

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

SHEPHERD'S COURT, LLC, a Florida
limited liability company

FHFC CASE NO.: 2007-029UC
APPLICATION NO. 2007-076CS

Petitioner,

v.

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 September 21, 2007. On or before April 10, 2007, Shepherd's Court, LLC ("Petitioner"), submitted its 2007 Universal Cycle Application ("Application") to Florida Housing Finance Corporation ("Florida Housing") to compete for funding from the State Apartment Incentive Loan (SAIL) Program and for an allocation from the Low Income Housing Tax Credit Program. Petitioner timely filed its Petition for Informal Administrative Proceedings, pursuant to Sections 120.569 and 120.57(2), Florida Statutes, (the "Petition") challenging Florida Housing's scoring on parts of the Application. An informal hearing was held in this case on August 22, 2007, in Tallahassee, Florida, before Florida Housing's designated

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Sherry Lee /DATE. 9-21-07

Hearing Officer, Diane D. Tremor. Petitioner and Respondent timely filed Proposed Recommended Orders.

After consideration of the evidence, arguments, testimony 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 finding that:

1. Petitioner's application failed to meet the threshold requirement regarding site control, as previously determined in Respondent's final scoring.

RULING ON THE RECOMMENDED ORDER

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

ORDER

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

1. 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.

2. 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 Petitioner's Application is scored as follows:

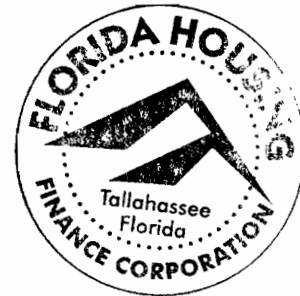
1. Petitioner's application failed to meet the threshold requirement regarding site control, as previously determined in Respondent's final scoring.

IT IS HEREBY ORDERED that Petitioner's Application is rejected for failure to meet the threshold requirement regarding site control, as previously determined in Respondent's final scoring.

DONE and ORDERED this 21st day of September, 2007.

FLORIDA HOUSING FINANCE
CORPORATION

By: *Lynne M. Stultz*
Chairperson



Copies to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

SHEPHERD'S COURT, LLC,
a Florida limited liability company,

Petitioner,

vs.

FHFC CASE NO. 2007-029UC
Application No. 2007-076CS

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, by its duly designated Hearing Officer, Diane D. Tremor, held an informal hearing in Tallahassee, Florida, in the above styled case on August 22, 2007.

APPEARANCES

For Petitioner:

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Miami, FL 33131

For Respondent:

Robert J. Pierce
Assistant General Counsel
Florida Housing Finance Corporation
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Tallahassee, FL 32301-1329

STATEMENT OF THE ISSUE

There are no disputed issues of material fact. The sole issue for determination in this proceeding is whether Petitioner's application met a threshold requirement of demonstrating site control as required by Part III. C. 2 of the 2007 Universal Application Instructions.

PRELIMINARY STATEMENT

At the informal hearing, the parties stipulated to the admission into evidence of Joint Exhibits 1 through 7, and Respondent's Exhibit R-1 was also received into evidence. Joint Exhibit 1 is a Prehearing Stipulation containing Stipulated Facts and a listing of the Joint Exhibits. That document basically describes the application process, and the circumstances regarding the scoring of Petitioner's application with regard to the issue in dispute. The Prehearing Stipulation is attached to this Recommended Order as Attachment A, and the facts recited therein are incorporated in this Recommended Order.

Subsequent to the hearing, the parties timely submitted their Proposed Recommended Orders.

FINDINGS OF FACT

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

1. Along with other applicants, Petitioner, SHEPHERD'S COURT, LLC, submitted its application for financing in Florida Housing's 2007 funding cycle. Petitioner applied for an allocation of Competitive Housing Credits in the amount of \$2,561,000, a SAIL loan in the amount of \$4,000,000 and a Supplemental Loan in the amount of \$680,000 to assist in financing the construction of an 80-unit high rise apartment building in Miami, Florida, to serve the homeless. (Joint Exhibit 1)

2. Among the threshold requirements for all applicants is a demonstration of legal control of the proposed development site. (Joint Exhibit 3) In its initial application, Petitioner submitted no documentation showing site control. Respondent's initial scoring awarded Petitioner the maximum number of total points and tie-breaker points, but found that Petitioner had failed to meet the threshold requirement with respect to a demonstration of site control. (Joint Exhibit 2)

3. The Universal Application Instructions relating to site control (Part III. C. 2) require applicants to demonstrate site control by providing documentation of either (a) a qualified contract, (b) a deed or certificate of title, or (c) a lease. A "qualified contract" is defined in the Application Instructions as:

. . . one that has a term that does not expire before the last expected closing date of October 31, 2007 . . . ; specifically states that the buyer's remedy for default on the part of the seller includes or is specific performance; and the buyer MUST be the Applicant unless a fully executed assignment of the qualified contract which assigns all of the buyer's rights, title and interests in the qualified contract to the Applicant, is provided. . . .

(Joint Exhibit 3, page 27) With respect to a "lease," the Application Instructions require that the lessee be the applicant and that the lease have an unexpired term of 50 years from the Application deadline. (Joint Exhibit 3, page 28)

4. In response to the initial scoring of its application, Petitioner timely submitted documentation intended to cure its threshold failure to demonstrate site control. This documentation consisted of an Assignment dated June 15, 2007, accompanied by a "Certificate" on Florida Department of Environmental Protection letterhead. The documentation also included an "Exchange Agreement" dated September 21, 2006, with four exhibits, and a legal description of the proposed Shepherd Court site. (Joint Exhibits 1 and 5)

5. After receiving a Notice of Alleged Deficiency asserting that the Petitioner's cure documentation was not sufficient to establish site control (Joint Exhibit 6), the Respondent declined to rescind its initial finding that "[t]he Applicant failed to provide any of the required documentation to demonstrate site control." (Joint Exhibit

7) The Respondent further concluded that:

The Applicant attempted to cure Item 1T by submitting a September 19, 2006 Certificate of Approval of the Board of Trustees of the Internal Improvement Trust Fund, a September 21, 2006 Exchange Agreement, and a June 5, 2007 Assignment. As outlined in the 2007 Universal Application Instructions, to demonstrate site control an Applicant must provide a qualified contract, a deed or certificate of title, or a long-term lease. None of the documents provided by the Applicant in its Cure are sufficient to establish site control by any of the means permitted by the Universal Application Instructions.

(Joint Exhibit 7)

6. The June 15, 2007 “Assignment” submitted as part of Petitioner’s cure documentation purports to assign to Petitioner all of the right, title and interest of Camillus House, Inc. in the Exchange Agreement. It further states that the assignee’s rights under the Assignment shall not expire before October 31, 2007. The Assignment is executed only by Camillus House and the Petitioner. (Joint Exhibit 5)

7. The September 21, 2006 Exchange Agreement provides for an exchange of property between the University of Miami and the Board of Trustees of the Internal Improvement Trust Fund (“Board of Trustees”). Paragraph 12 of that Exchange Agreement provides that the closing date shall be “on or before 120 days” after the Board of Trustees’ completion of the donation of a parcel from the FDOT, or, if there are defects in required documentation, within 60 days after receipt of documentation removing the defects. (Joint Exhibit 5) No evidence was offered as to when or if there

was a completion of the donation of the FDOT parcel to the Board of Trustees or when or if there has been a closing regarding the actual exchange of property between the University of Miami and the Board of Trustees.

8. Paragraph 19 of the Exchange Agreement provides that [t]his Agreement may not be assigned without the prior written consent of the other party.” (Joint Exhibit 5) No evidence or documentation was provided by Petitioner that Camillus House, Inc. (the third signatory to the Exchange Agreement) obtained the prior written consent of the University of Miami or the Board of Trustees to its Assignment of rights under the Exchange Agreement to Petitioner, or that those parties were even aware of the Assignment.

9. The Exchange Agreement is executed by the University of Miami (as “First Party”), the Board of Trustees (as “Second Party”) and Camillus House, Inc. (as “Managing Agent”). The only references in the Exchange Agreement to a “managing agency” is with regard to it bearing the sole cost and expense of an environmental site assessment, a current boundary survey and a marketable title insurance commitment. A “managing agent” is also referenced in Paragraph 29 of the Exchange Agreement with regard to conditions precedent, including land use matters relating to “that portion of Parcel One to be managed by Managing Agent.” Camillus House, Inc. is not mentioned in the body of the Exchange Agreement or its Addenda. There is no

reference whatsoever in the Exchange Agreement to a lease to Camillus House, Inc. (Joint Exhibit 5)

10. A direct reference to Camillus House does appear in the “Certificate” on the Florida Department of Environmental Protection’s letterhead. That “Certificate,” signed by “Cynthia Muir, Director, Office of Cabinet Affairs,” explains Item 5 on the September 19, 2006 Board of Trustees Agenda and certifies that the Board of Trustees approved Item 5, identified as “BOT/UM Exchange Agreement/DCF Lease Agreement/Camillus House, Inc. Sublease Agreement/Determination.” This “Certificate,” which was attached as Exhibit A to the Assignment between Camillus House and Petitioner, makes reference to a 60-year lease agreement to the Department of Children and Families and a 60-year sublease agreement to Camillus House, Inc. (Joint Exhibit 5) There was no further documentation presented regarding such a 60-year lease or sublease.

CONCLUSIONS OF LAW

Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Chapters 67-21 and 67-48, Florida Administrative Code, the Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding. The Petitioner’s substantial interests are affected by the proposed action of the Respondent Corporation. Therefore,

Petitioner has standing to bring this proceeding.

The prime issue in this proceeding is whether Petitioner presented sufficient information in its application to demonstrate that it has control over its proposed development site. Stated differently, the issue is whether Petitioner's cure documentation fell within the requirements of the Application Instructions to demonstrate site control by a qualified contract, a deed or certificate of title or a lease, as those documents are defined in the Instructions, which constitute rules of the Respondent Florida Housing Finance Corporation. See rule 67-48.004(1)(a), Florida Administrative Code.

At the time of filing its initial application, Petitioner submitted no documentation evidencing site control. Thus, Petitioner's only opportunity to "get it right" was through its cure documentation submitted prior to the filing of Notices of Alleged Deficiencies and final scoring.

The Application Instructions are clear and unambiguous. They require documentation evidencing either a qualified contract, a deed or certificate of title, or a lease, as those documents are further qualified in the same Instructions. The documents provided by Petitioner do not fall within any of those three categories of permissible evidence of site control.

Petitioner attempted to demonstrate site control through the Assignment from

Camillus House to Petitioner of all of its “right, title and interest in and to” the Exchange Agreement. Obviously, Camillus House could not assign any rights or interest not held by it by virtue of the Exchange Agreement.

The Assignment itself, including the “Certificate” attached thereto, does not constitute a “lease.” Indeed, Petitioner does not claim site control through demonstration of a lease. Instead, Petitioner claims that the Exchange Agreement, to which Petitioner now holds the rights possessed by one its signatories (Camillus House) constitutes a “qualified contract” within the meaning of the Application Instructions. This contention fails for a number of reasons.

The Exchange Agreement provides, *inter alia*, for the exchange of title between the University of Miami and the Board of Trustees to certain real property. Nowhere within that Agreement is there any provision for the conveyance, lease or other transfer of any interest in the real property described in the Agreement to Camillus House. Camillus House is clearly not a “buyer” of any property covered by the Exchange Agreement. Thus, the Exchange Agreement is not a “qualified contract” within the meaning of the Application Instructions, which require, in part, that:

... the buyer MUST be the Applicant unless a fully executed assignment of the qualified contract which assigns all of the buyer’s rights, title and interests in the qualified contract to the Applicant, is provided.

The only reference to Camillus House in the Exchange Agreement is as a managing

agent of a portion of the property. While the Certificate attached to the Assignment makes reference to a lease agreement with the Department of Children and Families and a sublease agreement with Camillus House, from which Petitioner derives any interest in the site under the Assignment, Camillus House is simply not a “buyer” under the Exchange Agreement. Accordingly, the Exchange Agreement does not satisfy the definition of a “qualified contract” under Respondent’s rules. A “qualified contract” only comes into play if an Applicant is purchasing the property. At best, Petitioner’s present interest is as a “managing agent,” and its prospective interest is as a sublessee. In either event, Petitioner can not be deemed a “buyer” of the development site. Accordingly, the only means for Petitioner to have demonstrated site control under Respondent’s rules was to present a lease meeting the qualifications in the rules. No lease or sublease was presented by Petitioner during the application process.

Under Respondent’s rules, a “qualified contract” must have a term that does not expire before October 31, 2007. (Joint Exhibit 3) The Exchange Agreement makes no reference to an October 31, 2007 termination date. Instead, it provides that closing shall take place 120 days after the Board of Trustees’ completion of the donation of a parcel from the Florida Department of Transportation. Accordingly, no ascertainable term or closing date can be determined, and no evidence was presented that the term

or closing date had not already occurred or will occur before the October 31, 2007 date. For this reason alone, the Exchange Agreement fails to meet the requirements of a “qualified contract” under Respondent’s rules.

While the Assignment states, at paragraph 5, that the “[a]ssignee’s rights under this Assignment shall not expire before October 31, 2007,” the assignee’s rights are only those contained within the Exchange Agreement. The Assignment cannot amend or modify the Exchange Agreement. It is the Exchange Agreement itself which must satisfy the defined elements of a “qualified contract” with respect to its term, and the Exchange Agreement simply does not meet that qualification. Moreover, the Exchange Agreement provides, at paragraph 23, that no modification of its terms is binding unless executed in writing by the parties. The Assignment was not executed by the University of Miami or the Board of Trustees and, therefore, it is not effective to modify or amend any terms of the Exchange Agreement.

Even if the Exchange Agreement did meet the criteria for a “qualified contract” (which it does not), and even if Camillus House were given site control rights under that Agreement (which it was not), it is doubtful that the Assignment by Camillus House to Petitioner is a valid document. The Exchange Agreement provides, at paragraph 19, that it may not be assigned without the prior written consent of the other party. No evidence was provided that either the University of Miami or the Board of

Trustees gave their written consent to the Assignment or were even aware of its existence (thus negating Petitioner's claim of a waiver of the provision requiring written consent). Accordingly, Petitioner failed to demonstrate that any rights under the Exchange Agreement were validly assigned to it. Without the Exchange Agreement, Petitioner is left with no colorable basis for demonstrating site control.

Petitioner claims that the Respondent, Florida Housing Finance Corporation, which was not a party to the Exchange Agreement, may not object to the Assignment based on the failure to obtain written consent of the parties to the Exchange Agreement. Typically, a litigant, such as Florida Housing in this proceeding, must assert only its own legal rights and cannot base a claim on the legal rights or interests of a third party (such as the University of Miami or the Board of Trustees). However, as pointed out by the Petitioner itself, there are certain exceptions to this rule; one of which is that the litigant has or will suffer an injury in fact. See Alterra Healthcare Corporation v. Estate of Shelley, 827 So.2d 936 (Fla. 2002).

Here, Florida Housing is being asked to facilitate various loans and tax credits to Petitioner which, combined, amount to over \$7.2 million. If the Assignment is not valid, Petitioner has no rights or interest in the property upon which it proposes to construct its development. Florida Housing would, indeed, suffer injury in fact if it allocated over \$7.2 million for a project which can not legally come into existence due

to a lack of site control on the part of the Applicant.

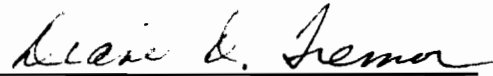
The undersigned has considered the case of New Arena Square North & South, Ltd. v. Florida Housing Finance Corporation, 744 So.2d 1259 (Fla. 1st DCA 1999), relied upon by Petitioner during oral argument, and finds it to be distinguishable from the facts in the instant proceeding.

In summary, Petitioner has failed to demonstrate site control through a qualified contract, a deed or certificate of title, or a lease. Under Respondent's rules, Petitioner failed to meet a threshold requirement and Respondent correctly so determined in its final scoring.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law stated herein, it is RECOMMENDED that a Final Order be entered finding that Petitioner's application failed to meet the threshold requirement regarding site control, as previously determined in Respondent's final scoring.

Respectfully submitted this 6th day of September, 2007.



DIANE D. TREMOR
Hearing Officer for Florida Housing
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NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

In accordance with Rule 67-48.005(3), Florida Administrative Code, 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 September 11, 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**

SHEPHERD'S COURT, LLC,
a Florida limited liability company

Petitioner,

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FHFC CASE NO.: 2007-029UC
Application No. 2007-076CS

FLORIDA HOUSING FINANCE
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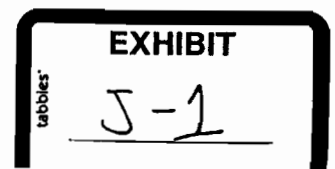
JOINT STIPULATION OF FACTS AND EXHIBITS

Petitioner, Shepherd's Court, LLC ("Shepherd's Court"), 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 3:00 pm, August 22, 2007, in Tallahassee, Florida, and agree to the following findings of fact and to the admission of the exhibits described below:

STIPULATED FACTS

1. Shepherd's Court is a Florida limited liability corporation with its address at 150 S.E. Second Avenue, Suite 1202, Miami, Florida 33131, and is in the business of providing affordable rental housing units.

2. 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 Chapter 67-48, Fla. Admin. Code).



3. Florida Housing administers various affordable housing programs including the following relevant to these proceedings:

(a) the Housing Credit (“HC”) Program pursuant to Section 42 of the Internal Revenue Code (IRC) and Section 420.5099, Fla. Stat., under which Florida Housing is designated the Housing Credit agency for the State of Florida within the meaning of Section 42(h)(7)(a) of the IRC and Rule Chapter 67-48, Fla. Admin. Code;¹ and

(b) the State Apartment Incentive Loan (SAIL) Program pursuant to Sections 420.507(22) and 420.5087, Fla. Stat., and Rule Chapter 67-48, Fla. Admin. Code.

4. The 2007 Universal Cycle Application, through which affordable housing developers apply for funding under various affordable housing programs administered by Florida Housing, including the HC Program and the SAIL Program, is adopted as the Universal Application Package or UA1016 (Rev. 3-07) by Rule 67-48.004(1)(a), Fla. Admin. Code, and consists of Parts I through V and instructions.

5. Because the demand for Competitive Housing Credits and SAIL funding exceeds that which is available under the HC Program and the SAIL 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, Fla. Admin. Code. Specifically, Florida Housing’s application process for the 2007 Universal Cycle, as set forth in Rules 67-48.001-.005, Fla. Admin. Code, involves the following:

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

¹ The HC Program awards developers and investors a dollar for dollar reduction in income tax liability through the allocation of tax credits in exchange for development of affordable rental housing units.

- b. the completion and submission of applications by developers;
- c. Florida Housing's preliminary scoring of applications;²
- 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, via informal or formal administrative proceedings, Florida Housing's evaluation of any item for which the applicant was deemed to have failed to satisfy threshold or received less than the maximum score; and
- j. final ranking scores, ranking of applications, and allocation of Housing Credits and SAIL (or other) funding to successful applicants as well as those who successfully appeal through the adoption of final orders.

6. On or about April 10, 2007, Shepherd's Court and others submitted applications for financing in Florida Housing's 2007 Universal Cycle. Shepherd's Court, pursuant to Application #2007-076CS (the "Application"), applied for an allocation of Competitive Housing Credits in the amount of \$2,561,000, a SAIL loan in the amount of

² Certain items in the application are designated threshold items (the failure to satisfy which will result in the rejection of the application), while other items, if satisfied, result in the award of points.

\$4,000,000, and a Supplemental Loan³ in the amount of \$680,000 to help finance the construction of an 80-unit high rise apartment building in Miami, Florida.

7. Shepherd's Court received notice of Florida Housing's initial scoring of the Application on or about May 9, 2007, at which time Florida Housing awarded Shepherd's Court a preliminary score of 66 points out of a possible 66 points, and 7.5 of 7.5 possible "tie breaker" points (awarded for geographic proximity to certain services and facilities). Florida Housing also concluded that the Application failed certain threshold requirements, only one of which is relevant to the instant case, to wit, the threshold failure for site control because Shepherd's Court "failed to provide any of the required documentation to demonstrate site control." (Exhibit J-2)

8. Part III.C.2. of the 2007 Universal Application Instructions is entitled Evidence of Site Control (Threshold). This section of the application instructions provides that an applicant must demonstrate site control by providing the documentation required therein for a "Qualified Contract" or a "Deed or Certificate of Title" or a "Lease." (Exhibit J-3)

9. Following review of NOPSEs, Florida Housing issued its NOPSE scoring summaries on or about of June 6, 2007. (Exhibit J-4) While NOPSEs were filed contesting the initial scoring of the Shepherd's Court Application, none are relevant to these proceedings.

10. On or before June 18, 2007, Shepherd's Court timely submitted its cure materials to Florida Housing to correct the threshold failures noted by Florida Housing in its preliminary scoring of the Application, including documentation intended to cure the

³ With limited exception, Applicants requesting Competitive HC and SAIL who commit to ELI Household set-asides above the minimum threshold requirements may be credited with a Supplemental Loan Amount as provided in Part V.A.1.e. of the Universal Application Instructions.

threshold failure for site control. The site control cure documentation consists of an Assignment dated June 15, 2007, accompanied by Exhibit A (a certificate on Department of Environmental Protection letterhead), Exhibit B (an Exchange Agreement dated September 21, 2006, with its own Exhibits A, B, C and D attached), and Exhibit C (Legal Description, Shepherd's Court Site). (Exhibit J-5)

11. On or before June 26, 2007, a NOAD was filed by a competitor applicant contending that the site control documentation submitted by Shepherd's Court as part of its cure materials was not sufficient to satisfy the threshold requirement for site control. (Exhibit J-6)

12. On or about July 12, 2007, Florida Housing issued its final scoring summary, determining that the Application failed the threshold requirement for site control noting that:

The Applicant attempted to cure Item 1T by submitting a September 19, 2006 Certificate of Approval of the Board of Trustees of the Internal Improvement Trust Fund, a September 21, 2006 Exchange Agreement, and a June 5, 2007 Assignment. As outlined in the 2007 Universal Application Instructions, to demonstrate site control an Applicant must provide a qualified contract, a deed or certificate of title, or a long term lease. None of the documents provided by the Applicant in its Cure are sufficient to establish site control by any of the means permitted by the Universal Application Instructions.

(Exhibit J-7)

13. Along with the final scoring summary Florida Housing provided Shepherd's Court a Notice of Rights, informing Shepherd's Court that it could contest Florida Housing's actions by requesting a hearing.

14. On August 3, 2007, Shepherd's Court timely filed its Petition together with an Election of Rights in which it elected an informal hearing.

15. 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. 3-07).

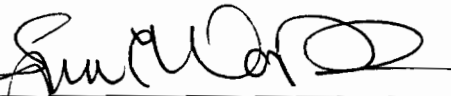
EXHIBITS

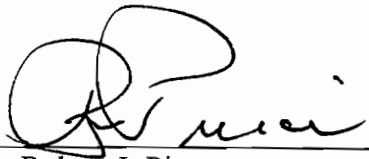
The parties offer the following joint exhibits into evidence and stipulate to their authenticity, admissibility and relevance in the instant proceedings, except as noted below:

- Exhibit J-1: This Joint Stipulation of Facts and Exhibits.
- Exhibit J-2: Preliminary Scoring Summary for Application #2007-076CS (Shepherd's Court) dated May 9, 2007.
- Exhibit J-3: Part III.C.2. of the 2007 Universal Application Instructions entitled Evidence of Site Control (Threshold).
- Exhibit J-4: NOPSE Scoring Summary for Application #2007-076CS (Shepherd's Court) dated June 5, 2007.
- Exhibit J-5: Cure materials submitted by Shepherd's Court regarding Item 1T from Exhibit J-2, comprising a cure coversheet, written explanation of the cure materials, and documentation consisting of an Assignment dated June 15, 2007, accompanied by Exhibit A (a certificate on Department of Environmental Protection letterhead), Exhibit B (an Exchange Agreement dated September 21, 2006, with its own Exhibits A, B, C and D attached), and Exhibit C (Legal Description, Shepherd's Court Site).
- Exhibit J-6: NOAD submitted by Application No. 2007-071C contesting the sufficiency of the site control cure materials submitted by Application #2007-076CS (Shepherd's Court).

Exhibit J-7: Final Scoring Summary for Application #2007-076CS
(Shepherd's Court) dated July 10, 2007.

Respectfully submitted this 22 day of August, 2007.

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