

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

MADISON HEIGHTS, LTD.

Petitioner,

vs.

FHFC CASE NO.: 2011-48 UC  
APPLICATION NO: 2011-172C

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**CONSENT AGREEMENT**

Petitioner, Madison Heights, LTD. ("Madison Heights"), 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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Tampa, Florida 33606-2637

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For Respondent:

Wellington Meffert, General Counsel  
Florida Bar No.: 003484  
Florida Housing Finance Corporation  
227 N. Bronough Street, Suite 5000  
Tallahassee, FL 32301-1329

## PRELIMINARY STATEMENT

On or about December 6, 2011, Madison Heights submitted an Application to Florida Housing for an award of tax credits through the 2011 Universal Cycle. On or about June 11, 2012, Florida Housing notified Madison Heights of the final ranking scores as reflected in the 2011 Universal Scoring Summary and provided Madison Heights with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes. Madison Heights timely filed a Petition for Informal Administrative Hearing (“Petition”) challenging Florida Housing’s scoring determination that a competing applicant, The Reed at Encore, LP (“The Reed”), Application number 2011-124C, was entitled to three Total Points for its claimed Housing Credit Development Experience. Florida Housing has reviewed the Petition and its scoring decisions with respect to The Reed’s application and has determined that The Reed was not entitled to the three Total Points Florida Housing awarded it for its claimed Housing Credit Development Experience. Thus, had The Reed’s application been properly scored, Florida Housing should have awarded it 76 Total Points, rather than the 79 Total Points awarded at the time applications were ranked. In its final scoring Florida Housing awarded Madison Heights’s Application 79 Total Points. Accordingly, but for the error in scoring of The Reed’s application, Madison Heights would have been entitled to an allocation of housing credit from the 2011 Universal Cycle.

Upon issuance of a Final Order adopting the terms of this Consent Agreement, Madison Heights 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 its 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. Petitioner is a Florida limited partnership with its address at 2301 Lucien Way, Suite 405, Maitland, Florida 32751, and is in the business of providing affordable rental housing units in the State of Florida

2. Florida Housing is a public corporation, with its address at 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, 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. Section 420.504, Florida Statutes.

3. Florida Housing administers various affordable housing programs including the following:

(a) Housing Credit (HC) Program pursuant to Section 42 of the Internal Revenue Code and Section 420.5099, Florida Statutes, under which Florida Housing is designated as the Housing Credit agency for the state of Florida within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code, and Chapter 67-48, Florida Administrative Code; and

(b) HOME Investments Partnerships (HOME) Program pursuant to section 420.5089, Florida Statutes, and Chapter 67-48, Florida Administrative Code.

4. The 2011 Universal Cycle Application, through which affordable housing developers apply for funding under the above-described affordable housing programs administered by Florida Housing, together with Instructions and Forms, comprise the Universal Application Package or UA1016 (Rev. 2-11) adopted and incorporated by rule 67-48.004(1)(a), Florida Administrative Code.

5. Because the demand for HC and HOME funding exceeds that which is available under the HC Program and HOME Program, respectively, qualified affordable housing developments must compete for this funding. To assess the relative merits of proposed developments, Florida Housing has established a competitive application process known as the Universal Cycle pursuant to Chapter 67-48, Florida Administrative Code. Specifically, Florida Housing's application process for the 2011 Universal Cycle, as set forth in rule 67-48.001-.005, Florida Administrative Code, involves the following:

- a. the publication and adoption by rule of a "Universal Application Package," which applicants use to apply for funding under the HC and HOME Programs administered by Florida Housing;
- b. the completion and submission of applications by developers;
- c. Florida Housing's preliminary scoring of applications, noticed to applicants via a preliminary scoring summary;
- 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 via a NOPSE scoring summary;
- f. an opportunity for the applicant to submit additional materials to Florida Housing to "cure" any items for which the applicant was deemed to have failed to satisfy threshold or 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 via a final scoring summary;

i. an opportunity for applicants to challenge, by informal or formal administrative proceedings, Florida Housing's evaluation of any item in their own application for which the applicant was deemed to have failed to satisfy threshold or received less than the maximum score;

j. final scores, ranking of applications, and award of funding to successful applicants, including those who successfully challenge the adverse scoring of their applications before the date rankings are adopted; and

k. an opportunity for applicants to challenge, by informal or formal administrative proceedings, Florida Housing's final scoring and ranking of competing applications where such scoring and ranking resulted in a denial of Florida Housing funding to the challenging applicant.

6. Madison Heights timely submitted its application for financing in Florida Housing's 2011 Universal Cycle. Madison Heights, pursuant to Application #2011-172C, applied for an allocation of \$1,695,000 in annual federal tax credits to help finance the development of its project, a 80-unit high-rise complex in Hillsborough County, Florida, known as Madison Heights.

7. In its final scoring Florida Housing awarded Madison Heights's Application 79 Total Points and a total of 34.00 of a possible 37 proximity tie-breaker points.

8. The Reed at Encore, LP ("The Reed") also submitted an application for financing in Florida Housing's 2011 Universal Cycle. The Reed, pursuant to Application #2011-124C, applied for \$2,110,000 in annual federal tax credits to help finance the development of its project, a 158-unit apartment complex in Hillsborough County, Florida to be known as The Reed at Encore (the "Development"). In its final scoring Florida Housing awarded The Reed's Application 79 Total Points and a total of 35.50 of a possible 37 proximity tie-breaker points.

Madison Heights timely filed its Petition challenging Florida Housing's scoring and ranking of The Reed's Application with respect to the 3.0 Total Points Florida Housing awarded The Reed for its claimed "Housing Credit Development Experience," and challenging Florida Housing's scoring with respect to the 3.5 tie-breaker points awarded to the Reed for proximity to a medical facility.

### **Housing Credit Developer Experience**

9. Part II of the Universal Application instructions requires applicants to disclose certain Applicant and Development team information. Failure to provide the requisite information results in the Application either failing threshold or suffering a point reduction. Failure to meet threshold precludes the Application from consideration to receive funding from Florida Housing.

10. In order to satisfy the Application's threshold requirements, a Developer must provide a completed Developer or Principal of Developer Certification form certifying that the Developer or Principal of Developer has, since January 1, 1991, completed at least three (3) affordable rental housing developments. (See Part II.B.1.b. (1), Application instructions).

11. In addition to having to satisfy the above-described threshold requirement, an applicant may be awarded an additional three (3) points for Housing Credit Development Experience if the applicant's "Principal of the Developer" has completed at least three (3) Housing Credit developments since January 1, 2007. In order to qualify for the selected Housing Credit Developer Experience and be awarded three (3) points, all three (3) of the listed developments must meet the following criteria set forth in the 2011 Universal Application Instructions:

- (1) Completion of at least three (3) Housing Credit Developments since January 1, 2007.

Indicate whether a Principal of the Developer (a Principal of at least one Developer if co-Developers) has completed at least three (3) Housing Credit developments since January 1, 2007. For purposes of this provision, completed for each of the three (3) developments means (i) that the temporary or final certificate of occupancy has been issued for at least one (1) unit in one of the residential apartment buildings within the development, or (ii) that at least one (1) IRS Form 8609 has been issued for one of the residential apartment buildings within the development. As used in this section a Housing Credit development that contains multiple buildings is a single development regardless of the number of buildings within the development for which an IRS Form 8609 has been issued.

With respect to a Principal of the Developer, if providing experience acquired from a previous affordable housing Developer entity, such principal must have been a Principal or Financial Beneficiary of that Developer entity.

To be eligible for 3 Points, the Applicant must answer "Yes" to the question at Part II.B.1.c.(1) of the Application and provide a prior experience chart, behind a tab labeled "**Exhibit 10**", reflecting the required information for the three (3) Housing Credit developments.

The prior experience chart must include the name of the Principal of Developer, name of Development, location of Development, and year completed. (See Part II.B.1.c. (1), Application instructions).

12. During its initial submission, The Reed included an executed Developer or Principal of Developer Certification identifying CP Development Group Four, LLC, a Florida limited liability company as its Developer.

13. During preliminary scoring, Florida Housing scored The Reed's Application as failing to achieve threshold because The Reed's "prior experience chart" failed to show any prior developer experience for CP Development Group 4, LLC or for a Principal of Developer.

14. Pursuant to rule 67-48.004(6), Florida Administrative Code, The Reed submitted as its cure a new Developer or Principal of Developer Certification form which identified Banc

of America Community Development Corporation as The Reed's Principal of Developer. The Reed also submitted a "Prior General Development Experience Chart" and "Prior Housing Credit Experience Chart."

15. The Reed identified "Centro Place Apartments – Tampa, FL – 2007" ("Centro Place") as one of three (3) qualifying Housing Credit developments. This development does not satisfy the "certificate of occupancy" or the IRS "Form 8609" requirement set forth in Part II.B.1.c. (1) of the Application Instructions. The Centro Place development was completed prior to January 1, 2007. As a result, The Reed failed to submit the requisite number of developments that would have entitled it to receive Housing Credit Development Experience.

16. A certificate of occupancy was issued on four (4) different dates for the four (4) residential apartment buildings that comprise the Centro Place development. None of the certificates of occupancy were issued after January 1, 2007.

17. IRS Form 8609's were issued for all of the Centro Place residential buildings on August 25, 2006.

18. The Reed's Application failed to identify a Developer or Principal of Developer that had completed at least three developments on or after January 1, 2007.

19. Based on the foregoing The Reed was not entitled to three (3) Total Points for Housing Credit Developer Experience awarded by Florida Housing in its 2011 Final Ranking Scoring Summary Report. The Reed failed to include within its Application three (3) qualifying Housing Credit developments as mandated in Part II.B.1.c.(1) of the Application instructions.



### **STIPULATED CONCLUSION OF LAW**

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

21. 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.

### **CONDITIONS OF SETTLEMENT**

22. In consideration of such allocation of tax credits, Petitioner hereby completely releases and forever discharges Respondent from any and all past, present, or future claims regarding the all issues raised or which may have been timely raised by the Petition. The parties agree that this Settlement Agreement and Release resolves any actions regarding the scoring and ranking of Petitioner's Universal Cycle Application, No. 2011-172C.

23. This Settlement Agreement and Release shall benefit and be a fully binding and complete Settlement among Respondent and Petitioner, and shall become effective and binding upon execution by both parties and approval by Respondent's Board of Directors.

24. Respondent agrees that Petitioner's Application, No. 2011-172C, would have been ranked in the funding range, but for Florida Housing's acceptance of the Reed's claimed developer experience.

25. Petitioner hereby withdraws the challenge, included in its Petition, to the 3.5 tiebreaker points awarded the Reed for proximity to a medical facility.

26. Petitioner agrees that it will accept its requested allocation of low income housing tax credits, in accord with and subject to Florida Housing's credit underwriting standards and R. 67-48, Florida Administrative Code, specified herein as a complete disposition of all issues raised by its petition in the above-captioned case.

27. It is understood and agreed to by the Parties that this Settlement Agreement is a compromise of a disputed claim, and the award of tax credits is not to be construed as an admission of liability on the part of the Respondent, by whom liability is expressly denied.

28. Each party hereto shall bear all attorney fees and costs arising from the actions of its own counsel in connection with this Settlement Agreement and all related matters and documents referred to herein.

29. Each party waives any right to appeal or further action regarding the issues raised in this matter.

30. All parties agree to cooperate fully to execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

31. Petitioner agrees that upon execution of this Settlement Agreement, Petitioner will agree to abate the proceedings in this matter until the Settlement Agreement may be considered by the Florida Housing Board of Directors. Upon Florida Housing's issuance of a Final Order adopting this Settlement Agreement, the Respondent will file a dismissal with prejudice of all claims against Respondent in the above captioned administrative action. .

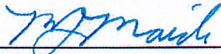
32. Petitioner acknowledges and agrees that no promise or agreement not herein expressed has been made to it; that the terms of this Settlement Agreement are contracted and not a mere recital; that there is no agreement or compromise on the part of Respondent to do any act

or thing not herein mentioned; and that this Settlement Agreement constitutes the entire agreement between the Parties hereto.

**STIPULATED DISPOSITION**

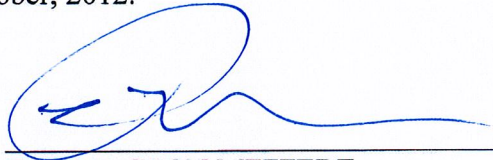
33. Madison Heights has demonstrated that but for the erroneous scoring and ranking of The Reed's application, its application would have been in the funding range for the 2011 Universal Cycle. Pursuant to Rule 67-48.005(7) F. A. C., Florida Housing agrees to allocate to Madison Heights \$1,695,000.00 in annual federal tax credits, which allocation shall come from the next available funding in either the current or subsequent years, subject to credit underwriting as provided in R. 67-48.0072, F.A.C..

Respectfully submitted this 2<sup>nd</sup> day of October, 2012.



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