

May 23, 2012

VIA HAND DELIVERY

Della M. Harrell, Clerk
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

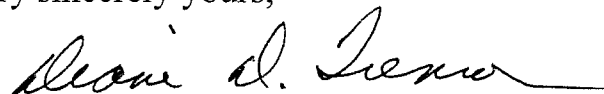
Re: DDC Investments, LTD dba Denison Development Florida, LTD v. Florida
Housing Finance Corporation
FHFC Case No. 2012-014 UC

Dear Ms. Harrell:

Enclosed is my Recommended Order in the referenced proceeding, along with Joint Exhibits 1 through 8, Petitioner's Exhibit 1-3; and the parties' Proposed Recommended Orders. I did not receive a transcript of the informal hearing.

By copies of this letter and the Recommended Order, the parties are advised that the Recommended Order and the record of the hearing are being transmitted to your office on this date.

Very sincerely yours,



Diane D. Tremor

DDT/bsr
Enclosures

cc: Linda Loomis Shelly, Esquire
Karen A. Brodeen, Esquire
Wellington H. Meffert, II, Esquire

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

DDC INVESTMENTS, LTD
d/b/a DENISON DEVELOPMENT
FLORIDA, LTD.,
Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,
Respondent.

FHFC Case No. 2012-014UC
Application No. 2011-137C

RECOMMENDED ORDER

Pursuant to notice and Sections 120.569 and 120.57(2), 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 captioned proceeding on May 10, 2012.

APPEARANCES

For Petitioner:

Linda Loomis Shelley
Karen A. Brodeen
Fowler White Boggs, PA
101 North Monroe Street, Suite 1090
Tallahassee, Florida 32301

For Respondent:

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

STATEMENT OF THE ISSUES

There are no disputed issues of material fact. The issues for determination in this proceeding are whether Petitioner's application was entitled to receive additional points for Local Government Support and for proximity to a medical facility.

PRELIMINARY STATEMENT

At the informal hearing, the parties stipulated to the admission into evidence of Joint Exhibits 1 through 8 and to Petitioner's Exhibit 1. Joint Exhibit 1 is a Joint Stipulation of Facts and Exhibits. That document basically describes the application process and the circumstances regarding the scoring of Petitioner's application with regard to the issues in dispute. The Joint Stipulation of Facts and Exhibits (Joint Exhibit 1) is attached to this Recommended Order as Attachment A, and the facts recited therein are incorporated in this Recommended Order.

At the informal hearing, Petitioner adopted its oral argument presented during the informal hearing, conducted by the undersigned Hearing Officer on the same date, in the case entitled *DDC Investments, Ltd d/b/a Denison Development Florida, Ltd. v. Florida Housing Finance Corporation*, FHFC Case No. 2011-015UC, Application No. 2011-136C, regarding the Applicant's eligibility to receive scoring points for a Local Government Contribution, as evidenced by Exhibit 38 of the application. Subsequent to the hearing, the parties timely

submitted their Proposed Recommended Orders, which have been fully 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. The Petitioner, DDC Investments, LTD d/b/a Denison Development Florida, LTD., submitted Application Number 2011-014C in Florida Housing's 2011 Universal Cycle seeking low income rental housing tax credits for its project known as Merritt at Highland Park. (Joint Exhibit 1)

Local Government Contribution

2. The 2011 Universal Application Instructions, at Part IV.A, allow applicants to receive five (5) points for a Local Government Contribution, which includes a loan. The Instructions further provide, at pages 93-94, that: "State, federal or Local Government funds initially obtained by or derived from a Local Government qualify as a Local Governmental contribution even though the funds are directly administered by an intermediary, such as a housing finance authority" To be entitled to such points, Applicants are required to submit, as Exhibit 38, a form entitled "Local Government Verification of Contribution – Loan." That form states that the Certification on the form:

“must be signed by the chief appointed official (staff) responsible for such approvals, Mayor, City Manager, County Manager/Administrator/Coordinator, Chairperson of the City Council/Commission or Chairperson of the Board of County Commissioners. If the contribution is from a Land Authority organized pursuant to Chapter 380.0663, Florida Statutes, this Certification must be signed by the Chair of the Land Authority. One of the authorized persons named above may sign this Form for certification of state, federal or Local Government funds initially obtained by or derived from a Local Government that is directly administered by an intermediary, such as a housing finance authority, a community reinvestment corporation, or a state-certified Community Housing Development Organization (CHDO). Other signatures are not acceptable. . . .

The upper portion of the form requires the completion of spaces for the “name of the City or County” which committed to the loan amount on or before the Application Deadline and the amount of the commitment (loan amount). The form also contains a space for the name of a government contact who can verify the contribution. (See Joint Exhibit 2)

3. As part of its initial application, Petitioner submitted, as its Exhibit 38, an executed “Local Government Verification of Contribution – Loan” form, stating in the space labeled “Name of City or County” that the “Saint Petersburg Housing Authority” committed \$120,000.00 in the form of a reduced interest rate loan to the Applicant. The St. Petersburg Housing Authority was listed as the name of the government contact, and the Certification on the form was signed by the Chairman, Joseph T. Lettelleir. (Joint Exhibit 2)

4. In its preliminary scoring of Petitioner's application, Florida Housing awarded Petitioner the maximum five (5) points for Local Government Contributions under Part IV, A. (Joint Exhibit 4)

5. After the preliminary scoring, competing applicants submitted Notices of Proposed Scoring Errors ("NOPSEs") to Florida Housing challenging the award of the maximum five points awarded to Petitioner for Local Government Contributions. The NOPSEs raised objections that the Chairman of the Saint Petersburg Housing Authority was not authorized to sign the Certification on Exhibit 38 and that the Saint Petersburg Housing Authority is ineligible to provide a local contribution loan for purposes of Exhibit 38 because it is not a county or municipality. The NOPSEs contained documentation raising a question as to whether the City of St. Petersburg approved the loan commitment. (Joint Exhibit 5)

6. Thereafter, Petitioner submitted two Cure forms regarding its initially submitted Exhibit 38. One Cure form urged that the Saint Petersburg Housing Authority is eligible as a source of Local Government Contribution, and the other urged that Joe Lettelleir, as Chairman of the Board of the Saint Petersburg Housing Authority appointed by the Mayor of St. Petersburg, is the appropriate person to sign the Certification attached to the Form included as Exhibit 38. However, the Petitioner attached to its Cure a "Substitute Exhibit 38" with notation: "Should

FHFC reject signature by Chief Appointed Official Joe Lettelleir.” The Certification on the revised Exhibit is signed by Darrell Irions, Chief Executive Officer, and the person listed as the government contact is Darrell Irions. That Exhibit is otherwise identical to the Petitioner’s originally submitted Exhibit 38. (Joint Exhibit 6)

7. In its final scoring of Petitioner’s application, Florida Housing did not award Petitioner any points for a Local Government Contribution under Part IV.A. As reasons for that determination, Florida Housing stated that “the funding committed was not from the City/County, but from the Saint Petersburg Housing Authority,” that Petitioner’s Exhibit 38 “does not indicate if the funding commitment is from the city or county and it is still signed by the St. Petersburg Housing Authority,” and that the form “must be signed by the chief appointed official (staff) responsible for such approvals, Mayor, City Manager, County Manager/Administrator/Coordinator, Chairperson of the City Counsel/Commission [sic] or Chairperson of the Board of County Commissioners.” (Joint Exhibit 8)

Proximity to Medical Facility

8. Part III, Section A, subsection 10 of the 2011 Universal Application Instructions allows applicants in the Housing Credit Program to receive a maximum of four (4) proximity tie-breaker points for the project’s physical

proximity to a medical facility. A “Medical Facility” is defined in the Instructions, in relevant part, as

a hospital, state or county health clinic or walk-in clinic (that does not require a prior appointment) that provides general medical treatment or general surgical services at least five days per week to any physically sick or injured person.

(Instructions, page 34) The Instructions further provide that applicants are entitled to provide information for only one of each type of eligible service, such as a medical facility, and that if information is provided for more than one type of such service, no proximity tie-breaker points will be awarded for that type of service.

(Instructions, page 33)

9. In order to demonstrate proximity to a medical facility, Petitioner submitted as a part of its initially filed application Exhibit 25 listing the Richard E. Hosking Health Center. (Joint Exhibit 3)

10. In its preliminary scoring of Petitioner’s application, Florida Housing awarded Petitioner the maximum 4.0 points for proximity to a medical facility.

(Joint Exhibit 4)

11. A competing applicant filed a Notice of Possible Scoring Error (“NOPSE”) regarding the eligibility of the Richard E. Hosking Health Center to be considered a “medical facility” as defined in the Instructions. The NOPSE included information from the Pinellas County Health and Services website about the County’s Health Plan, which Plan is accepted by Richard E. Hosking Health

Center and does not provide information about the full range of medical services provided by the Hosking Health Center. (Joint Exhibit 5) As stipulated by both parties herein, the “information provided in the NOPSE is facially misleading.” (Joint Exhibit 1, page 9, paragraph 32)

12. In response to the NOPSE, Petitioner submitted Cure documentation. This documentation included an explanation of the misleading nature of the documentation attached to the NOPSE by a competing applicant (to wit: a description of a County Health Plan), and stated that the Hosking Health Center offers services to individuals regardless of whether they are enrolled in the County Health Plan. In its Cure, Petitioner reasserted its position that the Hosking Health Center qualifies for proximity points and requested the reinstatement of four (4) points for that eligible medical facility. As part of its Cure, Petitioner included a “Substitute Exhibit 25” “should FHFC reject Richard E. Hosking Health Center.” The “Substitute” Exhibit 25 names St. Anthony’s Hospital as the medical facility claimed for proximity points. (Joint Exhibit 6)

13. A competing applicant submitted a Notice of Additional Deficiencies (“NOAD”) regarding Petitioner’s Cure documentation, arguing that the Cure submitted two different medical facilities for consideration and that the Instructions prohibit multiple locations. (Joint Exhibit 7)

14. In its final scoring of Petitioner's application, Florida Housing awarded Petitioner only 3.5 proximity tie-breaker points for proximity to a medical center. (Joint Exhibit 8) As stipulated by the parties, the 3.5 point score reflects an award based on the distance between St. Anthony's Hospital and the proposed project site. (Joint Exhibit 1, page 9, paragraph 31)

15. The parties have stipulated that the Hosking Health Center qualifies as a "Medical Facility," as that term is described in the Instructions. (Joint Exhibit 1, page 10, paragraph 33) The parties have further stipulated that

In its Cure, Petitioner was careful to note that the information provided regarding St. Anthony's Hospital is a "Substitute Exhibit 25" "Should FHFC reject Richard E. Hosking Health Center." Alternate Exhibit 25's explanatory text clarified that Florida Housing was first to reconsider original exhibit.

(Joint Exhibit 1, pages 10-11, paragraph 37)

CONCLUSIONS OF LAW

Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Chapter 67-48, Florida Administrative Code, the Informal Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding. Because Florida Housing determined that Petitioner was not entitled to receive five (5) points for a Local Government Contribution, and was entitled to only 3.5 (as opposed to 4.0) points for proximity to a medical facility, Petitioner's substantial interests are affected by Florida Housing's proposed agency action.

There are two issues for determination in this proceeding. The first is whether Petitioner submitted sufficient documentation regarding a Local Government Contribution. More specifically, the issue is whether Petitioner's Exhibit 38 complied with the Application Instructions and the forms prescribed by Florida Housing's rules. The second issue is whether Petitioner's application should receive 4.0 points for proximity to a medical facility known as the Richard E. Hosking Health Center, as opposed to 3.5 points for proximity to St. Anthony's Hospital.

Local Government Contribution

The Universal Application Package or UA 1016 (Rev. 2-11), which includes the application forms and the Application Instructions, is adopted by Rule 67-48.004(1)(a), Florida Administrative Code. As applicable to the issues raised in this proceeding regarding a local government contribution in the form of a loan, the Instructions, at pages 93 and 94, provide, in part, that

State, federal, or Local Government **funds initially obtained by or derived from a Local Government qualify** as a Local Government Contribution even though the funds are directly administered by an **intermediary such as a housing finance authority, a community reinvestment corporation, or a state-certified Community Housing Development Corporation** Local Government contributions that have not received final approval will not qualify as a Local Government contribution for purposes of this Application. (Emphasis supplied)

The Instructions further provide, at page 93, that Applicants must provide the Local Government Verification of Contribution – Loan form behind a tab labeled “Exhibit 38,” and that said form must reflect the effective date of the Local Government commitment, which date must be on or before the Application Deadline. This last requirement is reflected on the printed form. After spaces provided for the name of the development and the development location, the form states: “On or before the Application Deadline for the 2011 Universal Application Cycle . . . **the City/County** of _____ committed \$_____ in the form of a reduced interest rate loan to the Applicant . . .” Under the two blank spaces are the words “**Name of City or County**” and “loan amount”.

The Local Government Verification of Contribution – Loan form provides a listing of persons authorized to sign the form “for certification of state, federal or Local Government funds **initially obtained by or derived from a Local Government that is directly administered by an intermediary** such as a housing finance authority, . . . “ (Emphasis supplied) That same portion of the form states the persons authorized to sign the Certification, including “the chief appointed official (staff) responsible for such approval,” and states that “[o]ther signatories are not acceptable,” and that “[t]he Applicant will not receive credit for this contribution if the certification is improperly signed.”

Apart and separate from the issue of who may sign the Certification appearing on the form is the requirement, stated both in the Application Instructions and the form, that the funds committed must be “initially obtained by or derived from a Local Government.” As demonstrated by the language emphasized in bold type above, this repeated requirement is clear and unambiguous.

Petitioner argues that there is nothing on the form or any other part of the Application which inquires about the origin of the loan claimed as a contribution from local government. That is not correct. The form specifically requests the name of the City or County which committed the loan on or before the Application Deadline. In addition, the Certification of the truth and correctness of the information provided on the form references “funds initially obtained by or derived from a Local Government”. The Instructions provide: “Local Government contributions that have not received final approval will not qualify as a Local Government contribution for purposes of this Application.” Moreover, both the Instructions and the form refer to funds “directly administered by an intermediary.” An “intermediary” is defined in *Random House Webster’s College Dictionary* (2000) as an “intermediate agent or agency; a go-between or mediator.” An “intermediate” is “being, situated or acting between two points, stages, things, persons, etc.” Thus, to be qualified to administer funds proposed for the loan, the

St. Petersburg Housing Authority would have to be acting “between” the local government and the Applicant in this case. It again follow that the submission of a properly completed and executed Verification form is intended to be an affirmation that the funds proposed for the loan were initially obtained by a City or a County.

Importantly, Petitioner makes no argument in this proceeding, nor did it submit any information in its Application, that local government (i.e., the City or the County) was the source of the funds proposed to be loaned to the Petitioner. Petitioner did not address in its CURE materials the allegations and documents submitted with the NOPSEs suggesting that the funds proposed for a loan were not initially obtained by or derived from the City of St. Petersburg. Instead, as it did at the informal hearing, Petitioner argued that it was proper for the St. Petersburg Housing Authority, through its “chief appointed official (staff)” to execute the form entitled Local Government Verification of Contribution – Loan.

The undersigned agrees that the language on the Certification portion of the form describing the individual authorized to execute the form, which language is different than that appearing on prior versions of the form (see Petitioner’s Exhibit 1) permits a “chief appointed official (staff)” of an entity other than a City or a County to execute the form. However, that begs the issue. The person or entity signing the form must be acting as an “intermediary” in the administration of funds initially obtained by or derived from a City or a County. Petitioner’s original and

revised Exhibit 38 fail to demonstrate that required fact. Accordingly, Petitioner was entitled to no points for the Local Government Contribution sought through its Exhibit 38.

Proximity to Medical Facility

The parties have stipulated that the Richard E. Hosking Health Center submitted for proximity tie-breaker points in Petitioner's initial application in Exhibit 25 qualifies as a "medical facility" under Florida Housing's rules, and that the NOPSE addressing that facility was misleading. The parties have also stipulated that Petitioner's Cure documentation made clear that its Substitute Exhibit 25 identifying St. Anthony's Hospital for proximity points was to be considered only if the Hosking Health Center was rejected by Florida Housing. (See Finding of Facts, Paragraphs 9 and 15) Accordingly, there is no factual dispute regarding these matters.

The issue then becomes whether Florida Housing was required to consider only Petitioner's "Substitute Exhibit 25" identifying St. Anthony's Hospital for proximity points, submitted as a Cure as a result of a misleading NOSPE, or was entitled to rely upon Petitioner's originally submitted Exhibit 25. In resolving this issue, several rules come into play. The first is found in the Application Instructions prohibiting applicants from submitting more than one medical facility for proximity tie-breaker points. (Instructions, page 33) It is obvious that Florida

Housing did not penalize Petitioner under the auspices of this rule since it awarded points only for St. Anthony's Hospital. The second is Rule 67-48.006, Florida Administrative Code, which allows Applicants to "cure" their applications by submitting "additional documentation, revised pages and such other information" deemed appropriate to address issues raised in preliminary scoring and NOPSE decisions. That same Rule further provides that a new form, page or exhibit provided during the cure period will be considered a replacement of a previously submitted form, page or exhibit.

There is nothing in Florida Housing's rules which specifically allows applicants to provide alternative cures. That, however, is not what happened in this case. Instead, the Petitioner submitted a Cure which explained the misleading NOPSE, reasserted its position that the Hosking Health Center qualified as a "medical facility" and submitted a "Substitute Exhibit 25" if the Hosking facility as rejected. (Joint Exhibit 6) Petitioner was not asking Florida Housing to award points for two medical facilities, nor was Petitioner asking Florida Housing to choose the best medical facility as between the Hosking Health Center and St. Anthony's Hospital, thereby causing Florida Housing to "assist" an applicant contrary to Rule 67-48.004(1)(b). Stated differently, Petitioner's Cure materials did not request Florida Housing to consider the two medical facilities concurrently and then choose which one to score. As demonstrated by Joint Exhibit 6, Petitioner's

Cure submittal was clearly requesting Florida Housing to first reconsider its initially submitted Exhibit 25 as eligible for 4.0 proximity tie-breaker points. As noted above, the parties have so stipulated. Although Florida Housing's rules do not specifically address this situation, surely Florida Housing has the ability and authority to reconsider its decisions made during the application scoring process, even if that reconsideration involves the same documents previously reviewed. The fact that Petitioner also submitted a "Substitute Exhibit 25" to be considered only if its prior Exhibit were rejected does not preclude a review of Florida Housing's initial decision regarding that initial Exhibit. To apply a very strict and literal application of Rule 67-48.004(6), stating that new exhibits are to be considered a replacement of previous exhibits, under the facts of this case would be unreasonable. Moreover, it would frustrate an applicant's right to obtain meaningful administrative review of Florida Housing's proposed agency action, contrary to the Administrative Procedure Act and Florida Housing's Rule 67-48.005(1), Florida Administrative Code.

In summary, Petitioner was entitled to receive 4.0 proximity tie-breaker points for its proximity to the Richard E. Hosking Health Center based upon Petitioner's initially submitted Exhibit 25. Under the specific facts of this case, including the stipulation of facts by the parties, Petitioner's "Substitute Exhibit 25"

naming a different medical facility for proximity points did not vitiate its original request that 4.0 points be awarded for proximity to the Hosking Health Center.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that a Final Order be entered awarding Petitioner's application no points for a Local Government Contribution and 4.0 proximity tie-breaker points for proximity to a medical facility.

Respectfully submitted this 23rd day of May, 2012.



DIANE D. TREMOR
Hearing Officer for Florida Housing
Finance Corporation
Sundstrom, Freidman & Fumero, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

Copies furnished to:

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Fowler White Boggs, PA
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Tallahassee, Florida 32301

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

NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

In accordance with Rule 67-48.005(3), Florida Administrative Code, Applicants 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, excluding the caption and certificate of service. 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. five (5) calendar days from the date of issuance of the Recommended Order. 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.

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

DDC INVESTMENTS, LTD.
d/b/a DENISON DEVELOPMENT
FLORIDA, LTD.,

Petitioner,

v.

FHFC CASE NO.: 2012-014UC
Application No. : 2011-137C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

JOINT STIPULATION OF FACTS AND EXHIBITS

Petitioner, DDC Investments, Ltd. ("Petitioner"), and Respondent, Florida Housing Finance Corporation ("Florida Housing"), by and through undersigned counsel, submit this stipulation for purposes of expediting the informal hearing scheduled for May 10, 2012, in Tallahassee, Florida, and agree to the findings of fact and to the admission of the exhibits described below.

THE PARTIES

1. Petitioner is DDC Investments, Ltd. d/b/a Denison Development Florida, Ltd., which is authorized by the Florida Department of State to conduct business in the State of Florida as a foreign limited partnership. Its business address is 2520 Longfellow Street, Suite 310, Austin Texas, 78705. For purposes of this proceeding, Petitioner's address is that of its undersigned counsel, Linda Loomis Shelley, Esquire, Fowler White Boggs, PA, 101 North

Attachment A

1



Monroe Street, Suite 1090, Tallahassee, Florida, 32301; telephone number (850) 681-4260, facsimile number (850) 681-3381.

2. Florida Housing is a public corporation, with its address at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, 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, F.S.

BACKGROUND

3. Florida Housing administers various affordable housing programs including the Housing Credit (HC) Program pursuant to Section 42 of the Internal Revenue Code and Section 420.5099, F.S., under which Florida Housing is designated as the HC agency for the state of Florida within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code, and Rule Chapter 67-48, F.A.C.; and

4. The 2011 Universal Cycle Application, through which affordable housing developers apply for low income rental housing tax credits under the above-described affordable housing program 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), F.A.C.

5. Because the demand for HC tax credits exceeds that which is available, 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 Rule Chapter 67-48, F.A.C. Specifically, Florida Housing's application process for the 2011 Universal Cycle, as set forth in Rule 67-48.001-.005, F.A.C., 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 (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 (NOPSE scoring summary) 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 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 (final scoring summary) to applicants of any resulting change in their scores;
- 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;¹
- j. final scores, ranking of applications, and award of funding to successful applicants, including those who successfully appeal the adverse scoring of their application; 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.

¹ This proceeding is the subject of such a challenge.

PETITIONER'S APPLICATION AND SCORING ISSUES

6. FHFC prepared the application package for the competitive 2011 Universal Cycle. The application package is adopted by reference in FHFC Rule 67-48.004(1)(a), Fla. Admin. Code, and includes the application form, application exhibit forms, and application instructions (“Instructions”).

7. During the 2011 Universal Cycle, DDC submitted an application for Merritt at Highland Park to qualify for low income rental housing tax credits (“Application”).

Exhibit 38

8. With respect Part IV, Section A, the applicable type of local government contribution is a loan. Form 38 is entitled and described in the application form as “Local Government Verification of Contribution-Loan Form.” As required by the Application, Form 38 was completed and included behind a tab attached as “Exhibit 38.”

9. The Instructions for Part IV, Section A of the 2011 Universal Application state that an applicant is entitled to five points for a Local Government contribution (loan) if: 1) the dollar amount has a value equal to or greater than the amounts on the County Contribution List; 2) such contribution is demonstrated by providing the properly completed applicable form; and 3) there is an attachment that either shows, as applicable, the payment stream for all present value calculations or the calculations by which the total amount of each waiver is determined. Instructions, at 92-93.

10. . The Instructions further advise:

State, federal or Local Government funds initially obtained by or derived from a Local Government qualify as a Local Governmental contribution **even though the funds are directly administered by an intermediary such as a housing finance authority, a community reinvestment corporation, or a state-certified Community Housing Development Organization**, provided that they otherwise meet the requirements set forth in this Application, including those relating to the

executed verification form. Local Government contributions that have not received final approval will not qualify as a Local Government contribution for purposes of this Application. **The following will not qualify as a Local Government Contribution: (i) a contribution from an Applicant or Developer or Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer and (ii) HOPE VI funds.**

Instructions, at 93-94 (emphasis added).

11. The loan verification form reiterates that an entity other than a county or municipality may administer the local government contribution:

This certificate must be signed by the chief appointed official (staff) responsible for such approvals, Mayor, City Manager, County Manager, Administrator Coordinator, Chairperson of the City Council Commission or Chairperson of the Board of County Commissioners... One of the authorized persons named may sign this form for certification of state, federal or Local Government funds initially obtained by or derived from a Local Government that is **directly administered by an intermediary such as a housing finance authority, a community reinvestment corporation, or a state-certified Community Housing Development Organization (CHDO).**

Form 38 (emphasis added).

12. Petitioner timely submitted its application for financing in FHFC's 2011 Universal Cycle. The completed loan verification form submitted by Merritt at Highland Park as Exhibit 38 states that the "Government Contact" is the Saint Petersburg Housing Authority and it is executed by the Chairman of the Saint Petersburg Housing Authority, Joseph Lettelleir.

13. In the preliminary scoring, Petitioner was awarded the maximum five points for Part IV, Section A and a total score of 79 points.

14. After the preliminary scoring, applicants were provided the opportunity to submit Notices Of Proposed Scoring Errors ("NOPSEs") to FHFC challenging specific section scores awarded to other applications. NOPSEs filed by certain other applicants disputed the maximum five points awarded preliminarily for Part IV, Section A to Merritt at Highland Park.

15. The Application received NOPSEs raising objections that the signature of the Chairman of the Saint Petersburg Housing Authority is not eligible to sign Form 38 and that the Saint Petersburg Housing Authority is ineligible to provide a local contribution loan for purposes of Form 38 because it is not a county or municipality.

16. After review of the NOPSEs, Petitioner submitted Cures pursuant to Rule 67-48.004(6), Fla. Admin. Code, which provides an applicant the opportunity to submit additional documentation, revised pages, and other information that it deems appropriate.

17. None of the NOPSEs disputed the adequacy of the dollar amount of the loans, which is required to be at least equal to the amount listed in the County Contribution List, nor the Proposed Repayment Schedule included in Exhibit 38.

18. In the March 2012 Scoring Summary Report, Merritt at Highland Park received zero points for Part IV, Section A. The scoring sheet attributes the revised scoring to have been created as a result of the NOPSE process, as follows:

The Local Government Verification of Contribution – Loan form must be signed by the chief appointed official (staff) responsible for such approvals, Mayor, City Manager, County Manager/Administrator/Coordinator, Chairperson of the City Counsel/Commission or Chairperson of the Board of County Commissioners. Therefore, zero points were awarded and the Applicant was not eligible for automatic points.

The Applicant received zero points for the Local Government Verification of Contribution – Loan form because the funding committed was not from the City/County, but from the Saint Petersburg Housing Authority. The Applicant was not eligible for automatic points.

March 2012 Scoring Summary Report, Merritt at Highland Park, at 2.

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded As Result
11S	The Local Government Verification of Contribution- Loan form must be signed by the chief appointed official (staff) responsible for such approvals, Mayor, City Manager, County Manager/Administrator/Coordinator, Chairperson of the City Counsel/Commission or Chairperson of the Board of County Commissioners. Therefore, zero points were awarded and the Applicant was not eligible for automatic points.	NOPSE	
11S	The Applicant received zero points for the Local Government Verification of Contribution - Loan form because the funding committed was not from the City/County, but from the Saint Petersburg Housing Authority. The Applicant was not eligible for automatic points.	NOPSE	

19. The March 2012 Scoring Summary Report provides the following additional comment regarding the final scoring of the Application:

The Applicant attempted to cure Item 11S. However, the Local Government Contribution – Loan form does not indicate if the funding commitment is from the city or county and it is still signed by the St. Petersburg Housing Authority. Therefore, zero points were awarded. The Applicant does not qualify for automatic points.

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Comment(s)	Created as Result of	Rescinded as Result of
5C	IV.	A.		Local Government Contributions	The Applicant attempted to cure item 11S. However, the Local Government Contribution - Loan form does not indicate if the funding commitment is from the city or county and it is still signed by the St. Petersburg Housing Authority. Therefore, zero points were awarded. The Applicant does not qualify for automatic points.	Final	

20.

Exhibit 25-Medical Facility

21. Part III, Section A, Subsection 10, of the 2011 Universal Application addresses proximity points and applies only to the competitive Housing Credit Program. Proximity points are used by FHFC as tie-breaker points.

22. Subsection 10. a. addresses Tier One services. One of the eligible Tier One services is “Medical Facility.” A “Medical Facility” is defined in the Instructions, in relevant part, as follows:

For purposes of proximity tie-breaker points, a Medical Facility means a hospital, state or county health clinic or walk-in clinic (that does not require a prior appointment) that provides general medical treatment or general surgical services at least five days per week to any physically sick or injured person. This service

may be selected by all Applicants regardless of the Demographic Commitment selected at Park III.D. of the Application.

23. The Application identifies and describes the “Richard E. Hosking Health Center” (“Hosking Health Center”) as qualifying for Medical Facility proximity tie-breaker points. Exhibit 25 of the Application is a completed Form 25 entitled “SURVEYOR CERTIFICATION FOR COMPETITIVE HC APPLICATIONS.”

24. Exhibit 25 was executed by Greg Nipper, a Florida licensed surveyor. Included in Exhibit 25 is a map depicting various proximate eligible services, including a Proximity Sketch showing that the Hosking Health Center is located 0.087 miles from the Merritt at Highland Park project site.

25. The Application received a preliminary score of the maximum four points for the Medical Facility portion of the proximity tie-breaker points.

26. After the preliminary scoring, the Application received a NOPSE disputing whether the Hosking Health Center qualifies as a Medical Facility. In its NOPSE, Application 2011-182C contends that the Health Center “is a county medical clinic, but does not provide general medical treatment to any physically sick or injured person.” The NOPSE includes information from the Pinellas County Health and Services (“PCHS”) website about the County’s health plan. The PCHS website provides a description of the Pinellas County Health Plan, including its one stop health care “medical home” program; lists qualification criteria for Pinellas County Health Plan services; and provides addresses of “medical homes” and “Health Department sites.”

27. After review of the NOPSE, FHFC revised the Medical Facility score from a proposed award of four points to zero points.

28. The Cure also includes Substitute Exhibit 25, which is an alternative "SURVEYOR CERTIFICATION FOR COMPETITIVE HC APPLICATIONS" executed by Surveyor Greg Nipper that includes information about St. Anthony's Hospital. The substitute exhibit was submitted by DDC for consideration in the event that FHFC determined that the Hosking Health Center did not qualify for proximity tie-breaker points.

29. After the Cure was filed, Application 2011-182C filed a Notice of Additional Deficiencies ("NOAD") arguing that the Cure submitted two different locations for consideration and that the Instructions prohibit multiple locations. The NOAD did not dispute or otherwise address the substantive information provided in the Cure about the Hosking Health Center.

30. In the March 2012 Scoring Summary Report, Merritt at Highland Park received 3.5 points for Medical Facility proximity tie-breaker points.

31. Although the Scoring Summary Report does not state that FHFC awarded proximity points based on St. Anthony's Hospital, the revised final score of 3.5 reflects an award based on the distance between St. Anthony's Hospital and the proposed project site. The scoring sheet attributes the revised scoring to have been created as a result of NOPSE because "Evidence provided in a NOPSE calls into question whether the Medical Facility listed on the Surveyor's Certification for Competitive HC Applications form provides general medical treatment or general surgical services to any physically sick or injured person."

32. The information provided in the NOPSE is facially misleading. It provides qualification criteria for a particular health plan offered by the Pinellas County Health Plan services, its Medical Home Health Plan, which is accepted at the Hosking Health Center. The NOPSE does not provide information about the full range of medical services provided by the Hosking Health Center, including to those not covered by the Medical Home Health Plan.

33. As stated in the Cure, the Hosking Health Center is available to individuals who are not enrolled in the Medical Home Health Plan, provides a wide range of medical services that qualify it as a “full health clinic,” does not require a prior appointment, and is open Monday through Friday from 7:30 a.m. to 5:00 p.m. Exhibit A to the Cure is a page from the Pinellas County Health Department that describes the Hosking Health Center and lists its range of medical services. It does not state that its services are limited to those that are enrolled in the Medical Home Health Plan. Based on information provided in the Cure, the Hosking Health Clinic qualifies as a “Medical Facility,” as that term is described in the Instructions.

34. The Instructions provide, at page 33: Applicants are limited to one (1) of each type of Tier 1 Service. If the Applicant provides information for more than one (1) of each type of Tier 1 Service, the Tier 1 Service will not be scored and the Applicant will not receive any proximity tie-breaker points for that Tier 1 Service. A medical facility is a Tier 1 service.

35. Rule 67-48.004(6), F.A.C., provides: Each Applicant shall be allowed to cure its Application by submitting additional documentation, revised pages and such other information as the Applicant deems appropriate (“cures”) to address the issues raised pursuant to subsections (3) and (5) above that could result in failure to meet threshold or a score less than the maximum available.

36. Rule 67-48.004(6), F.A.C, further provides that “[a] new form, page or exhibit provided to the Corporation during this period shall be considered as a replacement of that form if such form, page or exhibit was previously submitted in the Applicant’s Application.”

37. In its Cure, Petitioner was careful to note that the information provided regarding St. Anthony’s Hospital is a “Substitute Exhibit 25” “Should FHFC reject Richard E Hosking Health

Center.” Alternate Exhibit 25’s explanatory text clarified that Florida Housing was first to reconsider original exhibit.

38.

OFFICIAL RECOGNITION OF RULES

40. The parties 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 Package or UA1016 (Rev. 2-11) which includes the forms and instructions.

41. The parties stipulate, subject to arguments on the grounds of relevance, to the official recognition of any Final Orders of the Florida Housing Finance Corporation and to any Rules promulgated by the Florida Housing Finance Corporation, including past and present versions of the Universal Cycle Application, Instructions, and any forms and exhibits attached thereto or incorporated by reference therein.

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 Joint Stipulation of Facts and Exhibits.
- Exhibit J-2: Petitioner’s Exhibit 38 to original Application (Local Government Verification of Contribution-Loan)
- Exhibit J-3: Petitioner’s Exhibit 25 to original Application (Surveyor Certification for Competitive HC Applications)
- Exhibit J-4: 2011 Universal Cycle Scoring Summary Report (Preliminary), dated January 19, 2012.
- Exhibit J-5: Notices of Possible Scoring Error (NOPSE’s) 387, 435, and 516 filed on Application No. 136C

Exhibit J-6: Petitioner's Cures and alternative Exhibits 38 and 25 (Local Government Verification of Contribution-Loan; Surveyor Certification for Competitive HC Applications)

Exhibit J-7: Notices of Alleged Deficiency (NOAD's) 841, 875, and 933 filed regarding Petitioner's Application Exhibits 38 and 25

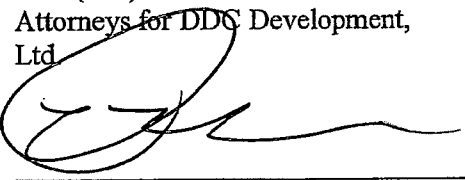
Exhibit J-8: 2011 Universal Cycle Scoring Summary Report (Final), dated March 27, 2012.

Petitioners' Exhibits:

Composite Exhibit 1: Silver Sands 2007 Universal Cycle documents (Application Ex. 43; NOPSE; Cure; 2011 Universal Cycle Scoring Summary Report Dated May 9, 2007)

Respectfully submitted this 10th day of May, 2012.

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