**STATE OF FLORIDA**
**FLORIDA HOUSING FINANCE CORPORATION**

CULMER PLACE PHASE 2, LLC,

Petitioner,

v.

FHFC CASE NO. 2012-003UC
Application No. 2011-243C

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 June 8, 2012. The matter for consideration before this Board is a recommended order pursuant to Section 120.57(2), Florida Statutes, and Rule 67-48.005(2), Florida Administrative Code.

After review of the record and otherwise being fully advised in the proceedings, this Board finds:

Culmer Place Phase 2, LLC, ("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

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
Della M Harrell/DATE: 6/8/12

Housing. Petitioner timely filed its Petition, pursuant to Sections 120.569 and 120.57(2), Florida Statutes, (the "Petition") challenging Florida Housing's scoring of its Application. Florida Housing reviewed the Petition pursuant to Section 120.569(2)(c), Florida Statutes, and determined that the Petition did not raise disputed issues of material fact. An informal hearing was held in this case on May 8, 2012, in Tallahassee, Florida, before Florida Housing's designated Hearing Officer, Diane D. Tremor.

Petitioner and Respondent timely filed Proposed Recommended Orders.

After consideration of the evidence and arguments presented at hearing, and the Proposed Recommended Orders, the Hearing Officer issued a Recommended Order. A true and correct copy of the Recommended Order is attached hereto as "Exhibit A." The Hearing Officer recommended Florida Housing enter a Final Order affirming Florida Housing's scoring of Petitioner's Application which determined that Petitioner was entitled to no points for the Local Government Contribution.

## PETITIONER'S WRITTEN ARGUMENT CHALLENGING THE RECOMMENDED ORDER

On May 29, 2012, the Petitioner filed a Written Argument challenging the Recommended Order pursuant to Rule 67-48.005(3), Florida Administrative Code. A copy of the Written Argument is attached hereto as "Exhibit B."

On May 31, 2012, Florida Housing filed a response to the Petitioner's Written Argument. A copy of Florida Housing's response is attached hereto as "Exhibit C."

The matters raised by Petitioner in its written argument have been argued, considered and rejected by the Hearing Officer as evidenced by a reading of the Recommended Order. The Board finds nothing in the record or in Petitioner's written argument that would warrant the rejection of, or a change to, the Hearing Officer's findings, conclusions and recommendation in the Recommended Order. Accordingly, upon due consideration, the Petitioner's written argument is rejected.

**RULING ON THE RECOMMENDED ORDER**

The findings and conclusions of the Recommended Order are supported by competent substantial evidence.

**ORDER**

In accordance with the foregoing, it is hereby found and ordered:

1. The Petitioner's Written Argument is rejected.

2. The findings of fact of the Recommended Order are adopted as Florida Housing's findings of fact and incorporated by reference as though fully set forth in this Order.

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

Accordingly, it is found and **ORDERED** that Florida Housing's final scoring of Petitioner's application is upheld, and that Petitioner's application is entitled to no points for the Local Government Contribution claimed in Exhibit 37. The Petition is DISMISSED.

**DONE and ORDERED** this 8th day of June, 2012.

FLORIDA HOUSING FINANCE CORPORATION

By: _____
Chair

Copies to:

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General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Kevin Tatreau
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Florida Housing Finance Corporation
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Carlton Fields, PA
215 South Monroe Street, Suite 500
Tallahassee, FL 32301

## 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

CULMER PLACE PHASE 2, LLC,

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FHFC Case No. 2012-003UC
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FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

# 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 the above captioned proceeding in Tallahassee, Florida on May 8, 2012.

## APPEARANCES

For Petitioner:

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215 S. Monroe St., Suite 500
Tallahassee, FL 32302

For Respondent:

Robert J. Pierce
Assistant 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 issue for determination in this proceeding is whether the Petitioner's application should receive five (5) points for a Local Government contribution.

## PRELIMINARY STATEMENT

At the informal hearing, the parties stipulated to the admission into evidence of Joint Exhibits 1 through 7. 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.

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, Culmer Place Phase 2, LLC, submitted Application Number 2011-243C in Florida Housing's 2011 Universal Cycle seeking $2,561,000 in annual federal tax credits to help finance the development of a 120-

unit apartment complex in Miami, Florida, known as Culmer Place Phase 2. (Joint Exhibit 1)

2. The 2011 Universal Application Instructions, at Part IV.A., allow applicants to receive five (5) points for local government contributions to their project. To qualify for these points, Applicants must submit a specified form. Relevant to the issue here, the form is entitled "Local Government Verification of Contribution – Fee Waiver" and the form is to be placed behind a tab labeled "Exhibit 37". The Instructions require that documentation of the calculations by which the total amount of each waiver is determined be attached to the Local Government Verification form. (Instructions, pages 92-93) The verification form itself also states, in bold type, that a sheet showing the computation by which the total amount of each fee waiver is determined must be attached to the form, and that computations should include, where applicable, waived fee amount per set-aside unit. (See Joint Exhibit 2) The Certification portion of the required form certifies that "the foregoing information and the computation stated on the sheet attached to this form are true and correct . . ." (See Joint Exhibit 2) The Instructions state that "[t]he government contact person listed on the Verification of Local Government Contribution form(s) may be contacted to verify the nature and the amount of the contribution." (Instructions, page 95)

3. Petitioner's original application contained, as Exhibit 37, an executed "Local Government Verification of Contribution – Fee Waiver" form, stating $277,474.12 as the amount of fee waiver and that such amount is based on a per set-aside unit computation. Included as a part of Exhibit 37 was a document entitled "Miami-Dade County Impact Fee Waiver Calculation" indicating a $2,312.28 net amount per unit waiver and 120 units, for a total waiver of $277,474.12. Also included as a part of Exhibit 37 was a letter from the Miami-Dade County Deputy Mayor restating the total amount of the waiver and providing a name and contact phone number of a person for any questions regarding the local government contribution. (Joint Exhibit 2)

4. In its preliminary scoring of Petitioner's application, and based upon information provided by a Notice of Proposed Scoring Error ("NOPSE"), Florida Housing awarded zero points for the Local Government Contribution, stating that "it appears the impact fees were calculated incorrectly and may have been overstated." (Joint Exhibit 4, at page 3) The NOPSE challenged the actual number of units that qualified for a waiver of road impact fees based upon an increase in development activity. (Joint Exhibit 3)

5. In response to this preliminary scoring, Petitioner submitted a revised executed "Local Government Verification of Contribution – Fee Waiver" form stating the amount of $210,417.87 as the fee waiver. Included with the form was a

letter from the Miami-Dade County Deputy Mayor confirming the total waiver amount of $210,417.87, and providing the name and telephone number of a contact person for any questions regarding the local government contribution. The letter states that it supersedes the prior letter submitted, "as there were changes required in the calculation of the local government contribution due to impact fee credits due for existing dwelling units that are proposed to be demolished." (Joint Exhibit 5) In the document entitled "Brief Statement of Explanation," required for each Cure, Petitioner explained that while 120 units were proposed for new construction, 29 existing units would be affected and that the applicant was eligible for a waiver in the amount of 91 units. (Joint Exhibit 5) The explanation further states that, as a result of the NOPSE, "it was determined that Applicant's Fee Waiver was incorrectly calculated." (Joint Exhibit 5) No further fee waiver computation or calculation was attached to this Cure.

6. In its final scoring of Petitioner's application, Florida Housing apparently rescinded its initial reasons for failing to award points for the Local Government contribution, but concluded that the Cure submitted by the Petitioner was not eligible for any points because no calculations by which the amount of the waiver is determined was provided. (Joint Exhibit 7, page 3)

## 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 eligible to receive five (5) points for a Local Government Contribution, Petitioner's substantial interests are affected by Florida Housing's proposed agency action.

The issue for determination in this proceeding is whether Petitioner is entitled to receive five (5) points for a Local Government Contribution. More specifically, the issue is whether Petitioner was required to attach to its Cure materials a sheet showing the computations by which the total amount of fee waiver is determined, including the waived fee amount per set-aside unit.

It is Petitioner's position that Petitioner provided an appropriate calculation in its Cure package at the Cure Explanation section for the revised Exhibit 37. Petitioner argues that the Application Instructions provide no guidance as to what must be included in the per set-aside unit calculation or in what format the calculation must be provided. Petitioner further contends that the calculation attached to its original submittal showed the impact fee per set-aside unit as $2,312.28, and that such amount was not changed in its Cure. The Cure, according to Petitioner, simply changed the calculation of how the total number of units

changed. Petitioner asserts that sufficient information was provided to allow Florida Housing to verify the amount of the waived fee per set-aside unit, and relies on *Cypress Senior Village, LLC v. Florida Housing Finance Corporation,* FHFC Case No. 2006-027 UC (Final Order July 31, 2006), to support its position.

An acceptance of Petitioner's position would require Florida Housing to ignore and violate its clear and unambiguous rules which govern the issues raised in this case. The rules governing this proceeding and the application process require that all applications be complete and that failure to submit an application completed in accordance with the Application Instructions will result in a score less than the maximum available. Rules 67-48.004(1)(b) and 67-48.004(2), Florida Administrative Code. The rules further provide that Cure materials replace the corresponding materials previously submitted and that pages not revised or otherwise changed may not be resubmitted. However, documents executed by third parties must be submitted in their entirety, including all attachments and exhibits referenced therein, even if only a portion of the original document was revised. Rule 67-48.004(6), Florida Administrative Code. The Application Instructions and the form to be submitted as Exhibit 37 are adopted as rules. Rule 67-48.004(1)(a), Florida Administrative Code. As more fully discussed above in Paragraph 2 of the Findings of Fact, both the Instructions and the form clearly require the attachment of a sheet showing the computation by which the total

amount of each fee waiver is determined, as well as the waived fee amount per set-aside unit. The Certification portion of the form states that the person signing the Certification verifies that the computation stated on the sheet attached to this form is true and correct.

Applying these rules to the evidence in this proceeding, it is concluded that Florida Housing correctly determined to award Petitioner no points for the Local Government Contribution claimed in Exhibit 37 of Petitioner's application. Even if it were assumed that the Explanation sheet submitted by Petitioner as a part of its Cure could satisfy the clear requirement that a computation be attached to the Verification form, such an assumption would not avail Petitioner in this case. The Explanation sheet of the Petitioner's Cure does not set forth the amount waived per set-aside unit for each waived fee. Petitioner's argument that this amount can be gleaned from its original submittal fails for several reasons. First, the Petitioner's Explanation explicitly states that its "Fee Waiver was incorrectly calculated" and that it is attaching a revised Exhibit 37. The letter attached to that Exhibit from the person signing both the initial Verification form and the revised Verification states that "there were changes required in the calculation of the local government contribution due to impact fee credits due for existing dwelling units that are proposed to be demolished." Accordingly, Petitioner cannot claim that it falls under that portion of Florida Housing's Rule 67-48.004(6) which prohibits the

resubmission of pages not revised or otherwise changed. Moreover, the Verification form is a document executed by a third party, and thus, pursuant to the explicit requirements of the same rule, it must be submitted in its entirety, which includes a sheet showing the computations by which the total amount of the fee waiver is determined, including the waived fee amount per set-aside unit.

Petitioner's reliance on the *Cypress Senior Village* case is likewise to no avail. It is apparent from a review of that case that Florida Housing revised its Instructions and the Fee Waiver Form after, and most likely as a result of, that case to explicitly require the attachment of a computation sheet to the fee waiver form required to be submitted as Exhibit is 37 and to clarify that the person signing the Certification is verifying that the information on the form "and the computations stated on the sheet attached to this form are true and correct." There is no longer the ambiguity discussed in the *Cypress Senior Village* case.

In summary, Petitioner failed to comply with the unambiguous rules regarding Cure documentation and the submission of its Exhibit 37. Florida Housing correctly scored Petitioner's application in that regard.

## RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law stated herein, it is RECOMMENDED that a Final Order be entered concluding that Petitioner's

application is entitled to no points for the Local Government Contribution claimed in Exhibit 37.

Respectfully submitted this 23rd day of May, 2012.

DIANE D. TREMOR
Hearing Officer for Florida Housing Finance Corporation
Sundstrom, Freidman & Fumero, LLP
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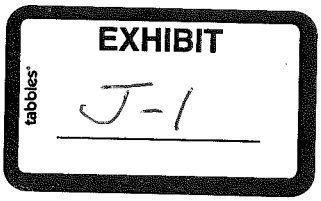
Tallahassee, FL 32301-1329

## 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.

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**JOINT STIPULATION OF FACTS AND EXHIBITS**

Petitioner, CULMER PLACE PHASE 2, LLC ("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 9:00 am, May 8, 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 a Florida limited liability company with its address at 3 East Stow Road, Suite 100, Marlton, New Jersey 08053, and is in the business of providing affordable rental housing units.

2. Florida Housing is a public corporation, with its address at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32310, 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.



Attachment A

## BACKGROUND

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, F.S., 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 Rule Chapter 67-48, F.A.C.; and

(b) HOME Investments Partnerships (HOME) Program pursuant to Section 420.5089, F.S., and Rule Chapter 67-48, F.A.C.

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), F.A.C.

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 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. The Petitioner timely submitted its application for financing in Florida Housing's 2011 Universal Cycle. The Petitioner, pursuant to Application No.: 2011-243C applied for $2,561,000 in annual federal tax credits[2] to help finance the development of its project, a 120-unit apartment complex in Miami, Dade County, Florida, known as Culmer Place Phase 2.

7. Pursuant to Part IV. A. of the Application Instructions, an applicant in the 2011 Universal Cycle is eligible for a maximum of 5 points for a Local Government contribution. In order for an application to achieve the maximum 5 points, the applicant must provide evidence of a contribution value whose dollar amount is equal to or greater than the amount listed on the County Contribution List for the county in which the proposed Development is located; applicants that do meet the necessary contribution values for maximum points are scored on a pro-rata basis. Relevant to these proceeding, for Miami-Dade County, the value of contribution required to achieve maximum points is $125,000.00. Except for those applicants eligible for automatic points, in order to demonstrate the contribution value, an applicant must provide a local government

[2] The United States Congress has created a program, governed by Section 42 of the IRC, by which federal income tax credits are allotted annually to each state on a per capita basis to help facilitate private development of affordable low-income housing for families. These tax credits entitle the holder to a dollar-for-dollar reduction in the holder's federal tax liability, which can be taken for up to ten years if the project continues to satisfy IRC requirements. The tax credits allocated annually to each state are awarded by state "housing credit agencies" to single-purpose applicant entities created by real estate developers to construct and operate specific multi-family housing projects. The applicant entity then sells this ten-year stream of tax credits, typically to a syndicator, with the sale proceeds generating much of the funding necessary for development and construction of the project. The equity produced by this sale of tax credits in turn reduces the amount of long-term debt required for the project, making it possible to operate the project at below-market-rate rents that are affordable to low-income and very-low-income tenants. Pursuant to section 420.5099, F.S., Florida Housing is the designated "housing credit agency" for the state of Florida and administers Florida's tax credit program under its Housing Credit (HC) Program. Through the HC Program, Florida Housing allocates Florida's annual fixed pool of federal tax credits to developers of affordable housing under its annual Universal Cycle application process.

verification of contribution form in accordance with the requirements in the Application Instructions and in the applicable form itself. Relevant to these proceedings is the Local Government Verification of Contribution – Fee Waiver form to be submitted at Exhibit 37 to the application.

8. Petitioner's original application included at Exhibit 37 a 2011 Universal Cycle – Local Government Verification of Contribution – Fee Waiver form signed by Russell Benford, Deputy Mayor, a letter dated December 5, 2011 on Office of the Mayor, Miami-Dade County letter head also signed by Russell Benford, Deputy Mayor, and a document containing the heading "Miami-Dade County Impact Fee Waiver Calculation." ***(Exhibit J-2)***.

9. Based on a NOPSE filed by a competing applicant ***(Exhibit J-3)***, Florida Housing identified the following deficiency relevant to these proceedings in its NOPSE scoring summary of the Petitioner's Application issued on 2/22/2012 ***(Exhibit J-4)***:

| | | | |
|---|---|---|---|
| 118 | The Applicant provided a Local Government Verification of Contribution - Fee Waiver form at Exhibit 37. Based on evidence provided by a NOPSE, it appears the impact fees were calculated incorrectly and may have been overstated. Therefore, the Applicant received zero points for the Local Government Contribution. The Applicant is not eligible for automatic points. | NOPSE | |

10. The Petitioner timely submitted cure materials in response to this scoring deficiency consisting of Petitioner's Brief Statement of Explanation of the cure, a revised 2011 Universal Cycle – Local Government Verification of Contribution – Fee Waiver form signed by Russell Benford, Deputy Mayor, and a revised letter dated December 5, 2011 on Office of the Mayor, Miami-Dade County letter head also signed by Russell Benford, Deputy Mayor. ***(Exhibit J-5)***

11. Following review of Petitioner's cure and a NOAD filed in response to the cure by a competing applicant ***(Exhibit J-6)***, Florida Housing scored the Petitioner's

Application and issued its final scoring summary dated 3/27/2012 ***(Exhibit J-7)*** in which Florida Housing concluded that the Petitioner's cure was deficient for the following reasons:

| | | | |
|---|---|---|---|
| 11S | As a CURE for 11S, the Applicant submitted a Local Government Verification of Contribution - Fee Waiver form. However, per Part IV.A. of the 2011 Universal Cycle Application Instructions in order for a fee waiver to be considered complete and eligible for points the calculations by which the total amount of each waiver is determined must be provided. No calculation was provided and the proposed Development is not eligible for automatic points. | Final | |

12. As a result of the noted deficiency, the Petitioner's application failed to receive any points out of a possible 5 points for the Local Government Contribution.

13. The Petitioner timely filed its Petition contesting Florida Housing's scoring of its application regarding the determination to award no points for the Local Government Verification of Contribution – Fee Waiver form whereupon Florida Housing noticed the matter for an informal hearing.

## OFFICIAL RECOGNITION OF RULES

14. 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.

15. 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

16. 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: Exhibit 37 to Petitioner's original application comprised of a 2011 Universal Cycle – Local Government Verification of Contribution – Fee Waiver form signed by Russell Benford, Deputy Mayor, a letter dated December 5, 2011 on Office of the Mayor, Miami-Dade County letter head also signed by Russell Benford, Deputy Mayor, and a document containing the heading "Miami-Dade County Impact Fee Waiver Calculation."

Exhibit J-3: Portion of NOPSE filed by Application Number 2011-093C directed to Petitioner's Exhibit 37.

Exhibit J-4: NOPSE scoring summary of Petitioner's application dated 2/22/2012.

Exhibit J-5: That part of Petitioner's cure materials pertaining to Exhibit 37 consisting of a Brief Statement of Explanation of the cure and a revised 2011 Universal Cycle – Local Government Verification of Contribution – Fee Waiver form signed by Russell Benford, Deputy Mayor, and a revised letter dated December 5, 2011 on Office of the Mayor, Miami-Dade County letter head also signed by Russell Benford, Deputy Mayor.

Exhibit J-6: Portion of NOAD filed by Application Number 2011-095C directed to Petitioner's cure.

Exhibit J-7: Final scoring summary of Petitioner's application dated 3/27/2012.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted this 8th day of May, 2012.

By: _____

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By: _____

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Attorney for Respondent

# WRITTEN ARGUMENT

Petitioner, CULMER PLACE PHASE 2, LLC, ("Petitioner"), hereby submits to the FLORIDA HOUSING FINANCE CORPORATION Board of Directors ("Board") its written argument in response to the designated Hearing Officer's Recommended Order entered May 23, 2012 ("Recommended Order"). In the Recommended Order, the Hearing Officer recommends that a Final Order be entered concluding that Petitioner's Application is entitled to no points for the Local Government Contribution claim in Exhibit 37.

1. The sole issue raised in this proceeding is whether the Petitioner has provided a calculation by which the total amount of the Fee Waiver was determined. The Hearing Officer has concluded that a calculation was not included and even if the CURE explanation submitted by the Petitioner could be considered a calculation it did not include a specific per unit set aside amount.

2. In reaching her conclusion the Hearing Officer failed to consider the purpose of the requirement for including a calculation in the first place.

3. In reviewing the Application and Rules, the purpose of the calculation is to provide Florida Housing with enough information to allow them to verify the information provided. Florida Housing elected not to contact the local government for verification of the information provided.

4. To the extent that a cost per set aside unit amount was needed in the CURE documents, the CURE explanation provides the calculation. Total Fee Waiver can be used to verify that number as indicated in the following Formula: $210,417.87 divided by 91 (set aside unit total) = $2,312.28 (Per Set Aside Unit Calculation).

5. Specifically, the CURE explains:

> Culmer Place will only affect four existing buildings containing a total of 29 existing Dwelling Units. Applicant has proposed 120 units of new construction, by applying the Impact Fee Credit (29 Units) the applicant will be eligible for a waiver in the amount of 91 units. This calculation has been further verified by Miami-Dade County and attached is a revised Exhibit 37 which provides verification of fee waiver in the amount of $210,417.87.

6. In the instant case the per unit set-aside amount did not change from initial Application to the CURE. An argument could be made that a CURE calculation was not even required given that the per-unit calculation included in the original application submission was (and remains to this day) unchanged. However, Petitioner also submitted an appropriate calculation by stating a calculation in the CURE summary to avoid potentially falling victim to a gotcha as mentioned under Rule 67-48 004(6). Petitioner has provided a calculation and should be awarded 5 points.

7. The calculation submitted by Petitioner contrary to the Hearing Officer's conclusion met the requirements of the Universal Application.

**STATE OF FLORIDA**
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Respondent.
_____/

**FLORIDA HOUSING'S RESPONSE TO PETITIONER'S WRITTEN ARGUMENT CHALLENGING THE RECOMMENDED ORDER**

On May 29, 2012, the Petitioner filed a Written Argument challenging the Recommended Order pursuant to Rule 67-48.005(3), F.A.C.

The Petitioner asserts that the Hearing Officer, in reaching her conclusion, failed to consider the purpose of the requirement for including a calculation in the first place. For that proposition, the Petitioner, in essence, restates the arguments made in its petition, at the informal hearing and in its Proposed Recommended Order. There is nothing in the Record or the Recommended Order to suggest that those arguments were not fully aired and considered by the Hearing Officer; if anything, the Hearing Officer made it a point to affirmatively acknowledge the positions advocated by the Petitioner, and to provide rule-based reasons for rejecting them, as demonstrated by the following excerpt:

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
Della M Harrell /DATE: 5/31/2012

> "Even if it were assumed that the Explanation sheet submitted by Petitioner as a part of its Cure could satisfy the clear requirement that a computation sheet be attached to the Verification form, such an assumption would not avail the Petitioner in this case. The Explanation sheet of the Petitioner's Cure does not set forth the amount waived per set-aside unit for each waived fee..." (Recommended Order, pg. 8)

While the purpose of the computation sheet is obvious within the context of the instructions and forms requiring its attachment, its purpose is not at issue in this case. The issue is whether the computation sheet was provided as required by the governing rules and instructions, or, as framed by the Hearing Officer: "...whether Petitioner was required to attach to its Cure materials a sheet showing the computations by which the total amount of fee waiver is determined, including the waived fee amount per set-aside unit." (Recommended Order, pg. 6)

As determined by the Hearing Officer, Florida Housing's rules and instructions governing that issue are clear and unambiguous:

> "...both the Instructions and the form clearly require the attachment of a sheet showing the computation by which the total amount of each fee waiver is determined, as well as the waived fee amount per set-aside unit. The Certification portion of the form states that the person signing the certification verifies that the computation stated on the sheet attached to this form is true and correct." (Recommended Order, pgs. 7-8)

The Hearing Officer applied "...these rules to the evidence in this proceeding ...and concluded that Florida Housing correctly determined to award

Petitioner no points for the Local Government Contribution claimed in Exhibit 37 of Petitioner's application." (Recommended Order, pg. 8) In short, the Hearing Officer concluded that:

> "...Petitioner failed to comply with the unambiguous rules regarding Cure documentation and the submission of its Exhibit 37. Florida Housing correctly scored Petitioner's application in that regard." (Recommended Order, pg. 9)

The matters raised by Petitioner in its written argument have been argued, considered and rejected by the Hearing Officer as evidenced by a reading of the Recommended Order. There is nothing in Petitioner's written argument that would warrant rejection of, or change to, the Hearing Officer's findings, conclusions and recommendation in the Recommended Order.

Accordingly, the Petitioner's written argument should be rejected.

Respectfully submitted this 31st day of May, 2012.

FLORIDA HOUSING FINANCE CORPORATION

By: _____

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 31st day of May, 2012, by electronic mail to Michael P. Donaldson at mdonaldson@carltonfields.com

Robert J. Pierce
Assistant General Counsel