

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

SP CENTRAL COURT 2012 LP,

FHFC Case No.: 2012-038UC  
FLORIDA HOUSING APPLICATION  
NO. 2011-133C

Petitioner,

vs.

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

\_\_\_\_\_ ,

**CONSENT AGREEMENT**

Petitioner, SP Central Court 2012 LP ("SP"), and Respondent, Florida Housing Finance Corporation ("Florida Housing"), by and through undersigned counsel, hereby present the following Consent Agreement:

**APPEARANCES**

For Petitioner:

Lawrence E. Sellers, Jr.  
Andrea Becker  
HOLLAND & KNIGHT, LLP  
315 South Calhoun Street, Suite 600  
Tallahassee, FL 32301

For Respondent:

Wellington H. Meffert II  
General Counsel  
Florida Housing Finance Corporation  
227 N. Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329

**PRELIMINARY STATEMENT**

On December 6, 2011, SP submitted an application for competitive 9% low income housing tax credits in Florida Housing's 2011 funding cycle for development of its project, involving acquisition and preservation of 68 units of garden style apartments in Tampa, Florida. SP's application number is 2011-149C. SP's application met all of Florida Housing's threshold application requirements, received the maximum application score of 79 total points, the maximum ability to proceed tie-breaker score of 6 points, 24.5 proximity points, and competed for tax credits in the Acquisition and Preservation development category. However, under Florida Housing's ranking procedures, SP's application was not among those in the funding range in the final rankings adopted by Florida Housing. SP received formal notice from Florida Housing of the final rankings and scores in the form of a memorandum dated June 8, 2012.

SP would have received its requested tax credit allocation but for Florida Housing's erroneous scoring decision with respect to CTA River Apartments,

Application No. 2011-133C ("Applicant"), a competing application for funding in the 2011 Universal Cycle.

On or before, July 2, 2012, SP, pursuant to Rules 28-106.301 and 67-48.005, Florida Administrative Code, timely filed a Petition for Informal Hearing ("Petition") to be conducted in accordance with Sections 120.569 and 120.57(2), Florida Statutes (2011), to contest the scoring decision with respect to Applicant. The scoring issue SP challenged was whether the Tie-Breaker Measurement Point ("TBMP") provided by Applicant met the requirements necessary to enable Applicant to receive Proximity Tie-Breaker points, since the TBMP provided by Applicant was not located within 100 feet of a residential building existing or to be constructed as part of the proposed development as required by Florida Housing's Rules and Instructions.

Thereafter, Florida Housing determined that the TBMP provided by Applicant did not meet the requirements necessary to enable Applicant to receive Proximity Tie-Breaker points.

Upon issuance of a Final Order adopting the terms of this Consent Agreement, SP agrees to dismiss its Petition with prejudice. The parties waive all right to judicial review of this Consent Agreement or the Final Order adopting this Consent Agreement, 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 adopting this Consent Agreement will be issued and this Consent Agreement shall be null and void as if it were never executed.

## **STIPULATED FINDINGS OF FACT**

### Background

1. 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.

2. 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.

3. 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.

4. 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(94), 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.

5. The 2011 Universal Cycle Application is adopted as Form UA1016 (Rev. 2-11) by Rule 67-48.004(1)(a), Florida Administrative Code, and consists of Parts I through V and Instructions, some of which are not applicable to every applicant.

6. Florida Housing's scoring process for 2011, 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 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 challenges whereby an applicant may file 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.

7. The 2011 Universal Cycle Application offers a maximum score of 79 points. In the event of a tie between competing applications, the 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) and the award of Proximity Tie-Breaker points (Application Instructions, III.A.10. at 28). To be eligible for Proximity Tie-

Breaker points, Applicants are required to submit a Surveyor Certification Form providing information regarding a Tie-Breaker Measurement Point and proximity to services. Application Instructions, III.A.10.a. at 28-29.

8. Part III(A)(10)(a) of the 2011 Universal Application Instructions provides:

In order for all Applications to be eligible for proximity tie-breaker points . . . the Applicant must submit a properly completed and executed Surveyor Certification for Competitive HC Applications form . . . which includes the Tie-Breaker Measurement Point and services information requested below:

(1) Tie-Breaker Measurement Point: To determine proximity, the Applicant must first identify a Tie-Breaker Measurement Point on the proposed Development site and provide the latitude and longitude coordinates determined in degrees, minutes and seconds, with the degrees and minutes stated as whole numbers and the seconds truncated after one decimal place . . . .

9. Rule 67-48.002(114), Florida Administrative Code provides:

“Tie-Breaker Measurement Point” means, with respect to a Competitive Housing Credit Development, a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For a Development which consists of Scattered Sites, this means a single point on the site with the most units that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development.

10. The instructions on the Surveyor Certification Form (required to be eligible for Proximity Tie-Breaker points) state:

Tie Breaker Measurement point means a single point selected by the Applicant on the proposed Development site that is located within 100

feet of a residential building existing or to be constructed as part of the proposed Development.

11. Rule 67-48.004(2) provides that the:

[f]ailure 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.

### Chronology

12. On or about December 6, 2011, Applicant submitted its application for tax credits in the 2011 Florida Housing Universal Funding Cycle. Applicant included a Surveyor Certification Form which included information regarding a TBMP and proximity to services.

13. On or about January 19, 2012, FHFC, in its preliminary scoring summary report, awarded Applicant Tie-Breaker points for proximity to certain services.

14. Thereafter, pursuant to several NOPSEs filed regarding Applicant's Surveyor Certification Form, FHFC denied Applicant certain Proximity Tie-Breaker points in its NOPSE score report, dated February 23, 2012. In response, Applicant submitted a replacement Surveyor Certification Form in a cure, on or about February 29, 2012.

15. In response, on or about March 6, 2012, SP filed several NOADs demonstrating that Applicant was ineligible for any Proximity Tie-Breaker points



because the TBMP Applicant provided was not located within 100 feet of a residential building existing or to be constructed as part of the proposed development, as required by Florida Housing's Rules and Instructions.

16. Nonetheless, in its final score report, dated March 27, 2012, Florida Housing awarded Applicant Tie-Breaker points for proximity in 9 different categories for a total of 32.5 Proximity Tie-Breaker points.

17. As a result of Florida Housing's Final Ranking, four applications located in Hillsborough County were eligible for funding within the Preservation Set-Aside. All four Hillsborough County Applications tied the first five tie-breakers established by Florida Housing for applications competing within the Preservation Set-Aside. The sixth tie-breaker, which ultimately determined the Final Ranking for Hillsborough County Preservation applications, is based on proximity to certain services. The Final Ranking resulted in Applicant's application being the highest ranked application competing for funds in Hillsborough County, and since Applicant's application was for a development consisting of 197 units, the SAUL for Hillsborough County was met and no other applications in Hillsborough County were considered for funding. As SP's application proposed 68 units, its application would have been funded had Florida Housing properly scored Applicant's application.

18. On or before, July 2, 2012, SP, pursuant to Rules 28-106.301 and 67-48.005, Florida Administrative Code, timely filed its Petition to contest the scoring decision with respect to Applicant.

19. The sole issue raised by the Petition was whether the TBMP provided by Applicant was located within 100 feet of a residential building existing or to be constructed as part of the proposed development, according to Florida Housing's requirements.

20. Following review of the Petition, Florida Housing determined that the TBMP provided by Applicant was not located within 100 feet of a residential building existing or to be constructed as part of the proposed development. Thus, Florida Housing erred in awarding Applicant 32.5 Proximity Tie-Breaker points and finding Applicant within the funding range. Accordingly, SP is entitled to an allocation of Housing Tax Credits from the 2011 Funding Cycle.

#### **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. SP has standing to challenge the scoring of Application No. 2011-133C pursuant to Rule 67-48.005(5), Florida Administrative Code.

4. For purposes of the Petition, Florida Housing agrees that an error was made in scoring Applicant's application to the extent that Applicant was awarded Proximity Tie-Breaker points, since the TBMP provided by Applicant did not meet Florida Housing's requirements.

5. SP's application would have been in the funding range of the 2011 Universal Cycle Final Ranking but for that error.

#### **STIPULATED DISPOSITION**

6. Florida Housing shall allocate Petitioner's requested tax credit allocation from the next available allocation as provided in Rule 67-48.005(7), Florida Administrative Code.

Respectfully submitted, this 5<sup>th</sup> day of October, 2012, by:



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*SP Central Court 2012 LP*



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