

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**MBCDC: VILLA MARIA LLC,**

**Petitioner,**

**v.**

**FHFC CASE NO. 2006-025UC  
Application No. 2006-033C**

**FLORIDA HOUSING FINANCE  
CORPORATION,**

**Respondent.**

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**RECOMMENDED ORDER**

Pursuant to notice and Sections 120.569 and 120.57(2) of the Florida Statutes, the Florida Housing Finance Corporation, by its duly designated Hearing Officer, Diane D. Tremor, held an informal hearing in Tallahassee, Florida, in the above styled case on June, 19, 2006.

**APPEARANCES**

For Petitioner, MBCDC: Villa  
Maria LLC:

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For Respondent, Florida Housing  
Finance Corporation:

Hugh R. Brown  
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### **STATEMENT OF THE ISSUE**

For the purposes of this Recommended Order, there are no disputed issues of material fact. The sole issue for determination is whether Petitioner's application met the threshold requirements regarding its qualification as an Urban In-Fill Development. More specifically, the issue is whether Petitioner's submission of information on an Urban In-Fill Development form from the 2005 Universal Application results in a failure to meet threshold requirements.

### **PRELIMINARY STATEMENT**

Petitioner, VILLA MARIA, LLC, raised two issues in its Petition for Review. The first issue pertained to the threshold requirements for qualification as an Urban In-Fill Development, and there were no disputed issues of material fact related to this issue. The second issue regarded the award of tie-breaker points for proximity to specified services. During the informal hearing on the second issue, it became apparent that a disputed issue of material fact existed. The parties agreed to have the

disputed factual issues decided by the Hearing Officer in an informal hearing rather than removing the case to the Division of Administrative Hearings. The parties further agreed that the resolution of the Urban In-Fill issue, because it is a threshold issue, could potentially render moot any issue regarding the award of tie-breaker proximity points. Accordingly, the parties and the undersigned agreed to abate the tie-breaker proximity point issue pending the resolution of the Urban In-Fill Development issue considered in this Recommended Order.

At the informal hearing, the parties stipulated to the admission into evidence of Joint Exhibits 1 through 8. Petitioner's Exhibit 1 was also received into evidence. Joint Exhibit 1 is a Prehearing Stipulation containing Stipulated Facts. That document basically describes the application process, and the circumstances regarding the scoring of Petitioner's application with regard to the issues in dispute. That Prehearing Stipulation is attached to this Recommended Order as Attachment A, and the facts in Paragraphs 1 through 9 are incorporated in this Recommended Order.

Subsequent to the hearing, the parties timely submitted Proposed Recommended Orders which have been considered by the undersigned.

## **FINDINGS OF FACT**

Based upon the undisputed facts and documents received into evidence at the hearing, the following relevant facts are found:

1. Along with other competing applicants, Petitioner submitted its Application No. 2006-033C to obtain tax credits to assist in the construction of an affordable housing apartment complex to be located in Miami, Florida.

2. With its initial application, Petitioner submitted a “Local Government Verification of Qualification as Urban In-Fill Development” form certified by Jorge G. Gomez, Planning Director, and dated January 17, 2006. On its face, the form requires that the certification “must be signed by the Mayor, City Manager, County Manager/Administrator/Coordinator, or Chairperson of the City Council or County Commission. Other signatories are not acceptable.” The bottom of this form bears the notation “UA 1016 (Rev. 1-06)”. (Joint Exhibit 5)

3. In its preliminary scoring summary dated March 1, 2006, Respondent found that Petitioner failed to meet threshold as it relates to the Urban In-Fill Development issue because the form provided was not signed by one of the stated acceptable signatories. (Joint Exhibit 2)

4. During the cure period, Petitioner submitted another “Local Government Verification of Qualification as Urban In-Fill Development” form certified by Jorge

Gonzalez, City Manager, and dated March 13, 2006. The bottom of this form bears the notation “UA 1016 (Rev. \_\_-05)”. (Joint Exhibit 6)

5. The two forms submitted by Petitioner in its initial application and in its cure contain identical language, both with regard to the information requested and the information supplied, with the exception of the signatory, his title, the date of the certification and the identification of the form on the bottom of the page.

6. In its final Scoring Summary dated May 4, 2006, the Respondent concluded that Petitioner failed to meet threshold with regard to qualification as Urban In-Fill Development for the following reason:

As a cure for Item 1C, the Applicant submitted a new Local Government Verification of Qualification as Urban In-Fill Development form signed by the appropriate party. However, the form submitted in the cure is from the 2005 Universal Application cycle. As stated in Item No. 6 of the Threshold Requirements, page 68 of the 2006 Universal Application instructions, “The Application cannot be submitted on exhibit forms or pages contained in the Application Package that are from a previous Application cycle . . .”

(Joint Exhibit 4)

7. As another unrelated part of its cure documentation, Petitioner utilized a “Local Government Verification of Contribution Loan” form with the “UA 1016 (Rev. \_\_-05)” notation at the bottom of the form. (Petitioner’s Exhibit 1) The Respondent’s final Scoring Summary does not indicate that the Petitioner failed to

meet threshold with regard to this portion of the application on the ground that Petitioner used a form from a prior application cycle.

### **CONCLUSIONS OF LAW**

Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Chapter 67-48, Florida Administrative Code, the Hearing Officer has jurisdiction of the parties and the subject matter of this informal proceeding. The Petitioner's substantial interests are affected by the proposed action of the Respondent Corporation. Therefore, Petitioner has standing to bring this proceeding.

The sole issue here is whether Petitioner's use of a form from a prior application cycle, which contains the identical language requesting information as the same form used in the current application cycle, and which is otherwise properly completed, requires the conclusion that Petitioner failed to meet threshold requirements. The resolution of this issue requires an examination of Rule 67-48.004, Florida Administrative Code, and the 2006 Universal Application and accompanying instructions.

Rule 67-48.004, Florida Administrative Code, governs the application process. In pertinent part, that rule provides:

- (1) When submitting an Application, Applicants must utilize the

Universal Application in effect at the Application Deadline.

(a) The Universal Application Package or UA 1016 (Rev. 1-06) is adopted and incorporated herein by reference and consists of the forms and instructions, obtained from the Corporation for a fee, . . . or available, without charge, on the Corporation's Website under the 2006 Universal Application link labeled Instructions and Application, . . .

...

(2) Failure to submit an Application completed in accordance with the Application instructions and these rules will result in the failure to meet threshold, rejection of the Application, a score less than the maximum available, or a combination of these results in accordance with the instructions in the Application and this rule chapter.

...

(13) The Corporation shall reject an Application if, following the submission of the additional documentation, revised pages and other information as the Applicant deems appropriate . . .

...

(b) The Applicant fails to achieve threshold requirements as detailed in these rules, the applicable Application, and Application instructions; . . .

The Universal Application Instructions for the 2006 application cycle, like the Application forms, bear the notation "UA 1016 (Rev. 1-06)", and are adopted as a rule, as provided in Rule 67-48.004(1)(a) cited above. Pages 67-69 of those Instructions contain a listing of 17 threshold requirements. Number 6 of that list reads as follows:

The Application cannot be submitted on exhibit forms or pages contained in the Application Package that are from a previous Application cycle or are drafts or that contain corrections or 'white-out' or have been scanned, imaged, retyped, or otherwise altered.

Petitioner urges that the Respondent erred in rejecting its application for failure to meet threshold requirements for three reasons. First, Petitioner attempts to draw a distinction between the terms “application” and “application package” utilized in the Instructions, contending that an “application package” constitutes a completed application actually submitted to the Respondent in another application cycle. This is a very strained reading of the plain and unambiguous words set forth in Paragraph 6 of the Threshold Requirements contained on page 68 of the Instructions, which are adopted as a rule. That paragraph prohibits submission of a current application on exhibit forms or pages from a prior application cycle. Had the Respondent intended to limit that prohibition only to those forms or pages **submitted** in a previous application cycle, it would have been a simple matter for the Respondent to state the prohibition in that manner. Instead, paragraph 6 prohibits the submission of exhibit forms or pages from a previous application cycle. Petitioner’s argument also conflicts with Rule 67-48.004(1)(a), which adopts as a rule “the Universal Application Package or UA 1016 (Rev. 1-06)”, which “consists of the forms and instructions . . . .” Obviously, the Respondent did not intend to adopt as a rule a developer’s prior completed application submitted in a previous cycle.

Petitioner next contends that the use of the Urban In-Fill Development form from last years’ application cycle constitutes an insignificant error since the 2005



form and the 2006 forms are identical, and since the date contained on the certification portion of the form submitted by Petitioner shows that the form was executed for the current years' application. This is a persuasive argument. The undersigned recognizes that the Respondent has taken the position that the decision to grant funds through the competitive process should not be based on insignificant scoring issues. However, there is one significant fact and principle of law which compels a rejection of Petitioner's argument in this regard. Here, unlike the cases cited by Petitioner, the Respondent has a specific rule governing the exact issue of the use of forms and exhibits from a previous application cycle. Such use is clearly prohibited. The undersigned, as well as the Respondent itself, is bound by the Respondent's duly adopted rules. Those rules require that an application be rejected for failure to use the forms and exhibits contained within the 2006 application. There is no exception from this requirement for forms from a prior application cycle which, in their uncompleted state, are identical to the uncompleted form in the 2006 cycle. To accept Petitioner's position on this issue would directly contravene the Respondent's duly adopted rule specifically addressing this issue. It is clear from the application Instructions and Rule 67-48.004, Florida Administrative Code, that applicants must utilize the application, which includes its forms, in effect at the application deadline. In this case, that application is the 2006 Universal Application

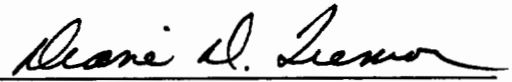
or UA 1016 (Rev. 1-06) and its forms.

Finally, Petitioner argued at hearing that the Respondent's "acceptance" of another, unrelated form from the 2005 application cycle submitted as a part of Petitioner's current application shows that the use of a 2005 form, if otherwise properly completed, does not constitute a substantive, significant error. The fact that Respondent apparently missed the defect with the second 2005 form (Petitioner's Exhibit 1) does not change the explicit requirement in Respondent's rules that no forms from previous cycles be accepted. Petitioner was certainly not prejudiced or misled by Respondent's failure to reject this other 2005 form in this case.

### **RECOMMENDATION**

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that Petitioner's application be rejected for failure to meet the mandatory threshold requirement regarding the use of the 2006 exhibit forms and pages contained in UA 1016 (Rev. 1-06).

Respectfully submitted this 14<sup>th</sup> day of July, 2006.



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Hearing Officer for Florida Housing  
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## **NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT**

In accordance with Rule 67-48.005(3), Florida Administrative Code, all parties have the right to submit written arguments in response to a Recommended Order for consideration by the Board. Any written argument should be typed, double-spaced with margins no less than one (1) inch, in either Times New Roman 14-point or Courier New 12-point font, and may not exceed five (5) pages. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301-1329, no later than 5:00 p.m. on July 21, 2006. Submission by facsimile will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to Recommended Orders.

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Application No. 2006-033C

FLORIDA HOUSING FINANCE  
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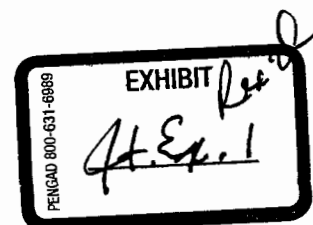
**PREHEARING STIPULATION**

Petitioner, MBCDC: Villa Maria, LLC (“Villa Maria”) and Respondent, Florida Housing Finance Corporation (“Florida Housing”), by and through undersigned counsel, submit this Prehearing Stipulation for purposes of expediting the informal hearing scheduled for 2:00 pm, June 19, 2006, in Tallahassee, Florida, and agree to the following findings of fact and to the admission of the exhibits described below:

**STIPULATED FACTS**

1. Villa Maria is a Florida limited liability corporation with its address at 945 Pennsylvania Avenue, Miami Beach, Florida 33139, 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

**ATTACHMENT A**



refinancing housing and related facilities in the State of Florida. (Section 420.504, Fla. Stat.; Rule 67-48, Fla. Admin. Code).

3. Villa Maria has applied for an allocation of competitive 9% low-income housing tax credits under the Low Income Housing Tax Credit (“HC”) program administered by Florida Housing, as authorized by the U.S. Department of the Treasury. The HC program is set forth in Section 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 construction of affordable rental housing units.

4. The 2006 Universal Cycle Application, through which affordable housing developers apply for funding under the HC program, is adopted as Form UA1016 (Rev. 01-06) by R. 67-48.004(1)(a), Fla. Admin. Code, consists of Parts I through V and instructions, some of which are not applicable to every Applicant.

5. Because Florida Housing’s annual available pool of HC funding is limited, qualified projects must compete for this funding. To assess the relative merits of proposed projects, Florida Housing has established a competitive application process pursuant to Chapter 67-48, Fla. Admin. Code. Specifically, Florida Housing’s application process for 2006, as set forth in Rules 67-48.001-.005, Fla. Admin. 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 NOPSE’s 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 NOAD’s 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 SAIL (or other) funding to successful applicants as well as those who successfully appeal through the adoption of final orders.

6. On or about February 1, 2006, Villa Maria and others submitted applications for financing in Florida Housing’s 2006 funding cycle. Villa Maria (Application #2006-033C) applied for \$1,055,642 in HC equity funding to help finance the acquisition and rehabilitation of a 70-unit high rise apartment building in Miami, Florida.

7. Villa Maria received notice of Florida Housing’s initial scoring of the Application on or about March 1, 2006, at which time Villa Maria was awarded a preliminary score of 64 points out of a possible 66 points, and 6.25 of 7.5 possible “tie breaker” points (awarded for geographic proximity to certain services and facilities).

Florida Housing also concluded that the Villa Maria application failed threshold requirements for various reasons, most of which are not material to the instant case.

8. On or before April 10, 2006, Villa Maria timely submitted its cure materials to Florida Housing to correct deficiencies in its preliminary application, most of which are not material to the instant case.

9. At the conclusion of the NOPSE, cure review and NOAD processes, Florida Housing awarded the Villa Maria Application the maximum score of 66 points, but concluded that a document included in Villa Maria's cure materials had caused the application to fail threshold, stating:

As a cure for Item 1C, the Applicant submitted as new Local Government Verification of Qualification as Urban In-Fill Development form signed by the appropriate party. However, the form submitted in the cure is from the 2005 Universal Application Cycle. As stated in Item No. 6 of the Threshold Requirement, page 68 of the 2006 Universal Cycle Instructions, "The Application cannot be submitted on exhibit forms or pages contained in the Application Package that are from a previous Application cycle..."

10. In addition to the scoring described in paragraph 9 above, Florida Housing granted Villa Maria 0 of a possible 7.5 tie-breaker points, stating:

The Applicant attempted to Cure Item 3P by providing a new Medical Facility with a revised Surveyor Certification Form and sketch. The new Form also contains revised latitude and longitude coordinates for the Tie-Breaker Measurement Point as well as all services. The new coordinates are invalid and cannot be recognized by the mapping software utilized by FHFC scorers. There is also a vertical black line that blocks out a portion of the Tie-Breaker Measurement coordinates making it impossible to determine the Longitude seconds.



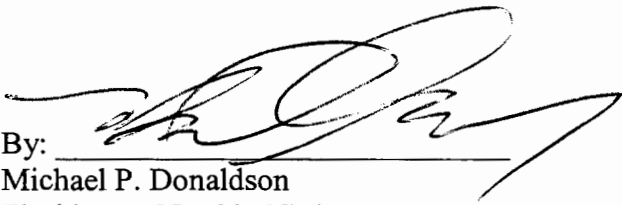
**EXHIBITS**

The parties offer the following joint exhibits into evidence. And stipulate to their authenticity, admissibility and relevance in the instant proceedings, except as noted below:

- Exhibit J-1: This Prehearing Stipulation.
- Exhibit J-2: Scoring summary for Application #2006-033S (Villa Maria) dated March 1, 2006.
- Exhibit J-3: Scoring summary for Application #2006-033C (Villa Maria), dated March 28, 2006.
- Exhibit J-4: Scoring summary for Application #2006-033C (Villa Maria), dated May 4, 2006.
- Exhibit J-5: The Local Government Verification of Qualification as Urban In-Fill Development form submitted by Villa Maria with its original application (signed Jorge G. Gomez).
- Exhibit J-6: The Local Government Verification of Qualification as Urban In-Fill Development form submitted by Villa Maria with its cure materials (signed Jorge Gonzales).
- Exhibit J-7: The Surveyor Certification form submitted by Villa Maria with its original application, dated January 24, 2006, with attached surveyor sketches.
- Exhibit J-8: The Surveyor Certification form submitted by Villa Maria with its cure materials, dated April 7, 2006, with attached surveyor sketch.

The parties also request the Honorable Hearing Officer take official recognition (judicial notice) of Rule Chapter 67-48, Fla. Admin. Code, as well as the incorporated Universal Application form and Instructions (Form UA1016 Rev. 1-06).

Respectfully submitted this \_\_\_\_\_ day of June, 2006.

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