

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

TOWN PARK CROSSING, L.P.

Petitioner,

**FHFC No. 2009-064 UC
Application No. 2009-255C
2009 Universal Cycle**

vs.

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

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CONSENT AGREEMENT

Petitioner Town Park Crossing, L.P., ("TPC") 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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STATE OF FLORIDA
HOUSING FINANCE CORPORATION

For Respondent:

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PRELIMINARY STATEMENT

On or before August 20, 2009, TPC submitted an Application to Florida Housing for funding through the 2009 Universal Cycle. On December 3, 2009, Florida Housing notified TPC of the results of scoring its Application and provided TPC with a Notice of Rights pursuant to Section 120.569 and 120.57, Florida Statutes. TPC timely filed a Petition for Review (“Petition”) challenging the finding that TPC 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 TPC Development site within the meaning of the “scattered sites” definition of Rule 67-48.002(106). Thus, TPC is entitled to 70 total points, 6 ability to proceed tie-breaker points, and 7.50 proximity tie-breaker points. Additionally, TPC has satisfied all threshold requirements.

Upon issuance of a Final Order adopting the terms of this Consent Agreement, TPC 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. TPC is a Florida for-profit limited partnership with its address at 8380 Resource Drive, West Palm Beach, FL, 33404, 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 Cycle 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, TPC and others submitted applications for financing in Florida Housing's 2009 funding cycle. TPC (Application #2009-255C) applied for \$1,735,993 of Tax Credit equity funding to help finance the construction of a 100-unit affordable apartment complex in Davie, Broward County, Florida.

10. TPC received notice of Florida Housing's initial scoring of the Application on or about September 21, 2009, at which time TPC was awarded a preliminary score of 66 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 TPC application had not passed all threshold requirements.

11. On or about October 1, 2009, Florida Housing received a NOPSE in connection with TPC's application. On or about October 23, 2009, Florida Housing sent TPC 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, TPC timely submitted its cure materials to Florida Housing.

13. On or about November 12, 2009, Florida Housing received a NOAD in connection with TPC'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 TPC Application a score of 47 points. The basis for the score was:

2S	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, 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.	Final
5S	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, 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.). 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.	Final
10S	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, 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.). Therefore, the Development Location on the Local Government Verification of Contribution - Loan form (Exhibits 45) should reflect all of the Scattered Sites. Because the form is incomplete, the Applicant was not eligible for points for this contribution. No other Local Government Verification of Contribution forms were provided and the Application is not eligible for automatic points.	Final
11S	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, 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.). 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.	Final

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

7T	III	A	2.b	Scattered Sites	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, 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 correctly answer the question at Part II.A.2.b. of the Application.	Final
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9T	III	A	2.b	Scattered Sites	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, 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.	Final
9T	III	C	1	Site Plan Approval / Plat Approval	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, 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.). Therefore, the Applicant failed to demonstrate site plan approval for all sites as required by the 2009 Universal Application Instructions.	Final
10T	III	C	3.a	Availability of Electricity	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, 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.). Therefore, the Applicant failed to demonstrate availability of electricity for all sites as required by the 2009 Universal Application Instructions.	Final
11T	III	C	3.b	Availability of Water	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, 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 availability of water be demonstrated for all sites if the proposed Development consists of Scattered Sites. Therefore, the Applicant failed to demonstrate availability of water for all sites as required by the 2009 Universal Application Instructions.	Final
12T	III	C	3.c	Availability of Sewer	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, 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.). Therefore, the Applicant failed to demonstrate availability of sewer for all sites as required by the 2009 Universal Application Instructions.	Final
13T	III	C	3.d	Availability of Roads	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, 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.). Therefore, the Applicant failed to demonstrate availability of roads for all sites as required by the 2009 Universal Application Instructions.	Final
14T	III	C	4	Zoning	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, 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.). Therefore, the Applicant failed to demonstrate appropriate zoning for all sites as required by the 2009 Universal Application Instructions.	Final
15T	III	C	5	Environmental Site Assessment	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, 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.). Therefore, the Applicant failed to demonstrate that a Phase I ESA has been performed for all sites as required by the 2009 Universal Application Instructions.	Final

16. Florida Housing also determined that TPC failed to achieve selected ability to proceed tie-breaker points stating:

1A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for site plan approval. See Item 8T above.	Final
2A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of electricity. See Item 10T above.	Final
3A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of water. See Item 11T above.	Final
4A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of sewer. See Item 12T above.	Final
5A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of roads. See Item 13T above.	Final
6A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for appropriate zoning and land use. See Item 14T above.	Final

17. Finally, Florida Housing determined that TPC failed to achieve selected proximity tie-breaker points:

1P	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites (see subsection 87-48.002(106), F.A.C.). Per subsection 87-48.002(115), F.A.C., if a Development consists of Scattered Sites, the Tie-Breaker Measurement Point must be located in the parcel with the most units. Because the Applicant did not provide information for each of its scattered sites at Exhibit 20, FHFC is unable to verify that the Tie-Breaker Measurement Point is on the site with the most units and therefore it is impossible to measure the distance between it and the other services.	Final
1P	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites (see subsection 87-48.002(106), F.A.C.). The Yes/No box was not checked within the Surveyor Certification form certifying that part of boundary of each parcel of the Scattered Sites is within 1/2 mile of the Tie-Breaker Measurement Point. Therefore, the form could not be scored.	Final
2P	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites (see subsection 87-48.002(106), F.A.C.). The Yes/No box was not checked within the Surveyor Certification form certifying that part of boundary of each parcel of the Scattered Sites is within 1/2 mile of the Tie-Breaker Measurement Point. Therefore, the form could not be scored.	Final
2P	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites (see subsection 87-48.002(106), F.A.C.). Per subsection 87-48.002(115), F.A.C., if a Development consists of Scattered Sites, the Tie-Breaker Measurement Point must be located in the parcel with the most units. Because the Applicant did not provide information for each of its scattered sites at Exhibit 20, FHFC is unable to verify that the Tie-Breaker Measurement Point is on the site with the most units and therefore it is impossible to measure the distance between it and the other services.	Final
2P	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, it appears that the Development site is divided by one or more easements and thus meets the definition of Scattered Sites (see subsection 87-48.002(106), F.A.C.). Per subsection 87-48.002(115), F.A.C., if a Development consists of Scattered Sites, the Tie-Breaker Measurement Point must be located in the parcel with the most units. Because the Applicant did not provide information for each of its scattered sites at Exhibit 20, FHFC is unable to verify that the Tie-Breaker Measurement Point is on the site with the most units and therefore it is impossible to measure the distance between it and the other services.	Final

5P	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, 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 Yes/No box was not checked within the Surveyor Certification form certifying that part of boundary of each parcel of the Scattered Sites is within 1/2 mile of the Tie-Breaker Measurement Point. Therefore, the form could not be scored.	Final
6P	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, 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 Yes/No box was not checked within the Surveyor Certification form certifying that part of boundary of each parcel of the Scattered Sites is within 1/2 mile of the Tie-Breaker Measurement Point. Therefore, the form could not be scored.	Final
6P	Because the Application does not qualify as an Urban In-Fill Development (see item 3C), the Applicant is not eligible for automatic 3.75 proximity points.	Final
6P	As a cure to item 1T, the Applicant provided an amended legal description and sketch of the property. Based on information provided by a NOAD, 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.). Per subsection 67-48.002(116), F.A.C., if a Development consists of Scattered Sites, the Tie-Breaker Measurement Point must be located in the parcel with the most units. Because the Applicant did not provide information for each of its scattered sites at Exhibit 20, FHF is unable to verify that the Tie-Breaker Measurement Point is on the site with the most units and therefore it is impossible to measure the distance between it and the existing Developments on the Proximity List.	Final

18. On or before December 28, 2009, TPC submitted a Petition for Review pursuant to Sections 120.569 and 120.57(2), Florida Statutes.

19. The sole issue raised by the petition was the determination by Florida Housing during the Universal Cycle scoring process that TPC'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 TPC consists of scattered sites resulted in TPC failing threshold requirements and achieving a total score of 46 with 0 ability to proceed tie-breaker points when final scores were issued on December 3, 2009. Had Florida Housing not found that TPC consisted of scattered sites, all threshold requirements would have been met and TPC 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.

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

TPC 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.

By: 

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