Florida.

10. Dr. Kennedy received notice of Florida Housing's initial scoring of the Application on or about September 21, 2009, at which time Dr. Kennedy was awarded a preliminary score of 70 points out of a possible 70 points, and 7.5 of 7.5 possible "tie breaker" points (awarded for geographic proximity to certain services and facilities), and 6 of 6 possible ability to proceed tie-breaker points. Florida Housing also concluded that the Dr. Kennedy application had passed all threshold requirements.

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

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

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

14. At the conclusion of the NOPSE, cure review and NOAD processes, Florida Housing awarded the Kennedy Application a score of 47 points. The basis for the score was:

Item #	Reason(s)	Created As Result
2S	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites (see subsection 67-48.002(106), F.A.C.). The Applicant failed to commit to locate each selected feature and amenity that is not unit-specific on each of the Scattered Sites, or no more than 1/16 mile from the site with the most units, or a combination of both. As a result, points were awarded only for those selected features and amenities that are unit-specific.	NOPSE
3S	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. Therefore, the Development Location on the Applicant Notification to Special Needs Household Referral Agency form should reflect all of the Scattered Sites. Because the form is incomplete, the proposed Development is not eligible for Special Needs points.	NOPSE
10S	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. Therefore, the Development Location on the Local Government Verification of Contribution – Grant form should reflect all of the Scattered Sites. Because the form is incomplete, the proposed Development is not eligible for any points for Local Government Contributions.	NOPSE
11S	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. Therefore, the Development Location on the Local Government Verification of Affordable Housing Incentives forms (Exhibits 47, 48, 49 and 50) should reflect all of the Scattered Sites. Because the forms are incomplete, the proposed Development is not eligible for any points for Local Government Incentives.	NOPSE

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

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of
1T	III	A	2.b	Scattered Sites	Based on information provided by a NOPSE, it appears that the Development site is divided one or more easements and thus meets the definition of Scattered Sites (see subsection 67-48.002(106), F.A.C.). The Applicant failed to correctly answer the question at Part III.A.2.b. of the Application	NOPSE
2T	III	C	1	Site Plan Approval / Plat Approval	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites (see subsection 67-48.002(106), F.A.C.). The 2009 Universal Application Instructions require that site plan approval be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although site plan approval has been demonstrated for the site located at 1004 W. Broward Boulevard, it has not been demonstrated for the other site(s).	NOPSE
3T	III	C	3.a	Availability of Electricity	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. The 2009 Universal Application Instructions require that evidence of the availability of electricity be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of the availability of electricity has been demonstrated for the site located at 1004 W. Broward Boulevard, it has not been demonstrated for the other site(s)	NOPSE
4T	III	C	3.b	Availability of Water	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. The 2009 Universal Application Instructions require that evidence of the availability of water be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of the availability of water has been demonstrated for the site located at 1004 W. Broward Boulevard, it has not been demonstrated for the other site(s)	NOPSE

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of
5T	III	C	3 c	Availability of Sewer	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. The 2009 Universal Application Instructions require that evidence of the availability of sewer be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of the availability of sewer has been demonstrated for the site located at 1004 W. Broward Boulevard, it has not been demonstrated for the other site(s)	NOPSE
6T	III	C	3 d	Availability of Roads	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. The 2009 Universal Application Instructions require that evidence of the availability of roads be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of the availability of roads has been demonstrated for the site located at 1004 W. Broward Boulevard, it has not been demonstrated for the other site(s)	NOPSE
7T	III	C	4	Zoning	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites. The 2009 Universal Application Instructions require that evidence of appropriate zoning be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of appropriate zoning has been demonstrated for the site located at 1004 W. Broward Boulevard, it has not been demonstrated for the other site(s).	NOPSE
8T	III	A	2.b	Scattered Sites	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites (see subsection 67-48.002(106), F.A.C.) The Applicant failed to provide the required information for each of the Scattered Sites at Exhibit 20, as required by the 2009 Universal Application Instructions.	NOPSE

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of
9T	III	C	5	Environmental Site Assessment	Based on information provided by a NOPSE, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites (see subsection 67-48.002(106), F.A.C.). Although evidence that a Phase I ESA has been performed for the site located at 1004 W. Broward Boulevard, no such evidence has been provided for the other site(s).	NOPSE

16. On or before December 28, 2009, Dr. Kennedy submitted a Petition for Review of 2009 Universal Cycle Final Scoring Summary Report pursuant to Sections 120.569 and 120.57(2), Florida Statutes.

17. The sole issue raised by the petition was the determination by Florida Housing during the Universal Cycle scoring process that Dr. Kennedy's development site "is divided by one or more easements and thus meets the definition of Scattered Sites" in rule 67-48.002(106). As noted in the charts above, the determination that Dr. Kennedy consists of scattered sites resulted in Dr. Kennedy failing threshold requirements and achieving a total score of 47 with 0

ability to proceed tie-breaker points when final scores were issued on December 3, 2009. Had Florida Housing not found that Dr. Kennedy consisted of scattered sites, all threshold requirements would have been met and Dr. Kennedy would have achieved a total score of 70, and six ability to proceed tie-breaker points, as well as 7.50 proximity tie-breaker points.

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

STIPULATED CONCLUSIONS OF LAW

1. Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Florida Administrative Code Chapter 67-48, the Board has jurisdiction over the parties to this proceeding.

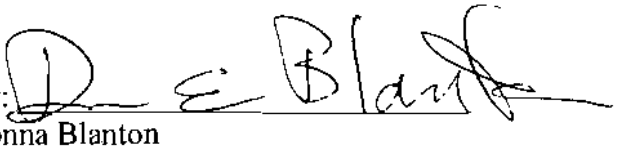
2. Florida Housing is statutorily authorized to institute a competitive application process for the allocation of Tax Credits and has done so through Rules 67-48.004 and 67-48.005, Florida Administrative Code.

3. An agency's interpretation of its own rules will be upheld unless it is clearly erroneous, or amounts to an unreasonable interpretation. *Legal Envtl. Assistance Found., Inc., v. Board of County Comm'rs of Brevard County*, 642 So. 2d 1081 (Fla 1994); *Miles v. Florida A and M Univ.*, 813 So. 2d 242 (Fla. 1st DCA 2002). This is so even if the agency's interpretation is not the sole possible interpretation, the most logical interpretation, or even the most desirable interpretation. *Golfcrest Nursing Home v. Agency for Health Care Admin.*, 662 So. 2d 1330 (Fla. 1st DCA 1995).

STIPULATED DISPOSITION

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

Respectfully submitted this 15th day of January 2010.



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