

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

CITY CROSSINGS, LTD.,

Petitioner,

v.

FHFC CASE NO.: 2012-049UC

Application No. 2011-090C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation ("Board") for consideration and final agency action on November 2, 2012. City Crossings, Ltd. ("Petitioner"), timely submitted its 2011 Universal Cycle Application ("Application") to Florida Housing Finance Corporation ("Florida Housing") to compete for an allocation of competitive housing credits under the Housing Credit (HC) Program administered by Florida Housing. Petitioner's application met all of Florida Housing's threshold application requirements, received an application score of 79, 36.25 proximity tie-breaker measurement points and six ability to proceed points. However, based on its ranking order relative to other applications under Florida Housing's ranking methodology, Petitioner's application was not among those included in the funding

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

idella M Harrell /DATE: Nov 2, 2012

range in the final rankings. Thereafter, Petitioner timely filed a Petition for an Administrative Proceeding pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Rule 67-48.005(5), Florida Administrative Code, in which it challenged Florida Housing's scoring of one or more competing applications ranked above it, alleging in its Petition that but for Florida Housing's erroneous scoring of those applications, Petitioner's application would have received its requested HC allocation.

The Board has before it for consideration a Consent Agreement agreed to by Florida Housing staff and Petitioner, which if adopted, will resolve the matters raised by Petitioner in its Petition. A true and correct copy of the Consent Agreement is attached hereto as "Exhibit A."

RULING ON THE CONSENT AGREEMENT

After due consideration and upon the recommendation of Florida Housing staff, the Board approves and adopts the terms of the Consent Agreement.

ORDER

In accordance with the foregoing, it is hereby **ORDERED**:

1. The facts in the statement of the case set forth in the Consent Agreement are adopted as Florida Housing's findings of fact and incorporated by reference as though fully set forth in this Order.

2. The conclusions of law set forth in the Consent Agreement are adopted as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Order.

3. The stipulated disposition as set forth in the Consent Agreement is adopted and, accordingly, Florida Housing shall allocate Petitioner's requested HC allocation from the next available allocation as provided in Rule 67-48.005(7), F.A.C.

DONE and ORDERED this 2nd day of November, 2012.



FLORIDA HOUSING FINANCE CORPORATION

By:

Chairperson

Copies to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

CITY CROSSINGS, LTD

Petitioner,

FHFC CASE NO.: 2012-049UC

vs.

**APPLICATION NO: 2011-090C
2011 Universal Cycle**

FLORIDA HOUSING FINANCE

CORPORATION,

Respondent.

CONSENT AGREEMENT

Petitioner, City Crossings, Ltd. ("City Crossings"), and Respondent, Florida Housing Finance Corporation ("Florida Housing"), by and through undersigned counsel, hereby present the following Consent Agreement:

STATEMENT OF THE CASE

1. City Crossings timely submitted its application for financing in Florida Housing's 2011 Universal Cycle. City Crossings, pursuant to Application #2011-090C, applied for an allocation of \$2,561,000 in annual federal tax credits to help finance the development of its project, a proposed 103-unit high-rise complex in Miami-Dade County.

2. In its final scoring Florida Housing awarded City Crossing's Application 79 Total Points, 6 Ability-to-Proceed Tie-Breaker Points and a total of 36.25 of a possible 37 Proximity Tie-Breaker Points. However, under Florida Housing's ranking procedures, City Crossing's application was not among those in the funding range in the final rankings adopted by Florida Housing.

3. Rule 67-48.005(5), Florida Administrative Code ("F.A.C."), provides an entry point and a procedure pursuant to which an applicant in the Universal Application Cycle may file an administrative petition contesting the final rank or score of a competing applicant, subject to certain conditions. The rule is designed to provide a means of redress to an otherwise eligible universal cycle applicant whose application was not ranked in the funding range in the final ranking adopted by Florida Housing due to an error made by Florida Housing in its scoring of a competing application. The rule requires that the petitioner allege facts in its petition sufficient to demonstrate that "but for" a specifically identified errors(s) made by Florida Housing in scoring or ranking the challenged application, the petitioner's application would have been in the funding range at the time Florida Housing issued its final rankings.

4. Joe Moretti Preservation Phase One, LLC, ("Joe Moretti") also submitted an application for financing in Florida Housing's 2011 Universal Cycle. Joe Moretti, pursuant to Application #2011-047C ("Application"), applied for

\$2,316,092 in annual federal tax credits to help finance the redevelopment of its project, a 116-unit high rise complex in Miami-Dade County. In its final scoring Florida Housing awarded Joe Moretti's Application 79 Total Points, 6 Ability-to-Proceed Tie-Breaker points and a total of 36.25 of a possible 37 Proximity Tie-Breaker points.

5. City Crossings timely filed its Petition challenging Florida Housing's scoring and ranking of Joe Moretti's application with regard to its determination that Joe Moretti's application satisfied site control threshold requirements. City Crossings alleged that Florida Housing incorrectly determined: (1) that Joe Moretti's Application demonstrated site control and (2) incorrectly scored Joe Moretti's Application as having met threshold.

JOE MORETTI APPLICATION

6. During its initial submission Joe Moretti included within its Application a ground lease dated December 5, 2011, entered into between Miami-Dade County (Landlord) and RUDG, LLC, (Tenant) ("Ground Lease"), which lease was later assigned to Joe Moretti ("Assignment"). During preliminary scoring, Florida Housing determined that they had not demonstrated site control as the Ground Lease submitted stated that the lease and the parties' obligations are contingent upon the final approval of the lease by the Miami-Dade Board of County Commissioners and that the Landlord's express written consent is required

for any assignment of the lease. Joe Moretti did not provide evidence that they met these conditions.

7. The Joe Moretti development site is encumbered by a Declaration of Trust ("DOT") entered into between the Housing Authority of the City of Miami and the Public Housing Administration¹, recorded at Deed Book 3377, Page 428 of the Public Records of Miami Dade County, Florida. The Ground Lease is subject to the same encumbrances and further provides Miami-Dade County or Joe Moretti must "obtain a release of the Declaration of Trust in connection with HUD's disposition of the Premises."

8. Pursuant to Section 67-48.004 (6), Fla. Admin. Code, as its cure, Joe Moretti resubmitted the Ground Lease and Assignment together with a number of additional documents, including a Consent by Landlord; Amendment No.1 to the Ground Lease Between Miami-Dade County and Joe Moretti Preservation Phase one, LLC ("Amendment 1 "); and Amendment No.2 to the Ground Lease Between Miami-Dade County and Joe Moretti Preservation Phase One, LLC ("Amendment 2"). Collective these documents comprise the "Cure" material submitted by Joe Moretti.

9. Florida Housing accepted Joe Moretti's cure and rescinded its threshold failure for site control as part of its Final Score. Subsequently, Petitioner

¹ In 1965 the Public Housing Administration became a part of the United States Department of Housing and Urban Development.

demonstrated through its Petition that the Cure did not remove the contingency of approval by HUD. The DOT prohibits Miami-Dade County from leasing the property without HUD consent or a release by HUD of the DOT. By the Cure deadline, Joe Moretti had not demonstrated that either of these contingencies had occurred, and these contingencies remained in effect.

CONCLUSIONS OF LAW

10. 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.

11. Petitioner has standing to challenge the scoring of the Joe Moretti application pursuant to Rule 67-48.005(5), F.A.C.

12. Petitioner's application would have been in the funding range of the 2011 Universal Cycle final ranking but for the determination that Joe Moretti demonstrated site control.

STIPULATED DISPOSITION

13. City Crossings has demonstrated that but for the error in scoring and ranking of Joe Moretti's application, its application would have been in the funding range for the 2011 Universal Cycle. Pursuant to Rule 67-48.005(7) Fla. Admin. Code., Florida Housing agrees to allocate to City Crossings, Ltd. \$2,561,000.00 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 standards and Rule Chapter 67-48, Fla. Admin. Code.

BOARD APPROVAL AND FINAL DISPOSITION

14. This Consent Agreement is conditioned upon approval by Florida Housing's Board of Directors, such approval to be evidenced by the Board's issuance of a Final Order adopting the terms and conditions of this Consent Agreement. If the Board has not issued such Final Order by November 2, 2012, this Consent Agreement shall be deemed automatically null and void without further notice or action by either party, whereupon Petitioner may pursue its Petition unaffected by this Consent Agreement.

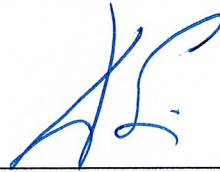
15. The adoption of this Consent Agreement by Final Order of the Board shall represent final disposition of all claims made by Petitioner with respect to the matters raised in its Petition. Upon issuance of a Final Order adopting the terms of this Consent Agreement, Petitioner agrees to dismiss its Petition with prejudice. The parties waive all right to appeal this Consent Agreement and the Final Order

adopting same, and each party shall bear its own costs and attorney's fees in connection with the matters addressed in this Consent Agreement and the Petition.

Respectfully submitted this 7th day of September, 2012.



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