

IN RE: SHEPHERD'S COURT APPLICATION

to FLORIDA HOUSING FINANCE CORPORATION –

APPLICATION #2007-076CS

FHFC Case No: 2007-029UC

PETITION

Shepherd's Court, LLC, a Florida limited liability company, by and through its undersigned counsel hereby submits this Petition and request an evidentiary proceeding and asserts as follows:

1. The name and address of the Agency affected and the Agency's file or identification number are as follows:

Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329
Agency's File or Identification Number: _____

2. Names, addresses and telephone numbers of Petitioner and Petitioner's representative and explanation of how interest will be affected:

- a. Petitioner: Shepherd's Court, LLC.
150 S.E. Second Avenue, Suite 1202
Miami, Florida 33131
Telephone Number: (305) 372-5795
Fax Number: (305) 372-5797
- b. Petitioner's Representative: Holland & Knight LLP
ATTN: Lynn C. Washington, Esq.
701 Brickell Avenue, Suite 3000
Miami, Florida 33131
Telephone Number: (305) 789-7798
Fax Number: (305) 789-7799
- c. The Petitioner submitted an application under the Homeless demographic designation for an allocation of Low Income Housing Tax Credits

("Credits"), for a SAIL Loan and for a Supplemental Loan from the Florida Housing Finance Corporation (the "Agency") from the 2007 Universal Cycle. The Agency found that the Petitioner's Application did not meet the threshold requirements for site control and, therefore did not grant Petitioner an allocation of Credits and did not award a SAIL or Supplemental loan to the Petitioner. Petitioner's interest will be substantially affected by the failure of the Agency to award Petitioner the Credits, the SAIL loan and the Supplemental loan because Petitioner will not be able to develop this Homeless development during its contemplated time schedule if the Credits, the SAIL loan and the Supplement loans are not awarded during the 2007 Universal Cycle.

3. Notification to Petitioner

The Petitioner received notification of the Agency's decision by mail on July 12, 2007.

4. Statement of Disputed Facts

The Agency's position is that the Petitioner's Applicant was rejected because "None of the documents provided by the Petitioner in its Cure are sufficient to establish site control by any of the means permitted by the Universal Application Instructions."

Petitioner submits that the Agency's decision should be rejected for the following reasons:

A. The Agency's position is that none of the individual documents presented by the Petitioner establishes site control. However, the Agency fails to recognized that the

combination of the Exchange Agreement, the Certificate of Approval of the Board of Trustees of the Internal Improvement Trust Fund and the Assignment Agreement executed by Camillus House, when reviewed together, demonstrate site control by the Petitioner.

The documents presented by the Petitioner included a contract, the Exchange Agreement. The instructions do not prescribe a specific form of contract. According to common knowledge and Black's Law Dictionary, a **contract** is a legally binding exchange of promises or agreement between parties that the law will enforce. The Exchange Agreement is a contract.

The instructions to the Universal Application further provide that site control may be established by an assignment of a contract. The Certificate of the Board of Improvement confirms the rights of Camillus House under the contract. And Camillus House, also a signatory to the contract, assigned its rights in the contract to the Petitioner. Therefore, the Petitioner's documents satisfied the requirements of Site control as set forth in the Instructions to the Application.

B. The Agency's determination should also be reversed because the Court has ruled in the past that there may be times when site control is established, even when the documents do not fit neatly within the "boxes" established by the Application. It appears that the Agency is not disputing Petitioner's site control, but rather is taking the position that site control can only be established by the methods set forth in the Instructions to the Application. Petitioner submits that this reading of the rule does not take into account the commercial realities of today's society. The purpose of the Instructions to the Application is to make sure that an applicant has site control, not to reject an applicant that clearly has site control, but has achieved so by another method. If the Agency rejects this position, the Agency must be mindful of a prior case at a time when the site control "boxes" were fewer and the method proving site control

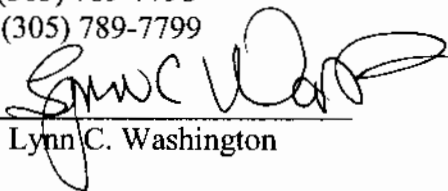
was narrower. In the case of New Arena Square North and South, Ltd v. Florida Housing Finance Corporation, Case No. 98-4128, the applicant in that case presented a certificate of title as evidence of site control. The Agency rejected that application because at that time, site control could be presented only by contract, deed or lease. The method of evidencing site control by a certificate of title was not an acceptable method. The applicant in that case, after it had unsuccessfully exhausted all of its administrative remedies, appealed the decision of the Agency to the District Court of Appeals. The Court of Appeals agreed with the applicant and held that the certificate of title was an acceptable means of proving site control. After the results of this matter, the Agency amended its rules to include a certificate of title as an acceptable method for establishing site control. Petitioner submits that precedent supports its position that the Agency rules must be flexible enough to accept evidence of site control that falls outside the parameters of the then existing "boxes", provided that site control is presented.

5. The rules of the Florida Housing Finance Corporation require reversal of the Agency's position.

6. The Petitioner requests that the Petitioner's Application be treated as having met threshold, that the agency position be reversed and that the Applicant be eligible to participate in the FHFC 2007 Universal Application Cycle for Housing Credits, a SAIL Loan and a Supplemental Loan.

Respectfully submitted:

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By: 
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