

**BEFORE THE
FLORIDA HOUSING FINANCE CORPORATION**

**NEW TRINITY TOWERS SOUTH
PRESERVATION ASSOCIATES, LLLP**

Petitioner,

vs.

**FLORIDA HOUSING FINANCE
CORPORATION,**

**FHFC Case No. 2015-031BP
FHFC RFA No. 2015-104
Petitioner's Application No. 2015-246C**

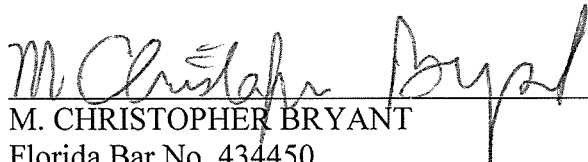
Respondent.

_____ /

PETITIONER'S NOTICE OF VOLUNTARY DISMISSAL

Pursuant to Section 120.57(4), Fla. Stat., and in express reliance on the attached Stipulation for Dismissal entered into by Petitioner and Respondent on October 12, 2015, Petitioner New Trinity Towers South Preservation Associates, LLLP hereby voluntarily dismisses its Formal Written Protest and Petition for Formal Administrative Proceedings filed in this matter on August 24, 2015.

FILED AND SERVED this 13th day of October, 2015.



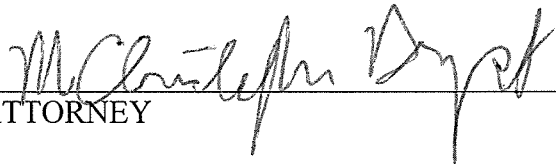
M. CHRISTOPHER BRYANT
Florida Bar No. 434450
OERTEL, FERNANDEZ, BRYANT
& ATKINSON, P.A.
P.O. Box 1110
Tallahassee, Florida 32302-1110
Telephone: 850-521-0700
Telecopier: 850-521-0720
ATTORNEYS FOR NEW TRINITY TOWERS
SOUTH PRESERVATION ASSOCIATES, LLLP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Petitioner's Notice of Voluntary Dismissal has been filed via Email and U.S. Mail with the Agency Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, and copies via Email and U.S. Mail to the following this 13th day of October, 2015:

Betty Zachem, Assistant General Counsel
Eric Scott Sonderling, Assistant General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
Betty.Zachem@floridahousing.org
Eric.Sonderling@floridahousing.org

Lawrence E. Sellers, Jr., Esquire
Holland & Knight, LLP
315 South Calhoun Street
Tallahassee, Florida 32301
larry.sellers@hkklaw.com
Counsel for Intervenor by Notice,
SP Preservation II, LLC



ATTORNEY

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FLORIDA HOUSING FINANCE CORPORATION**

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PRESERVATION ASSOCIATES, LLLP**

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**FLORIDA HOUSING FINANCE
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STIPULATION FOR DISMISSAL

Pursuant to Section 120.57(4), Fla. Stat., Petitioner New Trinity Towers South Preservation Associates, LLLP and Respondent, Florida Housing Finance Corporation hereby enter into the following Stipulation for Dismissal.

Factual Background

1. Petitioner submitted Application No. 2015-246C in Request for Applications ("RFA") 2015-104, Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments. The development proposed to be preserved is Trinity Towers South, a 162 unit midrise (4 story) development located at 615 New Haven Avenue in Melbourne, Brevard County, Florida, constructed in 1982.

2. In evaluating and scoring Petitioner's Application No. 2015-246C in RFA 2015-104, Respondent deemed Petitioner's application ineligible for consideration for funding. The bases for ineligibility as noted by members of Florida Housing's staff Review Committee were as follows:

a. A 1979 lease for the Trinity Towers South development site between Brevard County and Trinity Towers South, Inc. referenced an “Exhibit B,” and no Exhibit B to the lease was provided in the application attachments.

b. A July 22, 2014 Assignment of the Landlord’s interest in the Trinity Towers South development site from Brevard County to the City of Melbourne was not signed on behalf of the City.

c. The June 5, 2015 equity commitment letter submitted by the Applicant was not executed by the Applicant, and could not be considered, resulting in construction and permanent financing shortfalls.

3. On August 7, 2015, the Board of Directors of the Florida Housing Finance Corporation approved the determinations by staff that certain applicants were eligible and ineligible, and approved tentative funding awards. Petitioner timely filed a Notice of Protest and Formal Written Protest to contest the determination that its application was ineligible.

4. Based on additional information provided to Florida Housing by another party, Florida Housing has expressed concern that the Trinity Towers South application and another application submitted in this same RFA, Application No. 2015-247C, for Trinity Towers East in Brevard County, may be submittals for the same Development site, in violation of Rule 67-48.004(1). Trinity Towers East is a 156 unit highrise development located at 700 East Strawbridge Avenue in Melbourne, Brevard County, Florida, constructed in 1969.

Agreement to Resolve Dispute

5. As a result of settlement discussions held pursuant to Sections 120.57(3)(f) and 120.57(4), Petitioner and Respondent have resolved certain of the issues in this litigation, and

agree in the interest of avoiding the time, expense, and uncertainty of litigation, to the following terms:

(a) Respondent maintains its position that the site control documentation submitted by Petitioner is insufficient due to the absence of an “Exhibit B” referred to in a lease between Brevard County and Trinity Towers South, Inc., a predecessor in tenant interest to the property, dated March 15, 1979. Petitioner contends that there is no Exhibit B in existence, and that no Exhibit B was recorded along with the original 1979 lease; that Respondent has in two prior RFA’s reviewed the same 1979 lease without an Exhibit B and not found the lease insufficient; and that in any event the absence of Exhibit B (which purports to describe a right of access retained by the landlord over a portion of the site) is a waivable minor irregularity because of the lack of relevance of Exhibit B to Petitioner’s control of the site. The parties do not resolve that issue by this stipulation, and neither party is deemed to have conceded the issue as a result of this stipulation.

(b) The Assignment of Ground Lease from Brevard County to the City of Melbourne dated July 22, 2014, together with evidence in the application Attachments of the City of Melbourne’s acceptance of that Assignment, is sufficient and acceptable to Respondent under the terms of RFA 2015-104, despite the absence of any signature on such Assignment by the landlord/assignee City of Melbourne.

(c) Respondent maintains its position that the June 5, 2015 Equity Commitment letter from Boston Capital to Petitioner is not valid because the entity on whose behalf Petitioner’s general partner accepted and signed the letter is not Petitioner

but is a different applicant in this RFA. Petitioner contends that such designation of a different entity on the second page of the letter is at most a waivable minor irregularity, and that the letter viewed as a whole constitutes sufficient evidence of an equity commitment. Neither party concedes its position in entering into this stipulation, and such issue is not resolved by this stipulation.

(d) Upon consideration of all facts involving the Trinity Towers South development and Trinity Towers East development, Florida Housing agrees to withdraw the allegation that Applications 2015-246C and 2015-247C are applications for the same development site in contravention of Rule 67-48.004(1). The factors which support this conclusion include but are not limited to the following:

(1) Trinity Towers East, a 14 story high rise, was constructed in 1967; Trinity Towers South, a four story building, was constructed in 1981.

(2) The two buildings are located approximately 1,000 feet apart, and are separated by two public roadways and intervening ownership of property by other unrelated entities. The facilities and services provided at one of the buildings are not reasonably available to tenants of the other building.

(3) Although Trinity Towers South and Trinity Towers East, as well as another building formerly known as Trinity Towers West (constructed in 1971), were acquired as parts of a single portfolio from a common prior owner, Trinity Towers South and Trinity Towers East's acquisitions of interest in the properties were not subject to the same documents of

conveyance or the same form of site control. Specifically, Trinity Towers East has control of its site and building by virtue of a Purchase and Sale Agreement entered into with POAH Trinity Towers East, LLC, which owns the site in fee simple by virtue of a Special Warranty Deed from Trinity Towers, Inc., an unrelated company, to POAH Trinity Towers East, LLC. Petitioner has site control over the Trinity Towers South site and building pursuant to a leasehold interest previously held by Trinity Towers South, Inc., an unrelated company, conveyed to Trinity Towers South Preservation Associates, LLLP by Assignment of Lease and Assumption Agreement.

(4) Because of existing use restrictions on the Trinity Towers East and Trinity Towers South developments, both properties must exclusively house elderly residents. Neither Trinity Towers East nor Trinity Towers South has the ability to apply in a different demographic group than the other property.

(5) The two buildings have separate financing. Further, while 100% of the residents of Trinity Towers South receive Section 8 assistance, only 67% of the residents of Trinity Towers East receive Section 8 assistance.

6. In express reliance on the representations and agreements contained in this stipulation, Petitioner agrees to file a Notice of Voluntary Dismissal of its Formal Written Protest. Petitioner expressly informs Florida Housing that it reserves the right to and intends to submit applications for funding to Florida Housing for both the Trinity Towers South and Trinity Towers East developments, and may elect to do so within the same Request for Application. Florida Housing expressly reserves the right to assert in a future RFA that Trinity Towers South and Trinity

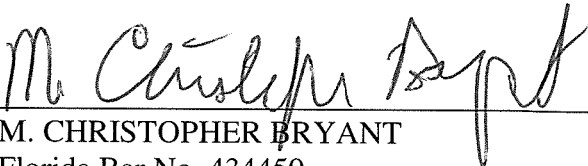
Towers East constitute submissions for the same Development site in violation of Rule 67-48.004(1) if it is presented with or discovers additional or different information than that set out in paragraph 5 above relating to the Development of those properties, or if the RFA or rule provisions regarding the “same Development site” analysis are modified in substance.

7. Each party will bear its own costs and attorneys’ fees incurred in this matter.

DATED this 12th day of October, 2015.



BETTY ZACHEM
Assistant General Counsel
Florida Bar No. 25821
ERIC SCOTT SONDERLING
Assistant General Counsel
Florida Bar No. 85425
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1367
Telephone: 850-488-4197
Attorneys for Respondent, Florida Housing
Finance Corporation
betty.zachem@floridahousing.org
eric.sonderling@floridahousing.org



M. CHRISTOPHER BRYANT
Florida Bar No. 434450
Oertel, Fernandez, Bryant & Atkinson, P.A.
P.O. Box 1110
Tallahassee, Florida 32302-1110
Telephone: 850-521-0700
Telecopier: 850-521-0720
Attorneys For Petitioner, New Trinity Towers
South Preservation Associates, LLLP
cbryant@ohfc.com