

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

POWERS AVENUE APARTMENTS,
LTD. as Applicant for PINE GROVE
APARTMENTS – Application No.
2007-027BS,

Petitioner,

v.

Application No. 2007-027BS

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**PETITION CONTESTING REJECTION OF APPLICATION FOR
FUNDING BY THE FLORIDA HOUSING FINANCE CORPORATION
PURSUANT TO RULES 28-106.201, ET SEQ. OF THE FLORIDA
UNIFORM RULES OF PROCEDURE**

Petitioner, POWERS AVENUE APARTMENTS, LTD., as applicant for PINE GROVE APARTMENTS (“Petitioner”), pursuant to Florida Statutes Sections 120.54(1), 120.569 and 120.57(1), and Rules 28-106.201, *et seq.* of the Florida Uniform Rules of Procedure, hereby submits this Petition to initiate a formal administrative proceeding to contest the decision of Respondent, FLORIDA HOUSING FINANCE CORPORATION (the “Corporation”), to reject the recommendation by the Corporation’s credit underwriter to approve funding for the PINE GROVE project. The grounds for this Petition are as follows:

INTRODUCTION

Parties

1. The agency affected is the FLORIDA HOUSING FINANCE CORPORATION, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

2. This Petition applies to Application No. 2007-027BS filed in the 2007 Universal Cycle.

3. Petitioner, POWERS AVENUE APARTMENTS, LTD., as applicant for PINE GROVE APARTMENTS, is located at 580 Village Boulevard, Suite 360, West Palm Beach, FL 33409. For purposes of this proceeding, Petitioner's address is that of its undersigned attorneys, Robert W. Turken, BILZIN SUMBERG BAENA PRICE & AXELROD LLP, 200 South Biscayne Boulevard, Suite 2500, Miami, Florida 33131-5340, Telephone: (305) 374-7580; Facsimile: (305) 374-7593; e-mail: rturken@bilzin.com; and J. Stephen Menton, RUTLEDGE, ECENIA & PURNELL, P.A., Suite 420, 215 South Monroe Street, Tallahassee, FL 32301, Telephone: (850) 681-6788; Facsimile: (850) 681-6515; e-mail: smenton@reuphlaw.com.

Procedural History and Notice of Agency Decision

4. On April 10, 2007, Petitioner submitted Application No. 2007-0027BS seeking funding for the PINE GROVE APARTMENTS under the State of Florida's Multifamily Mortgage Revenue Bonds Program (the "MMRB Program") and State Apartment Incentive Loan Program (the "SAIL Program") for large counties in the 2007 Universal Cycle (the "PINE GROVE Application").

5. As discussed below, the Corporation received the PINE GROVE Application along with multiple competing applications as part of the Corporation's 2007 Universal Cycle. On July 12, 2007, the Corporation promulgated its final scores in respect of the 2007 Universal Cycle, and on September 21, 2007 the Board of Directors of the Corporation approved the final rankings for all the applications submitted.

6. The final rankings included PINE GROVE in the funding range for both the MMRB and SAIL Programs, and, pursuant to the Corporation's rule regarding Credit Underwriting and Loan Procedures—Rule 67-48.0072 (the "Credit Underwriting Rule")—the PINE GROVE project was entered into credit underwriting.

7. In accordance with the Corporation's Credit Underwriting Rule, the Credit Underwriter selected by the Corporation evaluated the project based on the

criteria set forth in the Rule. On October 28, 2008, the Credit Underwriter issued its final credit underwriting report, recommending full funding for PINE GROVE under the MMRB Program and the SAIL Program.

8. On October 31, 2008, the credit underwriting report was presented to the Board of Directors of the Corporation for approval, and the Board of Directors voted to reject the Credit Underwriter's recommendation to fund the PINE GROVE project.

9. On November 21, 2008, Petitioner received a letter from the Corporation which provided Petitioner with formal notice of the Corporation's decision to reject the recommendation of the Credit Underwriter to fund the PINE GROVE project. This Petition challenging that decision is timely filed.

Explanation of Substantial Interests Affected

10. As a result of the Corporation's improper rejection of the Credit Underwriter's recommendation to fund the PINE GROVE project, Petitioner has been denied funding it is entitled to under the MMRB Program and the SAIL Program. Further, Petitioner incurred significant costs in reliance on the Corporation's Rules, including the 2007 Universal Cycle Application Instructions, and the scoring and ranking of applications in the 2007 Universal Cycle which concluded PINE GROVE was eligible for funding. In reliance on the Corporation's

existing rules and instructions, Petitioner expended \$3,221,680 in connection with the PINE GROVE project, including the purchase of the property on which the PINE GROVE project is to be built.

STATEMENT OF ULTIMATE FACTS
ENTITLING PETITIONER TO RELIEF

11. The Corporation's rejection of the recommendation of the Credit Underwriter to fund the PINE GROVE project was improper procedurally and unwarranted factually. The Corporation's decision was in error for the following reasons:

- (a) The Corporation had no authority in law or basis in fact to reject the Credit Underwriter's recommendation to fund PINE GROVE. The Corporation ignored its own procedures set forth in the Credit Underwriting Rule with respect to its assessment of the Credit Underwriter's report, and disregarded and supplanted the protections built into the 2007 Universal Cycle Instructions for existing projects. The Corporation also improperly disregarded the Credit Underwriter's unrefuted factual support for its recommendation.

- (b) The Corporation's decision to reject the Credit Underwriter's recommendation to fund PINE GROVE was based on the project's supposed financial impact on existing projects that are part of the Corporation's Affordable Housing Guarantee Program. This decision impermissibly violates and contradicts the policies incorporated in the Corporation's 2007 Universal Cycle Instructions. Petitioner was entitled to rely on these Instructions and policies in submitting its application for PINE GROVE in the 2007 Universal Cycle. There was no basis in any statute or rule for the Corporation to apply new policies and standards during its consideration of whether to approve the Credit Underwriter's recommendation to fund PINE GROVE.
- (c) The Corporation's rejection of the Credit Underwriter's recommendation to fund PINE GROVE was improperly based on an unadopted rule, in violation of Florida Statutes Sections 120.54(1) and 120.57(1)(e). The Corporation denied funding to PINE GROVE by applying a new, unpromulgated rule that provides the Corporation with discretion to deny funding to any proposed project that might have a potential adverse financial

impact on an existing project that is part of the Corporation's Affordable Housing Guarantee Program. The unadopted rule was improperly applied to the PINE GROVE Application even though the project was evaluated, scored and ranked in the funding range based on the criteria delineated in the Instructions for the 2007 Universal Cycle. The Corporation was prohibited from relying on the unadopted rule *inter alia* because: (i) the Corporation has not initiated rule-making to expeditiously adopt the rule, (ii) there is no recently enacted statute that directs the adoption of the unadopted rule, (iii) the unadopted rule is vague, lacks adequate standards and vests unbridled discretion in the Corporation, (iv) the unadopted rule is arbitrary and capricious, and (v) the unadopted rule was applied without due notice to Petitioner.

BASES FOR RELIEF

Background

The Application, Scoring and Ranking

12. On April 10, 2007, Petitioner submitted the PINE GROVE Application for funding under the State of Florida's MMRB Program and SAIL Program for large counties in the 2007 Universal Cycle. The MMRB Program and SAIL

Program are administered by the Corporation pursuant to Florida Statutes Section 420.501 *et. seq.* (the “Florida Housing Statute”). As directed by the Florida Housing Statute, the Corporation has promulgated a series of rules establishing an annual competitive scoring and review process for applicants seeking funding under the MMRB Program, SAIL Program and other programs administered by the Corporation. The annual scoring competition is referred to as the Universal Cycle, and is governed by the Corporation’s rules and the application instructions, which have been adopted by reference in the rules and, consequently, have the force, effect and limitations of rules.

13. The location of PINE GROVE is in a portion of Duval County, Florida that was designated by the 2007 Universal Cycle Instructions (the “Instructions”) as a “Set-Aside Location A” area. This designation signified a determination by the Corporation that there was a softness in the market for affordable housing directed at tenants in the income range of 60% Adjusted Medium Income (“AMI”) to 50% AMI, and a need for additional housing for tenants with an income level of 50% AMI and below. The Instructions addressed this concern by establishing as a threshold requirement that all projects located in a Set-Aside Location A area “must commit to set aside at least 50 percent of the Development’s residential units at 50 percent AMI or less.”

14. The Corporation designated the portion of Duval County in which PINE GROVE was located as a Set-Aside Location A area because of its concerns regarding existing projects that are part of the Corporation's Affordable Housing Guarantee Program (the "Duval County Guarantee Fund Projects"). These projects, including, specifically, a project by the name of Leigh Meadows, contained only units set aside for tenants at the 60% AMI level and had experienced reduced occupancy rates for a number of years.

15. Petitioner's PINE GROVE Application met the 50% AMI set-aside requirement for Set-Aside Location A area projects established by the Instructions. Indeed, Petitioner committed to set aside 60% of PINE GROVE's units at 50% AMI and below, with 10% of those units committed at 30% AMI and below.

16. In addition to the general geographic targeting represented by the Set-Aside Location A designation, the Corporation identified for the 2007 Universal Cycle specific existing projects that were under-performing by including them on the FHFC Development Proximity List. Pursuant to the Instructions, an applicant was eligible for "proximity tie-breaker points" depending on the distance of its proposed project from the projects included on the FHFC Development Proximity List.

17. Petitioner made a deliberate and conscious effort to qualify for the maximum proximity tie-breaker points by selecting a proposed site for the PINE GROVE project that was more than five miles away from any project on the FHFC Development Proximity List. None of the Duval County Guarantee Fund Projects was included on the FHFC Development Proximity List.

18. On July 12, 2007, the Corporation completed its scoring and evaluation of the applications in the 2007 Universal Cycle and published its final scores for the 2007 Universal Cycle applications. The final score of Petitioner's PINE GROVE Application included the maximum proximity tie-breaker points. On September 21, 2007, the Board of Directors of the Corporation approved the final rankings for the 2007 Universal Cycle applications. Based on its position in the final rankings, PINE GROVE qualified for the full amount of funding Petitioner requested under both the MMRB and SAIL Programs.

Credit Underwriting

19. Thereafter, pursuant to the Credit Underwriting Rule, PINE GROVE was entered into credit underwriting.

20. Under the Credit Underwriting Rule, a professional credit underwriter is appointed by the Corporation to review each project that qualified for funding as a result of the Universal Cycle scoring competition. The credit underwriter reviews

and assesses numerous financial, demographic and market factors concerning the proposed project. The credit underwriter selected by the Corporation to review PINE GROVE was Seltzer Management Group, Inc. (the “Credit Underwriter”). The Credit Underwriter, in turn, engaged Integra Realty Resources Tampa Bay (“Integra”) to perform the independent appraisal and market study required by the Credit Underwriting Rule.

21. The appraisal and market study performed by Integra analyzed the demographic income distribution of households in the geographic sub-market in which the PINE GROVE project was located and concluded, among other things, that (i) there was an unmet demand in the market for in excess of 5,000 affordable housing units, and (ii) PINE GROVE’s 168 units would only capture approximately 3.3% of that unmet demand. The appraisal and market study further determined that the overwhelming majority of the unmet demand for affordable housing units—approximately 70%—was comprised of households in the 50% AMI and below income band that was the primary target of the PINE GROVE project.

22. As part of the underwriting process, Paragraph 10 of the Credit Underwriting Rule required the Credit Underwriter to consider “the financial impact on Developments in the area previously funded by the Corporation.” The Credit Underwriter complied with this requirement. It observed that PINE GROVE “will

likely have” an unquantified adverse financial impact on the Duval County Guarantee Fund Projects that the Credit Underwriter stated “are currently underperforming and have been for quite some time.” This observation was consistent with the situs of PINE GROVE in a designated Set-Aside Location A area. However, in view of Petitioner’s commitment in compliance with the Instructions’ threshold requirement to set aside 60% of the units at 50% AMI and below, the Credit Underwriter recommended the full funding Petitioner requested for PINE GROVE.

23. On August 25, 2008, the Credit Underwriter issued its draft underwriting report. Pursuant to Paragraph 23 of the Credit Underwriting Rule, Petitioner was allowed 48 hours after its receipt of the draft report within which to offer comments to the draft report. Because the draft underwriting report recommended approval of funding for PINE GROVE, Petitioner did not submit any comments to the draft underwriting report.

24. The Credit Underwriting Rule further provides that, commencing after the 48-hour period given to Petitioner to submit its comments to the draft underwriting report, the Corporation had an additional 48 hours to offer its comments, if any, to the draft underwriting report. The Corporation also did not submit any comments to the draft underwriting report.

25. In order to allow an applicant the opportunity to respond to comments submitted by the Corporation to a draft underwriting report, the Credit Underwriting Rule requires a credit underwriter to issue a revised report that incorporates the comments by the applicant and the Corporation that the credit underwriter “deem[s] appropriate.” The Credit Underwriting Rule then gives the applicant 72 hours to respond to the revised credit underwriting report.

26. On September 8, 2008, the Credit Underwriter issued its revised underwriting report. Because neither Petitioner nor the Corporation submitted any comments to the Credit Underwriter’s draft report, the revised credit underwriting report was identical to the draft report, and there was nothing for Petitioner to respond to.

27. On October 28, 2008, the Credit Underwriter issued its final credit underwriting report. Again, there was no substantive change from the initial draft credit underwriting report. The final credit underwriting report was presented to the Corporation’s Board of Directors for its approval at the meeting of the Board on October 31, 2008 (the “Board Meeting”).

The Corporation Staff’s Recommendation and the Board’s Decision

28. Notwithstanding the failure of the Corporation to offer any comments to the draft underwriting report as required by the Credit Underwriting Rule, the

Corporation's Executive Director and staff argued at the Board Meeting that the Board of Directors should reject the Credit Underwriter's recommendation to fund PINE GROVE. The Executive Director and staff based their argument on their concern that PINE GROVE might have an adverse financial impact on the Duval County Guarantee Fund Projects.

29. Significantly, the Corporation had never previously rejected a credit underwriter's recommendation for funding of a proposed project because of the possible financial impact the proposed project might have on an existing project that was part of the Affordable Housing Guarantee Program or which otherwise had been funded by the Corporation. Rather, the Corporation's approach to soft market conditions was limited to (i) its identification of Set-Aside Location A areas, (ii) its establishment of specific threshold set-aside requirements for proposed projects located in a Set-Aside Location A area, and (iii) its inclusion of projects on the FHFC Development Proximity List.

30. The Corporation also did not review or consider any market study that disagreed with the conclusions reached by Integra or the Credit Underwriter, and did not commission or direct any further market analysis. Indeed, the Executive Director acknowledged that the demand for housing at the 50% AMI and below income level that was the focus market of PINE GROVE was very strong. The

Executive Director further conceded that the Duval County Guarantee Fund Projects about which the Executive Director and staff expressed concern did not offer any units at the 50% AMI and below income level.

31. The Duval County Guarantee Fund Projects had been underperforming for a number of years prior to the 2007 Universal Cycle. During those preceding years, the Corporation approved several new projects in the same geographic area. However, when consideration of the PINE GROVE project came before the Board of Directors, the Executive Director and staff told the Board that one of the Corporation's primary policy concerns now must be to protect projects that are part of the Corporation's Affordable Housing Guarantee Program. They stated that the Corporation had discretion to reject any proposed project that might have a potential adverse financial impact on a project that is part of the Corporation's Affordable Housing Guarantee Program.

32. The Board of Directors accepted the position of the Executive Director and staff that the protection of all projects that are part of the Corporation's Affordable Housing Guarantee Program should be a primary policy concern of the Corporation. Thus, notwithstanding that neither the Executive Director nor the staff attempted to quantify what potential financial impact, if any, PINE GROVE might have on the Duval County Guarantee Fund Projects, the Board of Directors acceded

to the Executive Director and staff's advice and rejected the recommendation of the Credit Underwriter to fund PINE GROVE.

The Corporation's Rejection of the Credit Underwriter's Recommendation to Fund PINE GROVE Violates and Contravenes the Credit Underwriting Rule

33. The Credit Underwriting Rule establishes the procedures for credit underwriting. It provides the mechanism for experts designated by the Corporation to perform a comprehensive analysis of the applicant, the proposed development and the market in which the project is located. It also supplies the means by which the applicant and the Corporation can comment on the credit underwriting report and allows the credit underwriter to assess the comments in its final underwriting report to the Board of Directors.

34. The Corporation violated both the substantive and procedural components of the Credit Underwriting Rule by its rejection of the Credit Underwriter's recommendation to fund the PINE GROVE project. The market study that was required by the Credit Underwriting Rule and which the Credit Underwriter engaged Integra to perform revealed a strong demand for affordable housing in PINE GROVE's geographic sub-market, particularly among the 50% AMI and below income level that was the primary target market of PINE GROVE. Indeed, the market study and credit underwriting report showed that PINE GROVE

would only capture 3.3% of the more than 5,000 units of unmet demand for affordable housing in the sub-market.

35. Although the credit underwriting report predicted that the 67 units offered by PINE GROVE at the 60% AMI income level would likely have an unquantified adverse impact on the Duval County Guarantee Fund Projects, this prediction had been assumed, and already taken into consideration, by the Corporation even before Petitioner submitted its application for PINE GROVE in the 2007 Universal Cycle. The geographic sub-market in which PINE GROVE is located was designated a Set-Aside Location A area, and the Corporation had imposed specific threshold set-aside requirements for all applications for projects in that area. The PINE GROVE project's full compliance with those requirements is evidenced by the Corporation's ranking of Petitioner's Application in the funding range for the MMRB and SAIL Programs.

36. Prior to the Board Meeting, the Corporation did not submit any comments to the Credit Underwriter's draft report as required by Paragraph 23 of the Credit Underwriting Rule. Moreover, in their arguments to the Board of Directors that the Credit Underwriter's recommendation should be rejected, the Corporation's Executive Director and staff did not offer a competing market study or any other

market data that refuted the demand analysis included in the credit underwriting report.

37. Instead, the Corporation rejected the detailed factual analysis and recommendations from its own Credit Underwriter based on criteria—the possibility that PINE GROVE in the future might have some unspecified adverse impact on the Duval County Guarantee Fund Projects—that (i) do not exist anywhere in the Credit Underwriting Rule or any other rule of the Corporation, (ii) are impermissibly vague and lack any identified standards, and (iii) vest complete and unbridled discretion in the Corporation.

38. In short, the Corporation disregarded the procedures and requirements of its own Credit Underwriting Rule, and substituted itself as the *de facto* credit underwriter of PINE GROVE.

**The Corporation's Rejection of the Credit
Underwriter's Recommendation to Fund PINE GROVE
Violates and Contravenes the 2007 Universal Cycle Instructions**

39. As previously noted, the proposed site for PINE GROVE was in an area that the Corporation had designated as a Set-Aside Location A area. This designation reflected the Corporation's view that there was a softness in the market for affordable housing directed at tenants in the income range of 60% AMI to 50%

AMI, and that there was a significant unmet demand for housing directed at households with an income level of 50% AMI and below.

40. The Corporation's Instructions thus included the threshold requirement that applicants seeking MMRB and SAIL funding for "a Development located in a Set-Aside Location A with a Demographic Commitment of Family at Part III.D . . . must commit to set aside at least 50 percent of the Development's residential units at 50 percent AMI or less."

41. Petitioner complied with the Set-Aside Location A threshold requirement contained in the Instructions in its application for PINE GROVE. Petitioner committed to set aside 60% of PINE GROVE's units at 50% AMI and below, with 10% of those units committed at 30% AMI and below.

42. Even though Petitioner complied with—indeed exceeded—the Set-Aside Location A threshold requirement for MMRB and SAIL funding set forth in the Instructions, the Corporation nevertheless rejected the Credit Underwriter's recommendation to fund PINE GROVE based on the Corporation's assumption of a possible, unquantified adverse financial impact PINE GROVE might have on the Duval County Guarantee Fund Projects. Notably, the Duval County Guarantee Fund Projects about which the Corporation expressed concern only contained units set aside for tenants at 60% AMI and below income levels, in contrast to PINE GROVE

which set aside 60% of its units for tenants with income levels at 50% AMI and below.

43. In rejecting the Credit Underwriter's recommendation to fund PINE GROVE, the Corporation improperly disregarded its own Instructions. The Universal Cycle Instructions have the force and effect of a rule of the Corporation, and thus the existing 2007 "rule" of the Corporation could not be superseded or modified by an after-the-fact "amendment" of the "rule."

**The Corporation's Rejection of the Credit Underwriter's
Recommendation to Fund PINE GROVE was Based on an Unadopted Rule**

44. Florida Statutes Section 120.57(1)(e) provides that "[a]n agency or administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule." The Corporation's rejection of the Credit Underwriter's recommendation to fund PINE GROVE falls squarely within this proscription.

45. Florida Statutes Section 120.52(20) defines "unadopted rule" as "an agency statement that meets the definition of the term 'rule,' but that has not been adopted pursuant to the requirements of s. 120.54."

46. Florida Statutes Section 120.52(16) defines a "rule" as:

each agency statement of generally applicability that implements, interprets or prescribes law or policy or describes

the procedure or practice requirements of any agency and includes any form which imposes any requirement or solicits any information not specifically required by a statute or by an existing rule. The term also includes the amendment or repeal of a rule. § 120.52(16), FLA. STAT. (2008).

47. The Corporation rejected the Credit Underwriter's recommendation based on the stated policy to allow the Corporation discretion to reject any proposed project that might have a potential adverse financial impact on a project that is part of the Corporation's Affordable Housing Guarantee Program.

48. This "rule" as stated by the Corporation at the Board Meeting has not been adopted through the procedures required by Florida Statutes Section 120.54(1)(a), and is not the subject of current rulemaking initiated by the Corporation. Further, the Corporation cannot point to any statute that authorizes the Corporation to adopt the unadopted rule.

49. In addition, the unadopted rule is vague and lacks any identified standards to assess the financial impact of a proposed project on an existing project that is part of the Affordable Housing Guarantee Program. For example, the unadopted rule does not define what would constitute an adverse financial impact on a project that is part of the Affordable Housing Guarantee Program or give any guidance regarding how that adverse financial impact might be determined.

50. The absence of any identified standards in the unadopted rule, by definition, vests in the Corporation unbridled discretion to assess the financial impact of a proposed project on an existing project that is part of the Affordable Housing Guarantee Program. As demonstrated by the application of the unadopted rule to PINE GROVE, the unadopted rule allows the Corporation to deny funding to a proposed project simply because the Corporation believes that there might be some financial impact on an existing project in the future without any need to quantify what that impact might be.

51. Finally, the unadopted rule was applied to Petitioner without any notice. The unadopted rule had never been applied previously in the history of the Corporation, and was revealed for the first time after the Credit Underwriter issued its credit underwriting report.

DISPUTED ISSUES OF FACT

52. Disputed issues of fact in this proceeding include, but are not limited to, the following:

- (a) Whether the Corporation violated the Credit Underwriting Rule by its rejection of the factual analysis and recommendations from its own Credit Underwriter without having offered any comments to the draft credit underwriting report;

- (b) Whether the Corporation violated the Credit Underwriting Rule based on criteria—the possibility that PINE GROVE in the future might have some unspecified adverse impact on existing projects—that do not exist anywhere in the Credit Underwriting Rule or any other rule of the Corporation;
- (c) Whether the Corporation disregarded the procedures and requirements of its own Credit Underwriting Rule, and substituted itself as the *de facto* credit underwriter of PINE GROVE, without the adoption of a rule that allowed it to do so;
- (d) Whether there is inadequate demand for affordable housing in PINE GROVE’s geographic sub-market, particularly among the 50% AMI and below income level that was the primary target market of PINE GROVE;
- (e) Whether the Corporation’s approach to soft market conditions was limited to its identification of Set-Aside Location A areas and its inclusion of projects on the FHFC Development Proximity List;
- (f) Whether the Corporation addressed the reduced occupancy rates of the Duval County Guarantee Fund Projects and the potential adverse financial impact that proposed projects might have on the

Duval County Guarantee Fund Projects by the designation of PINE GROVE's geographic submarket as a Set-Aside Location A area;

- (g) Whether PINE GROVE's compliance with the threshold set-aside requirements imposed by the Instructions for proposed projects in a designated Set-Aside Location A area precludes the Corporation from denying funding to the project based on the potential adverse financial impact it might have on the Duval County Guarantee Fund Projects;
- (h) Whether the Corporation's failure to include any of the Duval County Guarantee Fund Projects on the FHFC Development Proximity List precluded the Corporation from rejecting the Credit Underwriter's recommendation to fund PINE GROVE based on its potential adverse financial impact on the Duval County Guarantee Fund Projects;
- (i) Whether the Corporation's rejection of the Credit Underwriter's recommendation to fund PINE GROVE based on its supposed potential financial impact on existing projects that are part of the Corporation's Affordable Housing Guarantee Program violates the Corporation's 2007 Universal Cycle Instructions and/or

impermissibly modifies the Instructions after the 2007 Universal Cycle applications were filed, scored and ranked;

- (j) Whether the Corporation's decision to reject the Credit Underwriter's recommendation to fund PINE GROVE was based on its concern that PINE GROVE might have an adverse financial impact on the Duval County Guarantee Fund Projects;
- (k) Whether the Corporation's decision to reject the Credit Underwriter's recommendation to fund the PINE GROVE project was based on an unadopted rule that provided the Corporation with discretion to reject the funding of any proposed project that might have a potential adverse financial impact on an existing project that is part of the Corporation's Affordable Housing Guarantee Program;
- (l) Whether the Corporation has initiated rule-making to expeditiously adopt the unadopted rule;
- (m) Whether there is a recently enacted statute that directs the adoption of the unadopted rule;
- (n) Whether the Corporation's decision to reject the Credit Underwriter's recommendation to fund Pine Grove was based on

adequate standards to assess the financial impact of a proposed project on existing projects that are part of the Affordable Housing Guarantee Program or are otherwise funded by the Corporation;

- (o) Whether the absence of standards to assess the financial impact of a proposed project on existing projects that are part of the Affordable Housing Guarantee Program or are otherwise funded by the Corporation vested unbridled discretion in the Corporation to reject the recommendation of the Credit Underwriter; and
- (p) Whether the unadopted rule was applied without due notice to Petitioner.

CONCLUSION

For the reasons set forth above, Petitioner requests the following relief:

- A. That the Corporation forward this Petition to the Division of Administrative Hearings, and that a formal administrative proceeding be held in accordance with Florida Statutes Sections 120.569 and 120.57(1);
- B. That recommended and final orders be issued requiring the approval of the Credit Underwriter's recommendation to fund the PINE GROVE project;

C. That Petitioner be awarded attorneys' fees incurred in connection with the Corporation's use of an unadopted rule as a basis for rejecting the Credit Underwriter's recommendation to fund PINE GROVE; and

D. That Petitioner be awarded such further relief as is deemed just and proper.

Dated this 11th day of December, 2008.

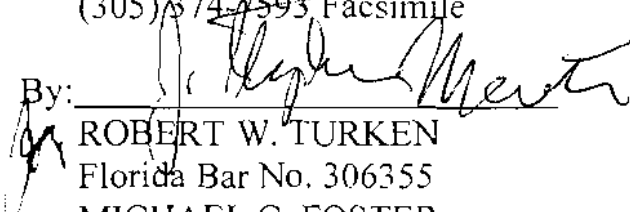
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served via hand delivery this 11th day of December, 2008 upon: Wellington H. Meffert, II, Esq., General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

