

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

RENAISSANCE PRESERVE IV, LLLP
Petitioner,

v.

FHFC CASE NO.: 2012-028UC
Application No. 2011-174C

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

On or before December 6, 2011, Renaissance Preserve IV, LLLC, (“Petitioner”), submitted its 2011 Universal Cycle Application (“Application”) to Florida Housing Finance Corporation (“Florida Housing”) seeking an allocation of competitive “9%” Tax Credits under the federal Low Income Housing Tax Credit program to fund the project known as Renaissance Preserve Phase III.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Kella M Harrell /DATE: 6/8/12

Petitioner timely filed its "Petition for Review," (the "Petition") challenging Florida Housing's scoring on its Application, No. 2011-174C. Petitioner challenged the decision of Florida Housing to reject a tax credit syndication letter, causing the Application to fail threshold requirements. This decision was based upon Florida Housing's finding that the percentages of ownership of the requested tax credit allocation as expressed in the syndication letter were inconsistent with those expressed in Exhibit 9 to the 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. In informal hearing was held in this case on May 8, 2012 before Florida Housing's designated Hearing Officer, Chris H. Bentley. Following the hearing, 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 determining that Petitioner's Application failed to meet threshold requirements.

**PETITIONER'S WRITTEN ARGUMENT
CHALLENGING THE RECOMMENDED ORDER**

On May 29, 2012, 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 Board finds that the findings of fact and the conclusions of law 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 No. 2011-174C is upheld, and that Petitioner's Application fails to meet threshold requirements regarding its tax credit syndication letter. 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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Kevin Tatreau
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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**

RENAISSANCE PRESERVE IV, LLLP,

Petitioner,

v.

CASE NO.: 2012-028UC
Application No. 2011-174C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice and Sections 120.569 and 120.57(2) of the Florida Statutes, the Florida Housing Finance Corporation ("Florida Housing"), by its duly designated Hearing Officer, Chris H. Bentley, held an informal hearing in Tallahassee, Florida, in the above styled case on May 8, 2012.

APPEARANCES

For Petitioner:

Michael P. Donaldson, Esquire
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Tallahassee, Florida 32302-0190

For Respondent:

Hugh R. Brown
Deputy General Counsel
Florida Housing Finance Corporation
227 North Bronough Street
Suite 5000
Tallahassee, Florida 32301-1329

STATEMENT OF THE ISSUE

The issue to be determined is whether the Revised Application Exhibit 9 (Joint Exhibit 4) provided by the Petitioner during the Cure Period is inconsistent with the Revised Syndication Agreement letter dated February 23, 2012, Revised Application Exhibit 49 (Joint Exhibit 4), also provided by Petitioner during the Cure period.

PRELIMINARY STATEMENT

At the final hearing, the parties submitted a Joint Stipulation of Facts and Exhibits which has been admitted as Joint Exhibit 1. Joint Exhibits 2-7 were admitted into evidence pursuant to the stipulation embodied in Joint Exhibit 1. Hearing Officer Exhibit 1 was marked as a demonstrative exhibit and attached to the record. Hearing Officer Exhibit 2 is a Final Order of Florida Housing Finance Corporation of which the Hearing Officer takes Official Notice. Hearing Officer Exhibit 3 was withdrawn.

The joint request of the parties that Official Recognition be taken of Rule Chapter 67-48, Fla. Admin. Code, as well as the incorporated Universal Application Package or UA 1016 (Rev. 2-11) which includes the forms and instructions, is GRANTED.

FINDINGS OF FACT

Based upon the undisputed facts and exhibits received into evidence at the hearing, the following relevant facts are found:

1. The facts recited in Joint Exhibits 1-7 are accepted as fact in this proceeding and incorporated herein by reference.

2. The Petitioner timely submitted its application for financing in Florida Housing's 2011 Universal Cycle. The Petitioner, pursuant to Application #2011-174C, applied for \$1,355,087 in annual federal tax credits to help finance the development of its project, an 88-unit townhouse complex in Fort Myers, Florida, known as Renaissance Preserve Phase III.

3. In its preliminary scoring of the Petitioner's Application, Florida Housing identified certain alleged deficiencies regarding Petitioner's equity commitment letter (Exhibit 49 to the Application), including the following matters relevant to these proceedings (*Exhibit J-3*):

Item#	Description	Reason
6T	HC Equity	The Applicant provided an equity commitment letter from RBC Tax Credit Equity, LLC. The commitment does not contain the language "paid prior to or simultaneous with the closing of construction financing" as required by Part V.D.3.(a) of the 2011 Universal Application Instructions. Therefore, the HC equity cannot be counted as a source of financing.
7T	HC Equity	The Applicant provided an equity commitment letter from RBC Tax Credit Equity, LLC. Exhibit A of the commitment letter states the total capital contributions total \$11,855,828. However, the installment amounts total \$11,855,827. Due to this inconsistency, the HC equity cannot be considered a source of financing.

4. In response to Respondent's preliminary scoring decision, Petitioner provided CURE documents, including a revised syndication letter dated February 23, 2012, Revised Application Exhibit 49 (Joint Exhibit 4). The revised letter corrected the issues cited by Respondent's initial scoring summary. (Joint Exhibit 4).

5. Specifically, the revised syndication letter includes the missing language identified by Respondent in its preliminary scoring and corrects the issue raised in the preliminary scoring. However, the introductory paragraph to the revised letter also amended the structure of the proposed acquisition to provide that "RBC Tax Credit Equity, LLC ("RBC") would acquire a 99.99% interest, and RBC Tax Credit Manager II, Inc. ("RBC Manager") would acquire a .001% interest ("collectively the interest") in the Partnership. The letter further provides that the General Partner would hold the remaining .009% interest in the Partnership. (Joint Exhibit 4).

6. In contrast to Revised Application Exhibit 49, Revised Application Exhibit 9 (Joint Exhibit 4), also submitted during the Cure Period, in describing the Applicant, Renaissance Preserve IV, LLLP, states:

Managing General Partner:
Norstar Renaissance Preserve Family III, INC., a Florida corporation, (.0051%).

General Partner:
Renaissance Preserve IV, LLC ... (.0040%)

Sole Member:
Housing Authority of The City of Fort Meyers...

Initial Limited Partner:
Housing Authority of The City of Fort Meyers ... (99.99%)

7. Following submission of cures, Florida Housing scored the Petitioner's Application and issued its final scoring summary dated March 27, 2012 (*Exhibit J-5*), in which Florida Housing rescinded the threshold failures identified as items 6T and 7T above, but identified a new alleged threshold failure (12T).

8. Specifically, the new threshold failure identified by Florida Housing regarding the replacement equity commitment letter (Exhibit 49 to the Application) in its final scoring summary is as follows:

Item#	Description	Reason
12T	HC Equity	As a cure to Items 6T, 7T and ST, the Applicant provided a revised equity commitment from RBC Tax Credit Manager II, Inc. Per page 107 of the 2011 Universal Application Instructions, the percentage of credits being purchased must be equal to or less than the percentage of ownership interest held by the limited partner or member. The Applicant stated on the revised Exhibit 9 that the limited partner's interest in the applicant entity is 99.99%. However, the syndication agreement was revised to state a total of 99.991% of the HC allocation is being purchased. Because of this inconsistency, the HC equity cannot be considered a source of financing.

9. On page 2 of the February 23, 2012, Syndication Letter, Revised Application Exhibit 49 (Joint Exhibit 4), in paragraph Number 2, entitled "Purchase Price" it states, "The Interest in the Partnership will be acquired for a total capital

contribution of \$11,855,826.” The letter, in its opening paragraph, defines “The Interest in the Partnership” as “collectively”, the 99.99% to be acquired by “RBC” and the .001% to be acquired by RBC Tax Credit Manager II, Inc. Thus, as a matter of fact, on the face of the letter, “the Interest in the Partnership” to be acquired for \$11,855,826 represents 99.991% of the Partnership. This is in contrast to and in conflict with the statement on Revised Application Exhibit 9, wherein it states that the “Initial Limited Partner”, the “Housing Authority of the City of Fort Meyers,” as the sole member of the Applicant, owns only 99.99% of the Applicant.

CONCLUSIONS OF LAW

10. Pursuant to Sections 120.569 and 120.57(2), Fla. Stat., and Rule Chapter 67-48, Fla. Admin. Code, the Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding.

11. The Universal Application Package, or UA1016 (Rev. 2-11), which includes both its forms and instructions, is adopted as a rule. *See*, Rule 67-48.004(1)(a), Fla. Admin. Code, and Section 120.55(1)(a)4., Fla. Stat. The forms and instructions are agency statements of general applicability that implement, interpret, or prescribe law or policy or describe the procedure or practice requirements of Florida Housing and therefore meet the definition of a “rule” found in Section 120.52, Fla. Stat. As such, the instructions and forms are

themselves rules.

12. The issue presented in this proceeding is whether Florida Housing erred in rejecting Petitioner's revised syndication letter, Revised Application Exhibit 49 based on an inconsistency in the percentage of ownership between that Application Exhibit and Revised Application Exhibit 9. (Joint Exhibit 4)

13. In addition to the general requirements for accuracy and completeness that apply to all parts of the 2011 Universal Application¹, the Instructions include specific provisions that apply directly to non-FHFC funding commitments. As set forth in Part V., in pertinent part:

D. Non-Corporation Funding Commitment(s)

Applicants must provide documentation of all commitments, proposals or letters of intent from both the construction and the permanent lender(s), the syndicator or other sources of funding. The commitments, proposals or letters of intent must state whether they are for construction financing, permanent financing, or both. For a commitment letter, proposal or letter of intent to meet threshold, all attachments must be included. **Unless stated otherwise in these instructions, a firm commitment, proposal or letter of intent will not be considered if any information contained in the document (which includes any attachments thereto) is inconsistent with information stated elsewhere within the document or elsewhere within the Application.** Insert documentation for each source directly behind its own tab beginning with a tab labeled **"Exhibit 47"**² and continuing with sequentially numbered tabs for

¹ See p. 2 of the 2011 Universal Cycle Application Instructions and Rule 67-48.004(2), Fla. Admin. Code (2011).

² Funding commitments are attached to the Application beginning with Exhibit 47. Additional exhibits in this category may receive higher Exhibit numbers, as is true in the instant cases where the funding commitment in question is labeled "Exhibit 49" to the Application.

each exhibit. Evidence for each funding commitment, proposal or letter of intent must be behind its own tab.

Page 2, 2011 Universal Cycle Application Instructions (emphasis added).

14. As can be seen from the plain language of the Application Instructions above, rejection of a funding commitment is mandatory where the commitment contains any inconsistency with other information in the document itself, or anywhere else in the Application. This language was added to the 2011 Universal Cycle Instructions and does not appear in the 2009 Universal Cycle Instructions or prior versions³. The same section of the Instructions from 2009 reads, in pertinent part:

D. Non-Corporation Funding Commitment(s)

Except for anticipated funding from the American Recovery and Reinvestment Act of 2009, Applicants must provide documentation of all commitments, proposals or letters of intent from both the construction and the permanent lender(s), the syndicator or other sources of funding. The commitments, proposals or letters of intent must state whether they are for construction financing, permanent financing, or both. For a commitment letter, proposal or letter of intent to meet threshold, all attachments must be included. Insert documentation for each source directly behind its own tab beginning with a tab labeled “**Exhibit 55**” and continuing with sequentially numbered tabs for each exhibit. Evidence for each funding commitment, proposal or letter of intent must be behind its own tab.

For purposes of this Application, neither net operating income for a Rehabilitation Development nor capital contributions will be considered a source of financing.

³ There was no 2010 Universal Cycle.

2009 Universal Cycle Instructions, 70⁴. Also, the following paragraph in Part V.D.1, of the 2009 Instructions was removed in the 2011 version:

(f) Commitments, proposals or letters of intent with conflicting information may be determined not to meet threshold depending upon the nature of the inconsistency.

The deletion of this language and the addition of the language in paragraph 13 above effectively removed any discretion Florida Housing may have had, prior to 2011, to deem an inconsistency as *de minimis* or a typographical error.

15. Petitioner's reliance on Pinnacle at Hammock Square, LLC v. Florida Housing Finance Corporation, Final Order No. 2010-006UC (Fla. FHFC May 4, 2010) is misplaced. Pinnacle does not stand for proposition asserted by Petitioner. Indeed, Pinnacle, which apparently involved this Petitioner, stands for the proposition that where, as here, the equity syndicator proposes to purchase a percentage of credits (i.e. 99.991%) which is greater than the percentage of ownership interest held by the limited partner or member as reflected on Application Exhibit 9 (i.e. 99.99%) it violates the Threshold requirement that the percentage of credits proposed to be purchased must be equal to or less than the percentage of ownership interest held by the limited partner or member.

16. The 2011 Universal Application Instructions at Part V, D, 3, b, require

⁴ http://apps.floridahousing.org/StandAlone/FHFC_ECM/ContentPage.aspx?PGE=0070

that “The percentage of Housing Credits proposed to be purchased must be equal to or less than the percentage of ownership interest held by the limited partner or member.” In this case the limited partner or member is the Housing Authority of the City of Fort Meyers which, according to Revised Application Exhibit 9 (Joint Exhibit 4) owns a 99.99% interest in the Applicant. However, Revised Application Exhibit 49 (Joint Exhibit 4), states on its face, under the heading “Purchase Price”, that “The Interest in the Partnership to be acquired for a total capital contribution of \$11,855,826...” includes “collectively” 99.991%. Thus, in light of the requirements stated in Part V, D, 3, b, 2011 Universal Application Instructions, the information stated in Revised Application Exhibit 49, wherein it proposes that the interest to be acquired via the “Purchase Price” totals 99.991% is inconsistent with the information set forth in Revised Application Exhibit 9, wherein it states that the percentage of interest held by the limited partner or member is only 99.99%.

17. The 2011 Universal Application Instructions at Part V, D, state that “... a firm commitment proposal or letter of intent will not be considered if any information contained in the document . . . is inconsistent with the information stated elsewhere within the document or elsewhere within the Application.” The instruction continues stating that a Firm Commitment, Proposal, or Letter of Intent


is a Threshold item. There being an inconsistency between Revised Application Exhibit 49 and the information in Revised Application Exhibit 9, the Revised Application Exhibit 49 may not be considered and Applicant has failed a Threshold item.

18. Although Petitioner offered additional legal argument and theories in support of its position, the matters set forth above are controlling.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law stated above, it is RECOMMENDED that, there being an inconsistency between the information in Revised Application Exhibit 49 and the information in Revised Application Exhibit 9, The Revised Application Exhibit 49 may not be considered and the Applicant has failed to meet a Threshold requirement, thus requiring that the Application be rejected.

Respectfully submitted this 23rd day of May, 2012.


CHRIS H.BENTLEY
Hearing Officer for Florida
Housing Finance Corporation
Sundstrom, Friedman & Fumero, LLP
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Copies furnished to:

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Post Office Box 190
Tallahassee, Florida 32302-0190

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
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FHFC CASE NO.: 2012-028UC
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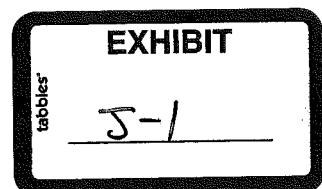
JOINT STIPULATION OF FACTS AND EXHIBITS

Petitioner, Renaissance Preserve IV, LLLP (“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 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 limited partnership with its address at 200 South Division Street, Buffalo, New York 14204, and is in the business of providing affordable rental housing units in the State of Florida.

2. Florida Housing is a public corporation, with its address at 227 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.



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 #2011-174C, applied for \$1,355,087 in annual federal tax credits² to help finance the development of its project, an 88-unit townhouse complex in Fort Myers, Florida, known as Renaissance Preserve Phase III.

7. In its preliminary scoring of the Petitioner’s Application, Florida Housing identified certain alleged deficiencies regarding Petitioner’s equity commitment letter (Exhibit 47 to the Application), including the following matters relevant to these proceedings (*Exhibit J-3*):

Item #	Description	Reason
6T	HC Equity	The Applicant provided an equity commitment letter from RBC Tax Credit Equity, LLC. The commitment does not contain the language "paid prior to or simultaneous with the closing of construction financing" as required by Part V.D.3.(a) of the 2011 Universal Application Instructions. Therefore, the HC equity cannot be counted as a source of financing.
7T	HC Equity	The Applicant provided an equity commitment letter from RBC Tax Credit Equity, LLC. Exhibit A of the commitment letter states the total capital contributions total \$11,855,828. However, the installment amounts total \$11,855,827. Due to this inconsistency, the HC equity cannot be considered a source of financing.

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.

8. The Petitioner timely submitted cures in response to these scoring deficiencies, including a replacement equity commitment letter (*Exhibit J-4*).

9. Following submission of cures, Florida Housing scored the Petitioner's Application and issued its final scoring summary dated March 27, 2012 (*Exhibit J-5*), in which Florida Housing rescinded the threshold failures identified as items 6T and 7T above, but identified a new alleged threshold failure (12T).

10. Specifically, the new threshold failure identified by Florida Housing regarding the replacement equity commitment letter (Exhibit 49 to the Application) in its final scoring summary is as follows:

Item #	Description	Reason
12T	HC Equity	As a cure to Items 6T, 7T and 8T, the Applicant provided a revised equity commitment from RBC Tax Credit Manager II, Inc. Per page 107 of the 2011 Universal Application Instructions, the percentage of credits being purchased must be equal to or less than the percentage of ownership interest held by the limited partner or member. The Applicant stated on the revised Exhibit 9 that the limited partner's interest in the applicant entity is 99.99%. However, the syndication agreement was revised to state a total of 99.991% of the HC allocation is being purchased. Because of this inconsistency, the HC equity cannot be considered a source of financing.

11. The Petitioner timely filed its Petition contesting Florida Housing's scoring of its Application whereupon Florida Housing noticed the matter for an informal hearing.

OFFICIAL RECOGNITION OF RULES

12. 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.

13. 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.

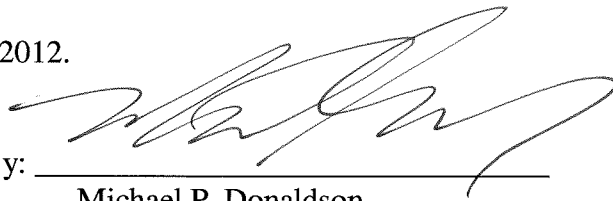
EXHIBITS

14. 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 49 to original Application (RBC equity commitment letter dated November 30, 2011)
- Exhibit J-3: 2011 Universal Cycle Scoring Summary Report (Preliminary), dated January 19, 2012.
- Exhibit J-4: Petitioner's Cure and replacement Exhibits 9 and 49 (RBC equity commitment letter dated February 23, 2012)
- Exhibit J-5: Notice of Alleged Deficiency (NOAD) filed regarding Petitioner's Application Exhibits 9 and 49
- Exhibit J-6: 2011 Universal Cycle Scoring Summary Report (Final), dated March 27, 2012.
- Exhibit J-7: Excerpts from the 2011 Universal Cycle Application Instructions: Part V.D.2

Respectfully submitted this 8th day of May, 2012.

By: _____



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Attorney for Respondent

WRITTEN ARGUMENT

Petitioner, RENAISSANCE PRESERVE IV, LLLP, ("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 because there is an inconsistency between the information in Revised Application Exhibit 49 and the information in Revised Application Exhibit 9], the Revised Application Exhibit 49 may not be considered an the Applicant has failed to meet a threshold, thus requiring the Application to be rejected.

1. The issue raised in this proceeding is whether Petitioner has satisfied the Universal Cycle Application Instructions and Rule requirements regarding firm Non-Corporation Funding Commitments. Specifically whether the "percentage of credits being purchased by the syndicator was less than or equal to the percentage of the ownership held by the limited partner or member."

2. In essence the Hearing Officer in his Recommended Order took the position that the syndicator, RBC, is purchasing a larger percentage of the credit allocation (99.991%) than is actually owned by the Limited Partner of the Applicant entity, the Housing Authority of the City of Fort Myers ("Housing

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Willa M. Farrell / DATE: 5/29/2012

Authority"). Based on a review of Exhibit 9 the Housing Authority owns 99.99% of the Applicant entity. To reach his conclusion the Hearing Officer mechanically combined the interests of two distinct legal entities, RBC Equity and RBC Manager, to equal 99.991%, which are two separate transactions.

3. This action by the Hearing Officer is erroneous for several reasons. First, as a factual matter and as a matter of law, RBC Tax Credit Equity, LLC (RBC Equity) and RBC Tax Credit Manager II (RBC Manager), Inc. are not the same legal corporate entity. They are distinct legal entities only one of which RBC Equity is purchasing a 99.99% interest in the applicant entity from the limited Partner. This is clearly stated in the letter through language and the dollar amount being paid for the LIHTC. The fact that the Hearing Officer and the Staff do not understand the transaction is not grounds to find the commitment insufficient or inconsistent in any manner. Because of this misunderstanding the final phase of a HOPE VI project will not be funded. The HOPE VI funds have a deadline which is depending on this award. The only thing holding this award from taking place is this misunderstanding of a business transaction.

4. The RBC commitment letter, submitted by Petitioner meets all the listed requirements of the Universal Application Instructions. The Hearing Officer asserted that the percentage of credits being "purchased" is not equal to or less than the percentage ownership interest held by the limited partner or member. That

finding of fact and conclusion of law is simply not true. At informal hearing Respondent took the position that the terms “acquire” and “purchase” have the same meaning and apparently the Hearing Officer agreed with no explanation as to why.

5. The words do not have the same meaning. “Purchase,” as defined by Merriam Webster Dictionary – Thesaurus (<http://www.merriam-webster.com/>), means:

to get possession of (something) by giving money in exchange for (*I need to purchase a new heavy coat*)
Synonyms cop [slang], pick up, purchase, take. **Related Words** acquire, gain, garner, get, obtain, procure, secure, win; finance, pay (for), spring (for); barter (for), deal (for), dicker (over), exchange (for), haggle (for), negotiate (about), trade (for); bargain (with), chaffer (with), horse-trade (with), palter (with); bid, offer; rebuy, repurchase.

“Acquire,” on the other hand, as defined by the same source, means:

to come to have gradually (from years of working two jobs, he has acquired the ability to get by on only a few hours of sleep a day) **Synonyms** acquire, cultivate, form. **Related Words** absorb, adopt, embrace, take in, take on; gain, get, obtain; achieve, attain, reach; foster, nourish, nurture, promote.

6. In the RBC letter RBC Equity proposes to "purchase" 99.99% of the Tax Credits. This is consistent with the percentage of ownership interest held by the limited partner, as reflected at Exhibit 9. This is also evidenced by the amount RBC Equity has stipulated to pay, through a capital contribution, in Paragraph 2 of the Letter (entitled “Purchase Price”).

7. Moreover, at RBC letter Paragraph 3 entitled “LIHTC” it states “It is expected that RBC will be allocated a total LIHTC amount of \$13,549,515 (the “Projected LIHTC”) during the credit period...” This amount equates to 99.99% of the 2011 LIHTC allocation to the partnership and no more.

8. The additional RBC entity, RBC Manager, while "acquiring" "an interest" in the Applicant entity, is not paying any money and therefore not "purchasing" an interest. This .001% interest will none the less be acquired from the .01% interest that is currently shared by the GP entities at a ratio of .051% and .049%. It is not a requirement of the Application to explain any future proposed changes to this interest.

9. A simple calculation of the Tax Credits being purchased and the price per credit being paid produces the amount of equity set forth in the syndication agreement only if the party providing the equity is purchasing a 99.99% interest in the Applicant entity; it does not include the .001% being acquired by the “special limited partner”, RBC Manager because there is no money being paid for this interest and the interest is being acquired by a different entity. The limited partner or member according to Exhibit 9 as of the application deadline is the Housing Authority who currently holds a 99.99% interest in the Applicant entity Renaissance Reserve IV, LLLP. Accordingly, for Respondent to be correct more than the 99.99% interest must be purchased by RBC Equity which is simply not the

case here as both the language and mathematical calculations provided in the letter demonstrate.

10. Despite this position, the Hearing Officer has determined in his recommended order that this is a scoring issue and not an underwriting issue, although, to the contrary, Respondent stipulated at the hearing that staff defers to the underwriters to make those final decisions.

11. The RBC commitment letter indicates that RBC Equity will pay \$11,855,826 for a 99.99% ownership interest in the Tax Credit Allocation for the proposed project. This is consistent with the Universal Application requirements. While the RBC Manager may be acquiring an interest in Applicant entity, that interest is separate and apart from the 99.99% interest being purchased by RBC Equity or any RBC entity for that matter.

12. Based on the foregoing, Petitioners request that the Board enter a Final Order which finds that Petitioner has passed threshold.

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

RENAISSANCE PRESERVE IV, LLLP,

Petitioner,

v.

FHFC CASE NO.: 2012-028UC
Application No.: 2011-174C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**FLORIDA HOUSING'S RESPONSE TO
PETITIONER'S WRITTEN ARGUMENT**

On May 29, 2012, Renaissance Preserve IV, LLLP, (the "Petitioner") filed a Written Argument ("Argument") challenging the Recommended Order issued in the above-styled proceeding, pursuant to Rule 67-48.005(3), Fla. Admin. Code (2011). Therein, Petitioner asserts that the Hearing Officer erred in determining that Petitioner's Exhibit 49 to its Application failed threshold. Florida Housing Finance Corporation (the "Respondent" or "Florida Housing") responds to this Written Argument and states:

1. In its Argument, Petitioner asserts that the issue to be determined in this case is whether the "percentage of credits being purchased by the syndicator was less than or equal to the percentage of the ownership held by the limited partner or member." While this was an issue addressed in the scoring of the Application, it was not the basis for the Hearing Officer's Recommendation. Petitioner attempts in its Argument to shift the focus away from the actual basis for the Hearing Officer's ruling and recommendation to a different set of provisions in the Application Instructions. It is clear

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HOUSING FINANCE CORPORATION

Della M. Harrell / DATE: 5/31/2012

from paragraph 14 of Recommended Order that the basis of the ruling is the language that provides:

D. Non-Corporation Funding Commitment(s)

Applicants must provide documentation of all commitments, proposals or letters of intent from both the construction and the permanent lender(s), the syndicator or other sources of funding. The commitments, proposals or letters of intent must state whether they are for construction financing, permanent financing, or both. For a commitment letter, proposal or letter of intent to meet threshold, all attachments must be included. **Unless stated otherwise in these instructions, a firm commitment, proposal or letter of intent will not be considered if any information contained in the document (which includes any attachments thereto) is inconsistent with information stated elsewhere within the document or elsewhere within the Application.** Insert documentation for each source directly behind its own tab beginning with a tab labeled “**Exhibit 47**”¹ and continuing with sequentially numbered tabs for each exhibit. Evidence for each funding commitment, proposal or letter of intent must be behind its own tab.

p. 70, 2011 Universal Cycle Instructions (emphasis added).

This provision in the Instructions was the basis for the Hearing Officer’s Recommendation, and not the provision cited by Petitioner, which states:

[T]he percentage of credits being purchased by the syndicator was less than or equal to the percentage of the ownership held by the limited partner.

p. 107, 2011 Universal Cycle Instructions.

As stated in paragraph 12 of the Recommended Order:

The issue presented in this proceeding is whether Florida Housing erred in rejecting Petitioner’s revised syndication letter, Revised Application Exhibit 49 based on an inconsistency in the percentage of ownership between that Application Exhibit and Revised Application Exhibit 9 (Joint Exhibit 4).

Furthermore, as stated in the Recommendation:

¹ Funding commitments are attached to the Application *beginning* with Exhibit 47. Additional exhibits in this category may receive higher Exhibit numbers, as is true in the instant case where the funding commitment in question is labeled “Exhibit 49” to the Application.

[T]hat, there being an inconsistency between the information in Revised Application Exhibit 49 and the information in Revised Application Exhibit 9, the Revised Application Exhibit 49 may not be considered and the Applicant has failed to meet a Threshold requirement, thus requiring that the Application be rejected.

2. It is true that the Recommended Order, in paragraph 15, mentions the requirement regarding the relative percentages of ownership, but only to distinguish the instant case from a previous Final Order cited by Petitioner. Accordingly, any argument made by Petitioner regarding the language quoted immediately above is irrelevant to the outcome. This was clearly the assessment of the Hearing Officer who, immediately after concluding that revised Exhibit 49 failed threshold for a direct inconsistency between it and revised Exhibit 9, and finding that issue dispositive of the case, went on to state:

Although Petitioner offered additional legal argument and theories in support of its position, the matters set forth above are controlling.

(Recommended Order, paragraph 18).

3. The whole of Petitioner's Argument is based on a misapprehension of the grounds of the Hearing Officer's Recommendation. The inconsistency between revised Exhibit 49 and revised Exhibit 9 is obvious, and as it involves the comparison of two non-equal numbers, cannot be resolved by any interpretation of the language appearing on p. 70 of the Application Instructions.

4. Even if the relative percentage of ownership were the dispositive issue in this case, Petitioner's argument regarding a purposeful the distinction between "acquire" and "purchase" is not credible. In addition to being synonyms (and thus both within the range of permissible interpretations of the Instructions), this distinction is meaningless for

the purposes of the Instructions, which are intended to require a detailed and accurate description of the ownership interest in the tax credit allocation.

5. In addition to the above, Petitioner asserts that the Hearing Officer “mechanically added” the numbers 99.99% and 0.001%, it is in fact the plain language of revised Exhibit 49 that refers to these two numbers as “collectively, the Interest.” *Exhibit J-4*.

6. Moreover, the new and erroneous numbers expressed in revised Exhibit 49 differ from the correct numbers submitted by Petitioner in its original Exhibit 49. Clearly this was a mistake on the part of the letter’s author, as Petitioner has provided no credible explanation for why this change occurred. It is clear under these circumstances that the irrelevant argument presented by Petitioner regarding the difference between “acquire” and “purchase” is both an attempt to avoid the dispositive issue in the case as well as an *ex post facto* attempt to characterize this obvious error as a deliberate change.

RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law stated above, it is RECOMMENDED that a Final Order be entered affirming Florida Housing’s scoring of Petitioner’s Application and rejection of Petitioner’s Cure regarding the tax credit equity letter, resulting in the threshold failure of the Application.

Respectfully submitted this 31st day of May, 2012.

/s/ Hugh R. Brown
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Proposed Recommend Order has been furnished this 15th day of May, 2012 by electronic mail to Michael P. Donaldson at mdonaldson@carltonfields.com.

/s/ Hugh R. Brown
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