

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**DESOTO COUNTY HOMELESS
COALITION, INC., and
HARDEE COUNTY HOUSING AUTHORITY,
Petitioners.**

**CASE NO.: 2007-
052FHRP**

v.

**FLORIDA HOUSING FINANCE CORPORATION,
Respondent**

and

**CATHOLIC CHARITIES HOUSING OF THE DIOCESE OF
VENICE, INC.**

Intervener

and

AIDS HELP, INC.

Intervener

_____ /

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation ("Board") for consideration and final agency action on January 25, 2008. On or before June 22, 2007, DeSoto County Homless Coalition, Inc., submitted an application to Florida Housing for \$1,500,000 of Special Housing Assistance Development ("SHADP") funding, and Hardee County Housing Authority submitted an application to Florida

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Sherry Shea /DATE. 1-28-08

Housing for \$2,645,000 of SHADP funding in the 2007 FRHP/SHADP program ("Petitioners"). Petitioners timely filed their "Petition for Informal Administrative Hearing," (the "Petition") challenging Florida Housing's decision through issuance of final scores, to award Catholic Charities Housing of the Diocese of Venice, Inc. ("Catholic Charities"), Farmworker Housing Recovery Program ("FHRP") funding; and Aids Help Inc., and Realty America, Inc., SHADP funding from the 2007 FHRP/SHADP cycle.

On October 15, 2007, counsel for Florida Housing filed a Motion to Dismiss for Lack of Standing to dismiss that portion of the Petition challenging the scoring of Catholic Charities application for FHRP funding. Catholic Charities and Aids Help, Inc., joined in Florida Housing's Motion to Dismiss.

Oral Argument on the Motion to Dismiss was heard on November 6, 2007, before Florida Housing's appointed Hearing Officer, Diane D. Tremor. The Hearing Officer's Recommended Order granting the Motion to Dismiss was filed on November 28, 2007. A copy of the Recommended Order is attached hereto as Exhibit "A."

An informal hearing on the merits was also conducted on November 6, 2007, before Florida Housing's appointed Hearing Officer, Diane D. Tremor, concerning the issuance of final scores of Aids Help Inc., and

Realty America, Inc. The Hearing Officer's Recommended Order on the merits was filed on December 10, 2007. A copy of the Recommended Order on the merits is attached hereto as Exhibit "B."

On December 17, 2007, Respondent, Realty America, Inc., submitted a Written Argument in response to the December 10, 2007, Recommended Order. A copy of the Written Argument is attached hereto as Exhibit "C."

The Recommended Order on the Motion to Dismiss recommends that Florida Housing enter a Final Order finding that:

1. Dismisses that portion of the Petitioner's Petition for Informal Administrative Proceedings relating to the scoring of Catholic Charities' application for funding under the FHRP for the project denominated as Casa San Juan Bosco.

The Recommended Order on the merits recommends that Florida Housing enter a Final Order finding that:

1. Places the Aids Help Inc., application in Group B for failure to adequately demonstrate site control.
2. Rejects the Realty America, Inc., application for failure to meet the threshold requirement of a firm financing commitment.

RULING ON THE RECOMMENDED ORDER

In accordance with the foregoing:

1. The Conclusions of Law of the Recommended Orders are adopted as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Final Order.
2. Petitioner failed to demonstrate its standing to challenge the scoring of Catholic Charities' application for funding under the FHRP program.
3. The Findings of Fact of the Recommended Order on the merits are adopted as Florida Housing's findings of fact and incorporated by reference as though fully set forth in this Order.
4. Pursuant to Rule 67ER07-03(1), F.A.C., and Part 3. of the Ranking and Selection Criteria of the 2007 FHRP/SHADP Instructions, eligible applications will be classified in two groups, 'A' and 'B.' Group 'A' applications are those who satisfied all threshold requirements for funding, have provided the necessary documentation and are deemed to have demonstrated site control; all other eligible applications who do not provide evidence of site control are to be included in Group 'B.' The Aids Help Inc., application is to be placed in Group B for failure to adequately demonstrate site control.

5. Pursuant to Rule 67ER07-03(1), Rule 67ER07-03(14)(b), F.A.C., and Part IV. Section C., of the 2007 FHRP/SHADP Instructions, the Realty America, Inc., application is rejected for failure to meet the threshold requirement of a firm financing commitment.

6. The Written Argument from Respondent, Realty America, Inc. is unpersuasive. First, Realty America, Inc., received proper notice of the hearing as evidenced by the timely submittal of written argument at the November 6, 2007 hearing. Second, although Florida Housing does not require an appraisal as part of the application process demonstrating a firm commitment, the Hearing Officer determined that where a third-party lender references one as part of its commitment, it must be provided during the application process in order for it to meet the firm financing threshold requirement. The Hearing Officer's determination is consistent with Florida Housing's Application Instructions and rules and Realty America's argument, that the ruling was not fair, does not establish grounds to overturn the Hearing Officer's Recommended Order.

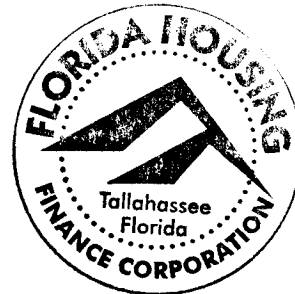
IT IS HEREBY ORDERED that Petitioner's Petition relating to the scoring of Catholic Charities' application for funding under the 2007 FHRP/SHADP for Casa San Juan Bosco, Application No. 2007-001 FHS is DISMISSED; that the Aids Help Inc., application is to be placed in Group

B for failure to adequately demonstrate site control; and the Realty America, Inc., application is rejected for failure to meet the threshold requirement of a firm financing commitment.

DONE and ORDERED this 25th day of January, 2008.

FLORIDA HOUSING FINANCE
CORPORATION

By: Lynn M. Stally
Chairperson



Copies to:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Robert Dearduff
Special Programs Administrator
Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Warren Husband
Metz, Husband & Daughton, P.A.
P.O. Box 10909
Tallahassee, Florida 32302-2909

J. Steve Menton
Rutledge, Ecenia, Purnell & Hoffffman, P.A.
P.O. Box 551
Tallahassee, Fl 32302

Michael Donaldson Bar No. 0802761
Carlton Fields, P.A.
P.O. Box 190
Tallahassee, Fl 32302

Joseph S. Herron
Realty America.Org, Inc.
2040 Highway A1A, #203
Indian Harbour Beach, Fl 32937

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

DESOTO COUNTY HOMELESS
COALITION, INC., and HARDEE
COUNTY HOUSING AUTHORITY,

Petitioners,

vs.

FHFC Case No. 2007-052FHRP

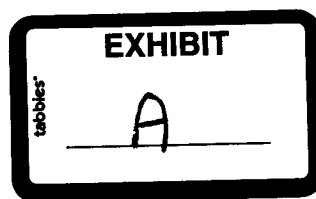
FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**RECOMMENDED ORDER GRANTING MOTION TO DISMISS
PETITION WITH RESPECT TO CATHOLIC CHARITIES'
APPLICATION FOR FHRP FUNDING**

Petitioners, DESOTO COUNTY HOMELESS COALITION, INC., and HARDEE COUNTY HOUSING AUTHORITY, applicants for funding under the Special Housing Assistance and Development Program, filed their Petition for Informal Administrative Proceeding challenging the scoring of Respondent, FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing") of three applications for funding from the Special Housing Assistance and Development

1



Program (“SHADP”) and one application for funding from the Farmworker Housing Recovery Program (“FHRP”). The Respondent Florida Housing has moved to dismiss that portion of the Petitioners’ Petition challenging the scoring of an application submitted on behalf of Catholic Charities Housing of the Diocese of Venice, Inc. (“Catholic Charities”) for funding under the FHRP for a project known as Casa San Juan Bosco targeted to meet the needs of migrant farmworkers in DeSoto County. Catholic Charities and AIDS Help, Inc. (one of the three challenged applicants for funding under the SHADP) joined in Florida Housing’s Motion to Dismiss. Oral argument on the Motion was heard at the commencement of the Informal Hearing convened on November 6, 2007.

The FHRP/SHADP was created by the Legislature in 2006 to address the affordable housing needs of special low income populations impacted by Florida’s 2004 and 2005 hurricane seasons. Pursuant to Section 420.55, Florida Statutes, the Legislature appropriated the sum of \$15 million to Florida Housing for the FHRP/SHADP, and Florida Housing was given emergency rulemaking authority to implement those programs. Emergency Rules 67ER07-01 through 67ER07-10 were adopted by Florida Housing to implement Section 420.55, Florida Statutes. See Florida Administrative Weekly, Vol. 33, No. 16, pages 1834-44 (April 20, 2007). The FHRP is intended to provide housing solutions for migrant farmworkers. Rule

67ER07-05. The SHADP is intended to provide permanent housing solutions for frail elders, persons with a disability, homeless people, youth aging out of foster care and/or victims of domestic violence. Rule 67ER07-06. Florida Housing established a competitive application process in Rule Chapter 67ER07, which incorporates by reference a single application form, and requires applicants to utilize the forms and instructions comprising the Application Package. Rule 67ER07-03(1) and (2).

The Application Form requires applicants to indicate and select only one Program (either the FHRP or the SHADP) when applying for funding. The Application Instructions further reiterate that an application may be submitted for only one of the two programs and that only one application may be submitted for each subject property. Application Instructions, Part II, A. Also see Rule 67ER07-03(12).

As noted above, the Legislature appropriated \$15 million for both the FHRP and the SHADP, without allocating a specific amount for either program. Likewise, Florida Housing's Emergency Rules provide no specific dollar amount allocation with regard to either program. However, the Application Instructions, as well as certain rules regarding funding, do provide guidance and indicate that it was intended that the funds for the two programs be considered separately and not pooled during the scoring process.

Rule 67ER07-08(1) provides that "No funding will be awarded for the 2007

cycle of these Programs until the conclusion of all litigation and appeal proceedings conducted pursuant to Sections 120.569, 120.57, and 120.68, F.S.” Similar language is found in Rule 67ER07-04(4). Those Rules provide that it is only upon the conclusion of such litigation and appeal proceedings that Florida Housing will offer all applicants within the funding range an invitation to enter credit underwriting, which invitation then constitutes a preliminary commitment of the available funds. Under the section of the Application Instructions entitled “Ranking and Selection Criteria,” and in keeping with Rule 67ER07-08(1), the Instructions refer only to an “[a]pplication **tentative** funding order.” (Application Instructions, page 29) With respect to Funding, page 28 of the Application Instructions provides that

(a) Eligible Applications whose Applicants selected and qualified for the Farmworker Demographic Commitment will compete for \$3,000,000 in FHRP funds.

(b) Eligible Applications whose Applicants selected and qualified for the Frail Elders, Homeless, or Persons with Disabilities Demographic Commitment will compete for an estimated \$8,091,515 in SHADP funds.

It thus appears that during the application scoring process, eligible funds for each program remain separate and unencumbered and that it was intended that, for scoring purposes, FHRP applicants would compete only against other FHRP applicants for FHRP funds and SHADP applicants would compete only against other SHADP

applicants for SHADP funds. In other words, the funds for the two programs are not pooled during the scoring process, of which the instant proceeding constitutes a portion thereof.

This result is also made apparent through Florida Housing's Rules 67ER07-05(15) and 67ER07-06(12). Those two rules provide that if funds remain "unencumbered" in a specific Program after two years, or if funds are returned to Florida Housing after a two-year period, they shall be utilized to fund a development in that specific Program or the other of the two Programs or as the Board deems appropriate. In other words, the **possibility** of the pooling of FHRP and SHADP funds, or the award of FHRP funds to SHADP applicants, would occur only after a two year period and only after Florida Housing exercised its discretion to either apply FHRP funds to another FHRP applicant, apply FHRP funds to any SHADP applicant or use FHRP funds in any other manner deemed appropriate by the Board.

Both Petitioners applied for SHADP funding. Catholic Charities applied for FHRP funding. Pursuant to the above-mentioned rules, even if Petitioners were successful in their challenge to the scoring of Catholic Charities' application, the only way Petitioners would be eligible for funding allocated to the FHRP would be to wait two years after the close of the instant litigation and any appeals therefrom for the FHRP funds to become unencumbered, and then "hope" that the Florida Housing's

Board would choose to utilize those FHRP funds for the SHADP program, “hope” that Petitioners’ projects under the SHADP would be chosen for funding over the project of another SHADP applicant, and “hope” that Florida Housing’s Board would not deem it appropriate to utilize the unencumbered FHRP funds in another manner. See Rules 67ER07-05(15) and 67ER07-06(12). This sequence of events and unknown future exercise of discretion on the part of the Board of Florida Housing renders Petitioners’ alleged injury both conjectural and too remote in time for Petitioners to demonstrate their standing to challenge the scoring of Catholic Charities FHRP application. See Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981). Petitioners simply are not unequivocally entitled to FHRP funds, whether or not Catholic Charities’ application was properly scored.

In response to the Motion to Dismiss, Petitioners rely on page 29 of the Application Instructions, at paragraph 6.a.(1)(e), which references the pooling of funds under the two Programs. After careful consideration, it is concluded that that provision applies only to funds which are set aside due to failure to meet the “request limit test” (the requirement that sufficient funds be available to fund at least 75% of an applicant’s request amount). See Application Instruction, p. 28 at paragraph 6.a.(1)(c) and (d).

Petitioners also claim that the above-mentioned paragraph in the Application Instructions is ambiguous, should be resolved in their favor and that, to do otherwise, would unfairly place Petitioners in “the unfortunate role of having to guess at their risk how to resolve any ambiguity inherent in the Corporation rule.” In the first place, the relied upon paragraph (e) on page 29 of the Instructions is not ambiguous, particularly when read in conjunction with the Emergency Rules discussed above. Secondly, Petitioners have not had to “guess at their risk” how to proceed during the application process. The Application form, Instructions and Rules clearly require applicants to choose between the FHRP and the SHADP allocations in seeking funding for their projects. There was simply no “risk” to Petitioners or other applicants arising from having to interpret the purported ambiguity in the Application Instructions.

In summary, Petitioners have failed to demonstrate their standing to challenge the scoring of Catholic Charities’ application for funding under the Farmworker Housing Recovery Program. Accordingly,

IT IS RECOMMENDED THAT a Final Order be entered dismissing that portion of Petitioners’ Petition for Informal Administrative Proceeding relating to the scoring of Catholic Charities’ application for funding under the FHRP for the project denominated as Casa San Juan Bosco.

Respectfully submitted this 28th day of November, 2007.



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

Copies furnished to:

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

Matthew A. Sirmans
Assistant General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

Warren H. Husband, Esq.
Metz, Husband & Daughton, P.A.
P. O. Box 10909
215 S. Monroe St., 5th Floor
Tallahassee, FL 32302-2909

J. Stephen Menton, Esquire
Rutledge, Ecenia, Purnell &
Hoffman, P.A.

215 S. Monroe St., Ste. 420
Tallahassee, FL 32301

Michael P. Donaldson, Esq.
Carlton Fields, P.A.

P. O. Drawer 190
Tallahassee, FL 32302-0190

NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

In accordance with Rule 67ER07-04(3), all parties 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. 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. on December 4, 2007. Submission by facsimile will not be accepted. 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

DESOTO COUNTY HOMELESS
COALITION, INC., and HARDEE
COUNTY HOUSING AUTHORITY,

Petitioners,

vs.

FHFC Case No. 2007-052FHRP

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

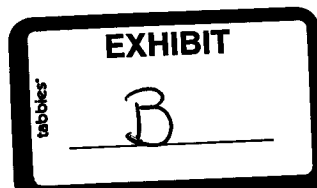
RECOMMENDED ORDER

Pursuant to notice and Sections 120.569 and 120.57(2), Florida Statutes, the Florida Housing Finance Corporation, through its duly designated Hearing Officer, Diane D. Tremor, held an informal administrative hearing in Tallahassee, Florida, in the above-styled case on November 6, 2007.

APPEARANCES

For Petitioners:

Warren Husband
Metz, Husband & Daughton, P.A.
P. O. Box 10909
Tallahassee, FL 32302-2909



For Respondent:

Matthew A. Sirmans
Assistant General Counsel
Florida Housing Finance
Corporation
227 North Bronough Street
Suite 5000
Tallahassee, FL 32301-1329

For Intervenor AHI

Michael P. Donaldson
Carlton Fields, P.A.
P. O. Drawer 190
Tallahassee, FL 32302-0190

For RealtyAmerica.Org, Inc.

No Appearance¹

STATEMENT OF THE ISSUES

The issues in this proceeding are whether the Respondent, Florida Housing Finance Corporation, properly scored the applications of (1) AIDS Help, Inc., with regard to site control, and (2) RealtyAmerica.Org, Inc., with regard to a firm loan commitment.

PRELIMINARY STATEMENT

Petitioners, DESOTO COUNTY HOMELESS COALITION, INC., and HARDEE COUNTY HOUSING AUTHORITY, applicants for funding under the

¹ Although RealtyAmerica.Org, Inc. did not petition to intervene in this proceeding or appear at the hearing, a Response to Petitioners' challenge to the scoring of its application was filed by "Joseph S. Herren, President" and was considered by the undersigned in this case.

Special Housing Assistance and Development Program (“SHADP”), filed their Petition for Informal Administrative Proceeding challenging Florida Housing Finance Corporation’s (“FHFC”) scoring of four applications for funding from the 2007 SHADP and the Farmworker Housing Recovery Program (“FHRP”). With regard to Petitioners’ challenge to the scoring of an FHRP applicant, Catholic Charities Community Development Corp., a Recommended Order of dismissal for lack of standing was entered on November 28, 2007. Accordingly, that application will not be addressed in this Recommended Order.

Petitioners’ Petition also challenged the scoring of an application for a project known as Courtyards of Rockledge. That portion of the Petition was voluntarily dismissed since it was determined by FHFC that said application did not meet threshold requirements and the applicant did not challenge that decision.

RealtyAmerican.Org, Inc. (“Realty American”), one of the two remaining applicants whose scoring is being challenged in this proceeding, did not appear at the informal hearing, but, through its’ President, did file a written Response to the Petitioners’ Petition. That pleading has been considered by the undersigned.

At the commencement of the informal hearing, Petitioners Desoto County Homeless Coalition, Inc., and Hardee County Housing Authority, Respondent FHFC and Intervenor AIDS Help, Inc., (“AHI”) stipulated to the admission into evidence

of Joint Exhibits 1 through 15. Joint Exhibit 1 is a Prehearing Stipulation by those parties containing stipulated facts and a listing of the Joint Exhibits. That document basically describes the FHRP/SHADP application process, and the scoring of the applications at issue in this proceeding. The Prehearing Stipulation is attached to this Recommended Order as Attachment A, and the facts recited therein, with the exception of those pertaining to Catholic Charities, are incorporated in this Recommended Order. Also received into evidence were FHFC's Exhibits 1 through 3, and Petitioners' Exhibits 1 through 13. Many of Petitioners' exhibits involve scoring decisions by the FHFC in programs and cycles other than the 2007 FHRP/SHADP. These documents were admitted into evidence over the relevancy objections of AHI and FHFC, with the ruling that appropriate weight would be afforded these documents.

Official recognition was taken of FHFC's Emergency Rule Chapter 67ER07, and the FHRP/SHADP Application Form and Application Instructions.

Subsequent to the hearing, Petitioners, Respondent FHFC and Intervenor AHI timely submitted their Proposed Recommended Orders.

FINDINGS OF FACT

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

1. In 2006, the Florida Legislature created the Farmworker Housing Recovery Program (“FHRP”) and the Special Housing Assistance and Development Program (“SHADP”) to address some of the affordable housing needs of special low income populations residing in areas of the state impacted by Florida’s 2004 and 2005 hurricane seasons. See Section 420.55, Florida Statutes. The FHRP is focused on providing housing solutions for farmworkers, especially migrant farmworkers. The SHADP is designed to target persons with disabilities, frail elders and the homeless population. Pursuant to statutory authority, the FHFC adopted permanent emergency rules to implement the FHRP/SHADP. See Emergency Rule Chapter 67ER07. For the purposes of this proceeding, the only program at issue is the SHADP, for which the Petitioners Desoto County Homeless Coalition, Inc. (“Desoto”) and Hardee County Housing Authority (“Hardee”), Intervenor AIDS Help, Inc., (“AHI”) and RealtyAmerica.Org, Inc., (“Reality America”) all filed applications for funding in the 2007 cycle. Each of these applicants received a final score of 52 points, were determined to have met all threshold requirements and were given credit for “site control.”

The AHI Application

2. As a part of its initial application, and in order to demonstrate site control, AHI submitted a Sub-Lease Agreement dated August 22, 2005 between AHI and the

Key West Housing Authority. The Sub-Lease Agreement references a Master Lease and addendum attached as Exhibit "A" and drawings of the 1.25 acre site attached as Exhibit "C." The Sub-Lease provides for a term of 43 years from the date of its execution and further provides that "[t]he parties may extend the term of this Sub-Lease so long as such extension is consistent with the Master Lease and the Key West City Charter." (Petitioners' Exhibit 1)

3. In its preliminary scoring, FHFC determined that the Sub-Lease was not proper evidence of site control because it did not contain a legal description and because the Master Lease referenced in the Sub-Lease was not provided. FHFC further determined that the Sub-Lease, with a 43-year term, did not meet or exceed the applicant's commitment to a 50-year affordability period. (Joint Exhibit 6)

4. No Notices of Possible Scoring Errors (NOPSEs) were filed by Petitioners or other applicants with regard to AHI's application.

5. In response to FHFC's preliminary scoring, and as permitted by rule, AHI submitted as a cure a legal description of the leased premises and the Master Lease and addendum which was referenced in the Sub-Lease. The legal description submitted is not labeled as Exhibit "C." The Master Lease and addendum submitted was not labeled as Exhibit "A" as referenced in the Sub-Lease. AHI did not resubmit the Sub-Lease as a part of its cure documents. The Master Lease is between the Key

West Naval Properties Local Redevelopment Authority and the Key West Housing Authority. The document submitted as a cure does not contain a complete Exhibit 4 referenced in the Master Lease as a "Homeownership Affordability Policy," and it does not appear to include a complete copy of the Addendum, including attachments. The License attached to the Addendum does not include the Exhibits referenced therein. (Joint Exhibit 7)

6. The Master Lease submitted as a cure is dated April 28, 1998, and is for a term of 50 years. There are no provisions for an extension. (Joint Exhibit 7)

7. Petitioner DeSoto submitted a Notice of Alleged Deficiencies ("NOAD") with regard to AHI's cure exhibits submitted to demonstrate site control. While the explanation included with the NOAD claimed that AHI was not entitled to claim an affordability period of 50 years, the basis for such a claim was that the Sub-Lease provides site control for a period of less than 50 years. (Joint Exhibit 8)

8. In its final scoring of the AHI application, the FHFC rescinded the three preliminary scoring comments regarding AHI's demonstration of site control (to wit: no legal description provided, no Master Lease provided and failure of the 43-year Sub-Lease term to meet or exceed the 50-year affordability period to which AHI had committed). Petitioner's NOAD was not considered by FHFC on the ground that "the item addressed in the NOAD was not part of the Cure." FHFC was referring to Part

III.D.5, the “affordability period,” in the application.

9. The subject of “site control” is addressed in Part III.C.2 of the Application form. That form states that “[s]ite Control is not a threshold item, but will be used as a tie breaker item.” It further states that an “[a]pplicant may demonstrate site control” by providing a recorded deed, an executed qualified contract for purchase and sale, a recorded certificate of title or a copy of the fully executed long-term lease.

10. The Application Instructions contain several references to site control. With regard to Part III.C.2, “Evidence of Site Control,” the Instructions do not label that item as a threshold item. Instead, the Instructions state that an applicant “may” demonstrate site control by providing a qualified contract, a deed or certificate of title or a lease. With regard to a lease, the Instructions require that the lease must have an unexpired term that does not expire before the end of the affordability period. The Instructions provide that any attachments or exhibits referenced in any document must be attached to that document and that a legal description of the site must be provided. The Instructions further provide that “[a]pplicants without the required documentation for site control shall be required to have fulfilled such status at time of Invitation to Credit Underwriting by Florida Housing.” (Application Instructions, pages 13 and 14)

11. Pages 26 through 32 of the Application Instructions set forth the ranking

and selection criteria. The Instructions provide, at pages 27 and 28, that if an application “has provided the necessary documentation and is deemed to have demonstrated site control, it will be included in Group A, all other eligible Applications will be included in Group B.” In a section labeled “tie-breakers,” the Instructions provide that tie-breakers will be applied to applications with tied scores, and that, with regard to site control, an application in Group A will receive preference over an application in Group B.

The Realty America Application

12. In order to meet threshold requirements, an applicant must provide documentation reflecting a firm financing commitment. In the preliminary scoring of Realty America’s application, the FHFC determined that it failed to meet threshold regarding its funding commitment for the following reasons:²

Applicant submitted commitment letter from Amsouth [sic] Bank for a construction/permanent loan. The loan commitment is for up to \$864,858 which is inconsistent with the amount listed on the pro forma of \$1,144,153. . . . Therefore, the commitment is not firm. This results in a financing shortfall in the construction and permanent financing of \$1,144,153.

(Joint Exhibit 11)

13. As a cure, Realty American provided a loan commitment letter from

² Other reasons were given, but they are not pertinent to the issues raised and argued in this proceeding.

AmSouth Bank dated July 16, 2007, that describes the “loan amount” as

Up to \$1,144,153 not to exceed the lesser of 30% of loan-to-cost or loan-to-value ratio (based on an evaluation or appraisal as provided in the “Appraisal” paragraph below) (the “LTV”).

The commitment letter further provides that the loan is subject to AmSouth’s receipt of an appraisal. (Joint Exhibit 12) No appraisal was submitted in the cure documentation.

14. Petitioner DeSoto filed a Notice of Alleged Deficiencies (NOAD) contending that the AmSouth Bank commitment letter

states that the loan amount is “up to” \$1,144,153 and is subject to an appraisal that establishes that this amount is not greater than a 30 percent loan to value ratio, a condition which is outside of the control of the applicant. Therefore we do not believe that this can be considered a firm commitment for \$1,444,153 in funding and that the project has a financing shortfall.

(Joint Exhibit 13)

15. In final scoring, FHFC determined that Realty America’s application met threshold requirements, and its former comments regarding a funding commitment were rescinded as a result of the applicant’s cure documentation. No comments were made regarding the NOAD filed by DeSoto.

CONCLUSIONS OF LAW

Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Emergency Rule 67ER07-04, the Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding. Having received identical final scoring as the two challenged applicants (AHI and Realty American), Petitioners' substantial interests are affected by the proposed scoring action of the FHFC, and thus have standing to bring this proceeding.

The issue in this proceeding with respect to the AHI application is whether AHI provided sufficient documentation of site control to enable it to receive a Group A status for purposes of ranking and selection. The issue with respect to the Realty American application is whether a firm financing commitment from AmSouth Bank was demonstrated.

The AHI Application

As a procedural matter, AHI appears to argue that because Petitioners did not file a NOPSE regarding FHFC's preliminary scoring, and because Petitioner's NOAD allegedly raised a different issue than is currently being alleged by Petitioners, AHI's final scoring cannot be adjusted or reduced as a result of this proceeding. For this proposition, AHI relies upon Rule 67ER07-03(10). This argument is rejected. In the first place, there was no need for AHI or any other applicant to file a NOPSE with

regard to AHI's application because the issue of site control had been addressed by FHFC in its preliminary scoring. As evidenced by its title, the purpose of a Notice of Proposed Scoring Error (NOPSE) is to advise FHFC of "possible scoring errors" it has made in evaluating an application. Here, Petitioners, as evidenced by their present challenges to the AHI application, agreed with the preliminary scoring by FHFC with regard to site control. There was no need to file a NOPSE.

Subsection (10) of Rule 67ER07-03 provides that applications may not be rejected or receive a point reduction as a "result of any issues not previously identified in the notices described in subsections (4), (5) and (6) above." Those subsections describe the following three "notices" to applicants: the preliminary scoring by FHFC, NOPSEs filed by other applicants, and FHFC's decision regarding the NOPSEs, along with any other items identified by FHFC to be addressed by the Applicants. The purpose of such notices is to give applicants an opportunity to cure any defects in their initial application through the submission of additional documentation. See Rule 67ER07-03(7). While Rule 67ER07-03(10) refers to "subsections (4), (5) **and** (6)" (emphasis supplied), common sense dictates that the word "and" be understood in the disjunctive. In other words, in order to receive a point reduction or other scoring change in final scoring, an applicant must be previously advised of any deficiency by one of the three notices described in

subsection (4), (5) or (6). Again, there is no reason for a competitor to file a NOPSE when it agrees with the preliminary scoring of the FHFC. Notice of the preliminary scoring by the FHFC affords applicants the opportunity to cure any defects through the filing of additional documentation or information.

AHI appears to also claim and allege that since Petitioner DeSoto's NOAD did not address the same issues as are presently being challenged, AHI's scores may not be reduced or adjusted. This claim is also rejected. In the first place, Petitioner's NOAD did address issues concerning site control. More importantly, the prohibition against point reductions is only directed to issues not identified in preliminary scoring, a NOPSE or FHFC's decision regarding the NOPSE. Once the application process reaches the stage where a NOAD may be filed, there is no longer any opportunity for an applicant to submit further documentation to the FHFC. Thus, the actual substance of a NOAD has nothing to do with the ability of FHFC to change its scoring as a result of an insufficient cure of deficiencies previously noted in preliminary scoring.

In any event, AHI was notified of the defects with regard to site control through FHFC's preliminary scoring, and AHI was given the opportunity to cure those defects. Whether it did so is the issue for determination in the instant proceeding. The three issues raised by FHFC in preliminary scoring with regard to

site control were lack of documentation providing a legal description of the leased premises, the failure to submit the Master Lease and addendum referenced in the Sub-Lease, and the failure of the Sub-Lease, with its term of 43 years, to meet the 50 year affordability period committed to by AHI.

With regard to the legal description of the leased property, the Application Instructions, at page 13, provide that “a legal description of the Development site must be provided behind a tab labeled “**Exhibit 13.**” It does not appear that the Sub-Lease contained or had as an attachment an actual written legal description of the property. Instead, “drawings” were attached to the Sub-Lease as Exhibit “C.” As a cure, AHI submitted a document containing a legal description of the property. That legal description was not part of Exhibit “C” or any other attachment to the Sub-Lease. Accordingly, contrary to the claims of Petitioners, it was not necessary to have the legal description provided as a cure labeled as an exhibit to the Sub-Lease, nor was it necessary for AHI to resubmit the Sub-Lease as part of its cure. FHFC properly accepted the legal description submitted by AHI as a cure.

AHI’s submission of the Master Lease and addendum as a cure presents a different story. The documents submitted by AHI were obviously incomplete and were not labeled as Exhibit “A” as referenced in the Sub-Lease. The Application Instructions with regard to site control clearly require that any attachments or exhibits

referenced in any document “must” be attached to that document. See Application Instructions, page 13. Moreover, Rule 67ER07-03(7) provides that documents executed by third parties (such as the Master Lease and addendum) must be submitted in their entirety, including all attachments and exhibits. The documents submitted by AHI as a cure do not satisfy those requirements. As noted in the Findings of Fact, certain attachments to the Master Lease and the addendum were either incomplete or entirely missing.

AHI attempts to excuse its lack of compliance with the above-cited rules by contending that it submitted what was provided to it as the Master Lease and addendum, and, since it was not a party to that Master Lease, it had no control over the documentation referenced as attachments. AHI urges that

What was provided as the Master Lease agreement is the Master Lease agreement as that document currently exists and Petitioners provided no evidence to the contrary.

This argument can not be accepted. When a required document submitted as a part of the application is, on its face, incomplete, it is the Applicant’s, not a competitor’s, burden to explain or cure any deficiencies during the cure period. If Applicants could satisfy the requirements of the rules governing the application process by simply claiming that “this is all the documentation I have,” then the rules become meaningless. When AHI chose to submit documentation showing site control in

order to gain an advantage in the ranking and scoring process, it was required to comply with all rules, including the Application Form and Instructions, governing the documentation required.

In its initial application, AHI claimed an affordability period of 50 years. (Petitioners' Exhibit 5) Points were awarded to AHI for this commitment. The Sub-Lease submitted by AHI as documentation demonstrating site control is dated August 22, 2005, and has a term of 43 years (or until the year 2048), which term "may" be extended so long as the extension is consistent with the Master Lease and the Key West City Charter. The Master Lease dated April 28, 1998, is a 50-year lease with no provision regarding an extension of that term beyond the year 2048. Thus, both the Sub-Lease and the Master Lease have a remaining life of 41 years. The term of the Sub-Lease "may" be extended only if an extension is consistent with the Master Lease and the City Charter. There is no evidence whether an extension would or would not be consistent with the City Charter. However, an extension of the term of the Sub-Lease (beyond the year 2048) would, on its face, be inconsistent with the Master Lease which would have expired in the year 2048. The affordability period claimed by AHI runs until the year 2057. The Application Instructions clearly provide, at page 14, that if a lease is relied upon to demonstrate site control, said "lease must have an unexpired term that does not expire before the end of the

affordability period . . .” Accordingly, AHI has failed to demonstrate site control through its claimed affordability period of 50 years.

FHFC attempts to justify its acceptance of AHI’s cure documentation on the grounds that, for purposes of the FHRP/SHADP application process, site control was not a threshold requirement, it was considered a tie-breaker item only and applicants did not have to produce any evidence of site control at all as part of their application. Instead, for the FHSP/SHADP program, site control could and would be addressed and resolved in credit underwriting. FHFC claims that it reviewed AHI’s site control documents with the knowledge that AHI could provide further evidence by the time it completed credit underwriting and that it reasonably determined that AHI complied with the instructions and rules when it submitted its cure.

Whether site control is considered a threshold item or a tie-breaker item, it is clear that a demonstration of site control makes the difference between receiving funds and not receiving funds in this competitive application program. True, applicants were not required to demonstrate site control during the application process. However, if they did not do so, they would not receive the ranking of a Group A, which was to be given preference in funding over the Group B ranking given to those who chose not to provide documentation of site control or those who did not adequately provide such documentation. Those applicants who chose to

demonstrate site control in order to receive the preferential Group A ranking were required to submit the documentation required by FHFC's rules, which include the Application Form and the Application Instructions. FHFC does not have the authority to waive those rules merely because site control is considered a tie-breaker item, as opposed to a threshold item. Accordingly, FHFC erred in its determination that AHI demonstrated site control during the affordability period.

The Realty American Application

The loan commitment letter submitted by Realty American as a cure for deficiencies in its originally submitted commitment letter provides for a loan amount of "up to \$1,144,153 not to exceed the lesser of 30% of loan-to-cost or loan-to-value ratio (based on an evaluation or appraisal . . .)." No evaluation or appraisal was submitted as a part of the cure documentation.

Petitioners claim that the loan commitment from AmSouth Bank cannot be considered as a firm commitment because of the words "up to" and the words "not to exceed 30% of loan-to-cost or loan-to-value ratio . . ." The undersigned does not agree that the words "up to" a certain dollar amount negate the firmness of a loan commitment. The words "up to \$1,144,153," standing by themselves, commits the lender to a loan in that amount.

However, that commitment was compromised by the language "not to exceed

the lesser of 30% of loan-to-cost or loan-to-value (based on an evaluation or appraisal as provided in the "Appraisal" paragraph below)the "LTV")." There is simply no way for FHFC to determine from that commitment whether the 30% figure will be greater than or less than \$1,144,153. As such, Realty American has not demonstrated a firm commitment for \$1,144,153. If the 30% condition ends up being less than \$1,144,153, which is the amount stated on the pro forma, Realty American will suffer a financing shortfall. FHFC admits that the loan amount is tied to the evaluation or appraisal, and then claims that the evaluation or appraisal amount would be provided in credit underwriting. That argument misses the point. The firm financing requirement is a threshold requirement which must be met during the application process. (Application Instructions, page 26, paragraph 13) Rule 67ER07-03(14)(b) requires Florida Housing to reject an application if the "applicant fails to achieve the threshold requirements as detailed in these rules, the applicable Application, and Application instructions." Accordingly, an applicant which fails to meet threshold requirements will never get to credit underwriting.

The initial loan commitment letter submitted with the application was not offered into evidence at the informal hearing. Thus, it cannot be known whether the "not to exceed" language was contained therein. However, with respect to the prohibition in Rule 67ER07-003(10) against changing scoring "as a result of any

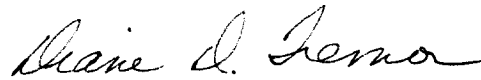
issues not previously identified,” Realty American was placed on notice through FHFC’s preliminary scoring that its loan commitment must match the amount listed on its pro forma of \$1,144,153. Accordingly, it is concluded that the issue of the “not to exceed” language was adequately identified prior to the cure period.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that:

- (1) AHI’s application be placed in Group B for failure to adequately demonstrate site control; and
- (2) Realty American’s application be rejected for failure to meet the threshold requirement of a firm financing commitment.

Respectfully submitted and entered this 10th day of December, 2007.



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

Copies furnished to:

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

Matthew A. Sirmans
Assistant General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

Warren H. Husband, Esq.
Metz, Husband & Daughton, P.A.
P. O. Box 10909
215 S. Monroe St., 5th Floor
Tallahassee, FL 32302-2909

Michael P. Donaldson, Esq.
Carlton Fields, P.A.
P. O. Drawer 190
Tallahassee, FL 32302-0190

Joseph S. Herren, President
RealtyAmerica.Org, Inc.
2040 Highway A1A, #203
Indian Harbour Beach, FL 32937

NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

In accordance with Rule 67ER07-04(3), all parties 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. 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. on December 17, 2007. Submission by facsimile will not be accepted. 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**

**DESOTO COUNTY HOMELESS COALITION, INC.,
and
HARDEE COUNTY HOUSING AUTHORITY,
Petitioners.**

**CASE NO.: 2007-
052FHRP**

v.

**FLORIDA HOUSING FINANCE CORPORATION,
Respondent**

and

CATHOLIC CHARITIES HOUSING OF THE DIOCESE OF VENICE, INC.

Intervener

and

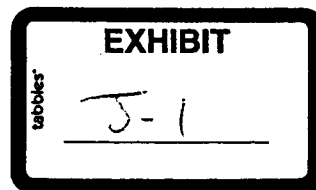
AIDS HELP, INC.

Intervener

PRE-HEARING STIPULATION

Petitioners DeSoto County Homeless Coalition, Inc., and Hardee County Housing Authority ("Petitioners"), Respondent, Florida Housing Finance Corporation ("Florida Housing"), and Interveners, Catholic Charities Housing of the Diocese of Venice, Inc. ("Catholic Charities"), and AIDS Help, Inc. ("AHI"), by and through undersigned counsel, submit this Prehearing Stipulation for purposes of expediting the informal hearing scheduled for 2:00 pm, November 6, 2007, in Tallahassee, Florida, and agree to the following findings of fact and to the admission of the exhibits described below:

ATTACHMENT A



STIPULATED FACTS

1. Petitioner DeSoto County Homless Coalition, Inc., is a not for profit Florida corporation, whose principal address is 1277 S.E. First Ave, Arcadia Florida, 34266, and is in the business of providing affordable rental housing units.

2. Petitioner Hardee County Housing Authority is a Public Housing Authority, whose principal address is P.O. Box 1802, Wauchula, Fl, 33873.

3. Florida Housing is a public corporation, organized to provide and promote the public welfare by administering the governmental function of financing and refinancing housing and related facilities in the State of Florida. (Section 420.504, Fla. Stat.; Rule 67ER07, Fla. Admin. Code).

4. Intervener, Catholic Charities is a Florida not for profit corporation, whose principal address is 1000 Pinebrook Road, Venice, Fl, 34285, and is in the business of providing affordable housing for migrant farmworkers.

5. Intervener, AHI, is a Florida not for profit corporation, whose principal address is 1434 Kennedy Drive, Key West, Fl, 33040 and is in the business of providing affordable housing for disabled individuals.

6. Applicant RealtyAmerica.Org, Inc. ("Realty America"), is a Florida not for profit corporation, whose principal address is 2040 Highway A-1-A, Suite 203, Indian Harbor, Fl, 32937, and is in the business of providing affordable housing for disabled individuals.

7. On or about June 22, 2007, Petitioner DeSoto County applied for a SHADP loan in the amount of \$1,500,000 to finance the construction of Rosene's Success House, a 17-unit garden style apartment complex for the homeless population.

Petitioner Hardee County applied for a SHADP loan in the amount of \$2,645,000 to finance the construction of Chester's Pointe, a 20 -unit single family complex for the frail elderly population.

8. On or about June 22, 2007, Intervener Catholic Charities applied for a FHRP loan in the amount of \$3,000,000 to finance the construction of Casa San Juan Bosco, a 53 unit single family complex for the migrant farmworker population.

9. On or about June 22, 2007, Intervener AHI applied for a SHADP loan in the amount of \$3,000,000, to finance the construction of Homes of Hope of Poinciana Plaza, a 20 unit residential complex for the disabled population.

10. On or about June 22, 2007, applicant Realty America applied for a SHADP loan in the amount of \$3,000,000, to finance the construction of Harbour Arms, a 32 unit garden apartment complex for the disabled population.

11. The FHRP/SHADP was created in 2006 to address some of the affordable housing needs of special low income populations impacted by Florida's recent hurricane seasons. FHRP serves the farmworker populations. Its program requirements are outlined in Rule 67ER07-05, F.A.C. SHADP serves the persons with disabilities, frail elders, and homeless populations. Its program requirements are outlined in Rule 67ER07-06, F.A.C. The FHRP/SHADP program is administered by Florida Housing pursuant to section 420.55, Fla. Stat. Florida Housing established a competitive application process pursuant to Rule Chapter 67ER07, F.A.C., which incorporates by reference an Application and Instructions to the Application. See 67ER07-03, F.A.C. The Instructions, Application, and scoring of the Applications involve the following:

- a. the publication and adoption by rule of an application package;

- b. the completion and submission of applications by developers;
- c. Florida Housing's preliminary scoring of applications;
- d. an initial round of 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 NOPSE's submitted, with notice to applicants of any resulting change in their preliminary scores;
- f. an opportunity for the applicant to submit additional materials to Florida Housing to "cure" any items for which the applicant received less than the maximum score;
- g. a second round of 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 NOAD's submitted, with notice to applicants of any resulting change in their scores;
- i. an opportunity for applicants to challenge, via informal or formal administrative proceedings, the scores arrived at by Florida Housing with respect to an applicant's own application and those of competing applicants; and
- j. final scores, ranking, and allocation of funding to successful applicants as well as those who successfully appeal through the adoption of final orders.

12. Under the 2007 FHRP/SHADP program, Florida Housing has approximately \$5,000,000 in FHRP funds and approximately \$8,000,000 in SHADP funds. Applicants must select only one category when applying for funds. Part II.A.1. of the Instructions. Applicants cannot request both FHRP and SHADP funds.

13. On or about July 11, 2007, Florida Housing issued its Preliminary Scores to the 17 FHRP/SHADP applicants, pursuant to Rule 67ER07-03(4), F.A.C.

14. Florida Housing received no NOPSE's for the 2007 FHRP/SHADP cycle. On August 1, 2007, Florida Housing issued its NOPSE scores to the 17 FHRP/SHADP applicants, pursuant to Rule 67ER07-03(6), F.A.C. As there were no NOPSE's received by Florida Housing, the NOPSE scores were identical to the Preliminary Scores.

15. On or about August 13, 2007, Florida Housing timely received cures from Catholic Charities, AHI, and Realty America to correct deficiencies in their preliminary applications, most of which are not material to the instant case.

16. On or about August 27, 2007, Florida Housing timely received a NOAD in connection with the Realty America application for the 2007 FHRP/SHADP cycle.

17. On or about August 27, 2007, Florida Housing timely received a NOAD in connection with the AHI application for the 2007 FHRP/SHADP cycle.

18. On or about August 31, 2007, Florida Housing completed scoring of the 17 FHRP/SHADP applicants and issued final scores.

19. At the conclusion of the NOPSE, cure review and NOAD processes, Florida Housing awarded the Catholic Charities application a score of 52 points and determined that it met all threshold requirements; awarded the AHI application a score of 52 points and determined that it met all threshold requirements; and awarded Realty America a score of 52 points and determined that it met all threshold requirements.

20. On or about September 24, 2007, Petitioners filed their Petition. The Petition challenges Florida Housing's decision through issuance of final scores, to award Catholic Charities FHRP funding; and AHI and Realty America SHADP funding from the 2007 FHRP/SHADP cycle.

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 Prehearing Stipulation.
- Exhibit J-2: Scoring summary for Application #2007-001 (Catholic Charities) dated July 11, 2007.
- Exhibit J-3: Cure submitted by Application #2007-001 (Catholic Charities) dated August 13, 2007 pertaining to Management Agent Prior Experience Chart.
- Exhibit J-4: Scoring summary for Application #2007-001 (Catholic Charities), dated August 31, 2007.
- Exhibit J-5: p. 6 of the 2007 FHRP/SHADP Application Instructions (Form 2007 FHRSHAD (7-18))
- Exhibit J-6: Scoring summary for Application #2007-003 (AHI) dated July 11, 2007.
- Exhibit J-7: Cure submitted by Application #2007-003 (AHI) dated August 13, 2007 pertaining to Site Control.
- Exhibit J-8: NOAD submitted by Application #2007-006 against Application #2007-003 (AHI)
- Exhibit J-9: Scoring Summary for Application #2007-003 (AHI) dated August 31, 2007
- Exhibit J-10: p. 13-14 of the 2007 FHRP/SHADP Instructions (Form 2007 FHRSHAD (7-18)).
- Exhibit J-11 Scoring Summary for Application #2007-014 (Realty America), dated July 11, 2007.
- Exhibit J-12 Cure submitted by Application #2007-014 (Realty America), dated August 13, 2007, pertaining to Loan Commitment.

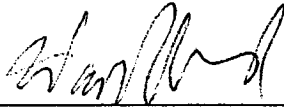
Exhibit J-13 NOAD submitted by Application #2007-006 against Application #2007-014 (Realty America).

Exhibit J-14 Scoring Summary for Application #2007-014 (Realty America), dated August 31, 2007.

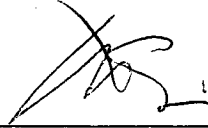
Exhibit J-15 p. 23-24 of the 2007 FHRP/SHADP Instructions (Form 2007 FHRSHAD (7-18)).

The parties also request the Honorable Hearing Officer take official recognition (judicial notice) of Rule Chapter 67ER07, Fla. Admin. Code, as well as the incorporated 2007 FHRP/SHADP Instructions (Form 2007 FHRSHAD (7-18) and Application (Form 67ER07 App).

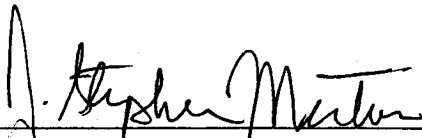
Respectfully submitted this 6 of November, 2007



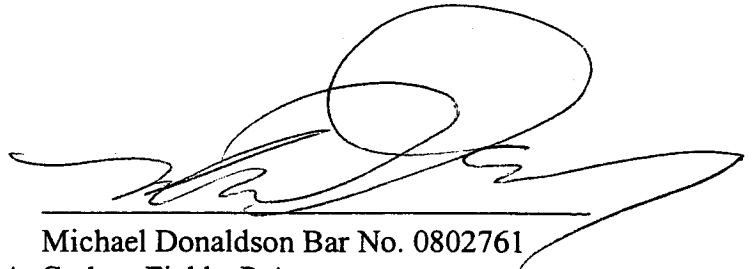
Warren Husband
Fla. Bar No. 0979899
Metz, Husband & Daughton, P.A.
P.O. Box 10909
Tallahassee, Fl 32302-2909
(850) 205-9000 phone
(850) 205-9001 fax



Matthew A. Sirmans Fla. Bar No. 0961973
Assistant General Counsel
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, Fl 32301
(850) 488-4197 phone
(850) 414-6548 fax



J. Steve Menton
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P.O. Box 551
Tallahassee, Fl 32302
(850) 681-6788 phone
(850) 681-6515 fax



Michael Donaldson Bar No. 0802761
Carlton Fields, P.A.
P.O. Box 190
Tallahassee, Fl 32302
(850) 224-1585 phone
(850) 222-0398 fax



The Easy Way Home

December 14, 2007

Florida Housing Financing Corporation
City Center Building Suite 5000
227 N. Bronough Street
Tallahassee, Florida 32301-1329

RE: Written Argument to Recommended Order FHFC Case No. 2007-052-FHRP

Ladies/Gentlemen:

Pursuant to Florida Statutes, the Florida Housing Finance Corporation held an informal administrative hearing in Tallahassee, Florida in the above referenced case on November 6, 2007. The Hearing Officer's Recommended Order is that our "application be rejected for failure to meet the threshold of a firm financing commitment."

In accordance with Rule 67ER07-043(3) RealtyAmerica.Org, Inc. is exercising its right to submit written arguments enclosed herewith. I would like to emphasize that RealtyAmerica has other issues with the Hearing Officer's recommendations, but because of format restrictions including a 5-page limitation, 14-point font, double space, we are unable to address those issues. We are even prevented from making any oral presentations or rebuttal to the board. Even more disturbing is that fact we only became aware of this on December 14, 2007 via regular mail and our response must be filed no later than December 17, 2007.

In our opinion, the Hearing Officer's recommended ruling is contrary to Florida Housing Finance Corporation's written and established procedures. Had these procedures been properly followed, we could have easily cured any valid issues that may have existed in the application. Instead a course of action was taken that effectively prevented us from addressing the issue that was raised concerning validity of a firm financial commitment.

We therefore, respectfully ask you to consider our written response and disregard the Hearing Officer's recommended order.

Respectfully submitted,


Joseph S. Herren, President

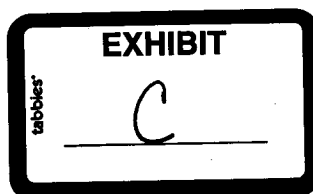
321.777.HOME (4663) | p

321.777.3812 | f

888.708.6005

2040 Hwy. A1A, Ste. 203
Indian Harbour Beach, FL 32937

www.RealtyAmerica.org



December 14, 2007

Florida Housing Financing Corporation
City Center Building Suite 5000
227 N. Bronough Street
Tallahassee, Florida 32301-1329

RE: Written Argument to Recommended Order FHFC Case No. 2007-052-FHRP

Ladies/Gentlemen:

Florida Housing Finance Corporation, held an informal administrative hearing in Tallahassee, Florida in the above styled case on November 6, 2007. The Hearing Officer recommended on the 10th day of December that Realty America's application #2007-014 (SHADP) be rejected for failure to meet the threshold requirement of a firm financing commitment. RealtyAmerica.Org, Inc., (Applicant) hereby submits the following Written Response to the Hearing Officer's Recommended Order.

1. The Hearing Officer agreed with the Petitioners claim that the loan commitment from AmSouth Bank cannot be considered as a firm commitment because of the words "up to" and the words "not to exceed 30% of loan-to-cost or land-to-value ratio..." The Hearing Officer agreed that the words "up to" a certain dollar amount standing by themselves does not negate the firmness of the loan but the firmness of the commitment is compromised by the language 'not to exceed the lesser of 30% loan-to-cost or loan-to value (based on an evaluation or appraisal as

provided in the "Appraisal" paragraph..." In the absence of an appraisal, it was determined that the amount of the commitment cannot be determined.

2. FHFC argued that the "loan amount is tied to the evaluation or appraisal which would be provided in credit underwriting." This is FHFC's established procedure and Realty America relied on this fact. The rule and the instructions pertaining to the application process do not require or even suggest that an appraisal be supplied during the application process. If it is discovered that a project cannot move forward during the underwriting phase for any reason including a funding shortfall, then in that event the underwriting department will notify Florida Housing Board of Directors and the funds will not be awarded. Hearing Officer's assertion that an appraisal is required at application stage rather than during underwriting is contrary to FHFC's established procedure.

3. Part IV of the (SHADP) Application Instructions describes the threshold requirements for financing. According to these instructions, "The Applicant must state the amount of Corporation funding it is requesting in this Application." There is no requirement for non corporation funding. The only requirement is that the sources and uses correspond to all other documents contained in the application. According to Application Instructions, a firm commitment for debt financing must adhere to the following:

A firm commitment shall contain:

- Terms
- specific interest rate of the construction loan specific interest rate of the permanent loan signature of all parties, including acceptance by the Applicant
- a statement that states the commitment does not expire before December 31, 2007, with the exception of Local Government issued tax-exempt bonds.
- In order for a financing commitment to count as a permanent financing source, it must have a term of at least 10 years.

The AmSouth Bank commitment submitted with Application #2007-014 (SHADP) satisfies the threshold requirements and FHFC was correct in scoring this as a firm commitment.

If it is felt that these rules are ambiguous or contradictory then that is something to be addressed by FHC for future applications but Applicant submits that it would it is grossly unfair to change the established rules based upon the interpretation of a Hearing Officer leading up to a final decision by the Florida Housing Board of Directors when the Applicant was in full compliance with these rules.

4. The Recommended Order contained an Exhibit A – Pre-Hearing Stipulation.

This exhibit recited the scoring process used by FHFC. Key elements of this scoring process are as follows:

- a. FHFC's preliminary scoring of eligible applications
- b. An initial round of administrative challenges in which an applicant may take issue with FHFC's scoring of another application by filing Notice of Possible Scoring Error ("NOPSE").
- c. FHFC's consideration of NOPSE's with notice to applicants of any resulting change in their preliminary scores.
- d. An opportunity for the applicant to submit additional materials to FHFC to "cure" any items for which the applicant received less than maximum score.

- e. 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").
- f. FHFC's consideration of the NOAD's submitted, with notice to applicants of any resulting change in their scores.
- g. An opportunity for applicants to challenge, via informal or formal administrative proceedings, the scores arrived at by FHFC with respect to an applicant's own application and those competing applicants.
- h. Final scores, rankings and allocation of funding to successful applicants as well as those who successfully appeal through the adoption of final orders.

5. FHFC's preliminary scoring of Application #2007-014 (SHADP) showed that the AmSouth Construction/Permanent Loan Commitment was for an amount less than what was shown on the Sources and Uses page of the Application submitted by the Applicant resulting in a funding shortfall and a failure to meet threshold.

No other aspects of the commitments were identified by FHFC as failing to meet threshold, just the amount.

6. As a cure, Applicant submitted a revised Construction/Permanent Loan Commitment from AmSouth Bank with the same amount as shown on the Sources and Uses page of the application submitted by the Applicant thereby curing the funding shortfall. No other changes were made to the commitment as no other deficiencies were identified or required by FHFC.

7. According to FHFC's scoring process if any applicant had an issue with FHFC's scoring of this or any other Application it was incumbent upon that applicant to file a NOPSE at this point in time. If a valid NOPSE had been filed for Application #2007-014 (SHADP), Applicant would have been provided the oppor-

tunity to cure those issues and supply additional materials. Since no NOPSE's were filed on this or any other application, Applicant relied on the fact that the failure to meet threshold had been corrected by Applicant and accepted by FHFC.

8. Applicant was notified September 25, 2007 via email from Rob Dearduff, officer at Florida Housing Finance Corporation that a petition had been filed challenging the scoring of Application #2007-014 (SHADP) and that a hearing had been scheduled for Monday, October 1, 2007. This email also noted that the October 1st date was going to be rescheduled for a later date in order to allow the parties more time to respond. Apparently it was rescheduled for November 6, 2007, but Applicant did not receive proper notice and for that reason was not present at the November 6th hearing.

9. Applicant provided a written response which was acknowledged by the Hearing Officer. However Applicant was advised that it could not submit any additional materials at this time. Had the Petitioners properly notified FHFC of a valid issue with the scoring of Application #2007-014 (SHADP) via NOPSE as required by FHFC, then Applicant could have submitted a revised commitment from AmSouth Bank at that time.

10. Therefore, Applicant respectfully requests that the Florida Housing disregard the Recommended Order and award SHADP funding to Applicant from the 2007 cycle.

Respectfully submitted and entered this 14th day of December, 2007.



Joseph S. Herren, President

Realty America.Org, Inc.

2040 Highway A1A, #203

Indian Harbour Beach, FL 32937