STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

RST FRUITLAND HOUSING, L.P.,

Petitioner,

vs. Application No. 2009-045

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

AMENDED PETITION FOR ADMINISTRATIVE HEARING

RST Fruitland Housing, L.P. ("RST"), files this Petition for Administrative Hearing challenging Florida Housing Finance Corporation's ("Florida Housing") actions in rescinding funding awarded to RST to supplement the construction of its proposed affordable housing project. In support of this Petition, RST states as follows:

1. This is a protest filed pursuant to Sections 120.569 and 120.57(1), Florida Statutes ("F.S.") and Rule 28-110.004, Florida Administrative Code ("F.A.C.").

Parties

2. RST is a Florida Limited Partnership. RST's business address is 1750 Valley View Lane, Suite 420, Dallas, TX 75234. For purposes of this proceeding, the Petitioner's address is that of its undersigned counsel.

3. RST is in the business of providing affordable rental housing. RST is a "Developer" as defined by Rule 67-48.002(29), F.A.C. and possesses the requisite skill, experience and credit-worthiness to successfully produce affordable housing in Florida. Through

its affiliated entities, RST routinely submits applications to Florida Housing and tax credit agencies in other states for public financing. RST and its affiliated entities have successfully completed the construction of 29 affordable housing developments and in excess of 3200 units of affordable housing using as a revenue source funds distributed by tax credit housing agencies.

4. The affected agency in this proceeding is Florida Housing whose address is 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. Florida Housing is a public corporation created by Section 420.504, F.S., to administer the governmental function of financing or refinancing affordable housing and related facilities in Florida. Florida Housing's statutory authority and mandates appear in Part V of Chapter 420, Florida Statutes.

Florida Housing's Programs

5. Florida Housing administers numerous programs aimed at assisting developers build affordable housing. These programs include: the Multi-Family Mortgage Revenue Bond Program ("MMRB") established under Section 420.509, F.S.; the State Apartment Incentive Loan Program ("SAIL") created pursuant to Section 420.5087, F.S.; and the Low Income Housing Tax Credit Program (the "Tax Credit program") established in Florida under the authority of Section 420.5093, F.S.

6. These funding sources are allocated by Florida Housing to finance the construction or substantial rehabilitation of affordable housing. A portion of the units constructed based upon funding from these programs must be set aside for residents earning a certain percentage of area median income ("AMI"). For purposes of this Petition, the primary program of interest is the Tax Credit program.

Tax Credits

7. The Tax Credit program was created in 1986 by the federal government. Tax Credits come in two varieties: competitively awarded "9%" tax credits, and non-competitively awarded "4%" tax credits. For the 9% credits, the federal government annually allocates to each state a specific amount of Tax Credits using a population-based formula. Tax Credits are a dollar for dollar offset to federal income tax liability over a ten-year period. A developer awarded tax credits will often sell the future stream of tax credits to a syndicator who in turn sells them to investors seeking to shelter income from federal income taxes.

8. The developer receives cash equity with no debt associated with it. Thus, Tax Credits provide an attractive subsidy and, consequently, are a highly sought after funding source. Florida Housing is the designated agency in Florida to allocate Tax Credits to developers of affordable housing. Every year since 1986, Florida Housing has received an allocation of Tax Credits to be used to fund the construction of affordable housing.

Universal Application

9. Florida Housing has historically allocated funding from the MMRB, SAIL and Tax Credit Programs through a single annual application process. Since 2002, Florida Housing has administered the three programs through a combined competitive process known as the "Universal Cycle." The Universal Cycle operates much the same as an annual competitive bidding process in which applicants compete against other applicants to be selected for limited funding.

10. Florida Housing has adopted rules which incorporate by reference the application forms and instructions for the Universal Cycle as well as general policies governing the

allocation of funds from the various programs it administers. Typically, Florida Housing amends its Universal Cycle rules, forms and instructions every year.

11. The typical process used by Florida Housing to review and approve the Universal Cycle applications operates as set forth in Rule 67-48.004 (F.A.C., 2008), is summarized as follows:

a. Interested developers submit applications by a specified date.

b. Florida Housing reviews all applications to determine if certain threshold requirements are met. A score is assigned to each application. Applications receive points towards a numerical score, based on such features as programs for tenants, amenities of the development as a whole and of the tenants' units, local government contributions to the specific development, and local government ordinances and planning efforts that support affordable housing in general.

c. Florida Housing has built into its scoring and ranking process a series of "tiebreakers" to bring certainty to the selection process. The tiebreakers are written into the Application Instructions which, as indicated above, are incorporated by reference into Florida Housing's rules.

d. After the initial review and scoring, a list of all applications, along with their scores, is published by Florida Housing on its website. The applicants are then given a specific period of time to alert Florida Housing of any errors they believe Respondent made in its initial review of the applications. An appeal procedure for challenging the scores assigned by Florida Housing is set forth in Rule 67-48.005, F.A.C.

e. Following the completion of the appeal proceedings, Florida Housing publishes final rankings which delineate the applications that are within the "funding range" for the various programs. In other words, the final rankings to determine which applications are preliminarily selected for funding. The applicants ranked in the funding range are then invited into the "credit underwriting" process. Credit Underwriting review of a development selected for funding is governed by Rule 67-48.0072, F.A.C. In the Credit Underwriting process, third party financial consultants (selected by Respondent, but paid for by the individual applicants) determine whether the project proposed in the application is financially sound. The independent third party looks at every aspect of the proposed development, including the financing sources, plans and specifications, cost analysis, zoning verification, site control, environmental reports, construction contracts, and engineering and architectural contracts.

f. Subsection (10) of Rule 67-48.0072, F.A.C., expressly requires that an appraisal (as defined by the Uniform standards of Professional Appraisal Practice), and a market study be ordered by the Credit Underwriter, at the Applicant's expense. The Credit Underwriter is required to consider the market study, as well as the Development's financial impact on other developments in the area previously funded by Florida Housing, and make a recommendation as to whether to approve or disapprove a funding allocation.

RST's Application in the 2008 Universal Cycle

12. RST timely submitted an application in the 2008 Universal Cycle seeking an award of Tax Credits and a supplemental loan to construct a 100-unit garden style apartment complex ("Plata Lago") in Fruitland Park, Lake County, Florida.

13. RST complied with all of the requirements of the 2008 Universal Cycle Application and Instructions, and achieved a perfect score for its application. RST also achieved maximum tie-breaker points. As a result, RST was allocated by Florida Housing $1,334,333 in Tax Credits from the 2008 Universal Cycle allocation.

14. Based on the final ranking of its application, RST was invited into the Credit Underwriting process on October 6, 2008 (see Exhibit 1). RST timely accepted the invitation and paid the necessary underwriting fees.

Credit Underwriting

15. Under the Credit Underwriting process, a professional credit underwriter is appointed by Florida Housing to review the proposed project that qualified for funding as a result of the Universal Cycle. The credit underwriter reviews and assesses numerous financial, demographic and market factors concerning the proposed project. The credit underwriter selected by Florida Housing to review the RST application was Seltzer Management Group, Inc. ("Seltzer").

16. As required by the applicable 2008 Universal Cycle Application requirements and rule, the credit underwriting process required the preparation of a Market Study by an independent appraiser. Seltzer engaged Meridian Appraisal Group ("Meridian") to perform an independent appraisal and market study as required by the RFP. This initial Market Study (2008 Study, see Exhibit 2) was issued with the identified purpose defined as follows:

(1) Provide a site analysis for the subject property.

(2) Provide regional and neighborhood analyses for the subject property.

(3) Provide an Apartment Market Overview for the subject market area.

(4) **Provide an evaluation of market demand within the competitive area for affordable rental apartment products.**

(5) **Identify and evaluate the relevant competitive supply of affordable apartments.**

(6) Perform an income band analysis for the subject property based on achievable restricted rents.

(7) Perform a Capture Rate analysis for the subject property as a restricted property, and estimate an absorption rate.

(8) Establish rental estimates for the subject, both as a market rate project and as restricted by the Housing Credit program.

(9) Illustrate the difference between our estimate of the market rental rates and restricted rental rates.

(10) Estimate the impact of the subject project on the existing rental inventory.

(Emphasis added.)

17. In essence, the purpose of the 2008 Study was to provide an "evaluation of market demand within the competitive area." The Study would ultimately provide an occupancy rate for the proposed project which could be considered by the underwriter and Florida Housing in ultimately approving the funding obligation. The evaluation began with the designation of the Primary Market Area ("PMA"). This area was defined by the 2008 Study to include an area radiating out from the project site some 10 miles. The PMA included the jurisdictions of Fruitland Park, Leesburg and Lady Lake.

18. The 2008 Study went on to provide that the "relevant competitive supply of affordable developments," which is based on the initial PMA designation included several

identified affordable housing projects, including Rolling Acres II and Silver Pointe at Leesburg. While other projects, including a project named Lake Point Senior located in Tavares, Florida, some 15 miles away from the Plata Lago proposed site, were mentioned in the study, they were not included for purposes of the final calculation in the PMA. This is because Lake Point Senior was not in the designated PMA. However, had Lake Point Senior been added to the PMA, it had an occupancy rate at the time the Market Study was prepared of 94%.

19. Based on this defined PMA and identified competitive supply of affordable developments, the 2008 Study concludes that an occupancy rate in the mid-90's will be expected for the Plata Lago project. This percentage would not have changed even if Lake Point Senior had been included in the calculation. While there was no bright line test for determining occupancy in the 2008 Universal Cycle, the 2008 Study was deemed acceptable by Seltzer.

Economic Downturn

20. By the fall of 2008, significant changes were taking place in the economic environment and the affordable housing market in particular. Many of the projects that had been awarded funding through the Florida Housing allocation process were encountering difficulties and in many instances were unable to close. By the later part of 2008, it became evident that the market for Tax Credits had precipitously dropped as a result of the changed economic environment.

21. Shortly before RST was to complete the Credit Underwriting process, the syndicator who had originally expressed its intent to purchase the Tax Credits awarded to RST announced that it would not go forward with the syndication. This withdrawal was a direct result of the nationwide downturn in economic conditions.

22. Many other projects that were awarded Tax Credits during the 2007 and 2008 (and later the 2009) Universal Cycles similarly experienced difficulty in finding syndicators to purchase the awarded Tax Credits and, thus, were unable to proceed to closing.

23. In early 2009, in recognition of the collapse of the housing market and the difficulty in marketing Tax Credits, the federal government, as part of its economic stimulus efforts, established mechanisms to assist in the development of affordable housing and offset some of the economic devastation to developers.

ARRA

24. The American Recovery and Reinvestment Act of 2009 ("ARRA") enacted by Congress and signed by the President on February 17, 2009, included specific provisions intended to address the collapse of the Tax Credit market. ARRA gives states the ability to return to the federal government previously awarded Tax Credits that had not been utilized. These Tax Credits are exchanged for a cash distribution of 85 cents for each tax credit dollar returned. The money that is awarded to the states for the return Tax Credits (the "Exchange Funds") is to be used by Florida Housing to fund developers who were unable to syndicate their Tax Credits due to the economic downturn. In other words, the Tax Credits that had not been utilized as a result of the declining economic conditions were allowed to be converted into cash from the federal government to be allocated to developers who were ready to proceed with their affordable hosing projects but for the inability to syndicate their Tax Credits.

25. ARRA also included a direct allocation of funds to state housing finance agencies under the Tax Credit Assistance Program ("TCAP"). These funds were allocated to the states to "resume funding of affordable rental housing projects across the nation while stimulating job creation in the hard-bat construction industry." TCAP is a separate program included as part of

ARRA to provide gap financing for affordable housing projects that have been affected by the economic downturn.

The RFP

26. In response to ARRA, on July 31, 2009, Florida Housing issued RFP 2009-04 (the "RFP," see Exhibit 3) setting forth criteria and qualifications for developers to seek funding for affordable housing projects from money that has been allotted to Florida by the federal government as part of economic stimulus efforts. RST received notice of the RFP through e-mail notification on July 31, 2009. The RFP required applicants to submit proposals to Florida Housing by no later than 2:00 p.m. on August 14, 2009.

27. The RFP solicits proposals from applicants with an "Active Award" of Tax Credits who were unable to close and are seeking alternate funding to construct affordable housing utilizing Exchange Funds from the Tax Credit Exchange Program authorized under Section 1602 of the ARRA.

28. The RFP provides a general description of the type of projects that will be considered eligible for this alternate funding. The RFP also sets forth eligibility criteria that are a precondition to award of an allocation of Exchange Funds and also specifies that projects allocated Exchange Funds will be required to meet new Credit Underwriting standards.

New Occupancy Standards

29. Section 5B.1b. of the RFP states that a tentative funding award under the RFP will be rescinded **"if the submarket of the Proposed Development does not have an average occupancy rate of 92% or greater for the same Demographic population, as determined by a market study ordered by the Credit Underwriter, and analyzed by the Credit Underwriter and Florida Housing staff, as well as approved by the Board."** The RFP does

not define "submarket." Likewise, there was no definition of "submarket" in the rules which governed the 2008 or the 2009 Universal Cycle. The word "submarket" is included in the 2009 Universal Cycle Rule, but it is not defined.

30. The RFP and the 2009 Universal Cycle rules are the first time the phrase "submarket" is used and the first time Florida Housing has attempted to use a bright line 92% occupancy test for purposes of being able to complete underwriting and ultimately obtain funding. Previously, the Market Studies, required and considered, but were not used as a basis to stop the underwriting process or reject an application.

31. RST timely submitted a response to the RFP on August 14, 2009, which sought additional funding for the Plata Lago project. On August 20, 2009, Florida Housing issued a Notice of Awards for RFP #2009-04 (see Exhibit 4). Based on the Notice, RST was one of the responders awarded funds subject to successfully completing the underwriting criteria listed in the RFP. Accordingly, RST was once again invited into credit underwriting (see Exhibit 5). RST timely accepted the invitation into credit underwriting on. By accepting the invitation, RST was required by the credit underwriter to update its Market Study ("2009 Study"). This Second Market Study, which was completed approximately eight months after the 2008 Study, was also prepared by Meridian on July 14, 2009 (see Exhibit 6). Likewise Seltzer was the assigned underwriter

32. A review and comparison of the 2008 and 2009 Studies shows that they are in most respects identical in terms of analysis and review. For example, the 2009 Study again indicates that Fruitland Park, Lady Lake, and Leesburg are included in the PMA which radiates out 10 miles from the Plata Lago project site.

33. However, the 2009 Study introduces a "Competitive Market Area" ("CMA"). CMA is not defined in the 2009 Universal Cycle Rule or RFP 2009-04. Moreover, a delineation of a CMA was not apparently requested by Florida Housing nor was it a requirement in the RFP. A CMA was also not specifically designated in the 2008 Study. The 2008 Study provided an "evaluation of market demand within the **competitive area**." which was an area within the designated PMA. There is no reason to believe that the competitive area established in the 2008 Study should be different in the 2009 Study.

34. As indicated previously, the PMA which apparently included the CMA was considered to only include three projects in the 2008 Study. One of the projects was not considered because it was in "lease up." This left only two projects for consideration. However, the CMA in the 2009 Study is designated as a larger area than the PMA used in either the 2008 or 2009 Study. This is true even though the PMA apparently served as the basis for determining the competitive market in the 2008 and 2009 Study. This is also true even though no new projects opened or came on line in the PMA between November 7, 2008, the date of the first Market Study, and July 14, 2009, the date of the second Market Study.

35. Unlike the 2008 Study, the 2009 Study, without much explanation, includes the Lake Point Senior development located in Tavares, Florida, which is outside of the PMA and some 15 miles away from the proposed Plata Lago site. At the time the second study was prepared, Lake Point Senior had an occupancy rate of 81%, down from the 94% occupancy rate in November of 2008. When Lake Point Senior's 81% rate was added to the previously identified projects, it caused the Plata Lago occupancy percentage to fall below the 92% requirement found in the RFP. Had the projects within the PMA been used in the calculation as was done in the 2008 Study, then the Plata Lago project would have met the requirement.

36. On September 8, 2009, Seltzer issued a letter to Florida Housing concerning the Plata Lago project (see Exhibit 7). In essence, Seltzer in the letter considered the 2009 Market Study and concluded that "the submarket average occupancy rate for the subject does not meet the minimum requirement of 92%."

37. Interestingly enough, the underwriter in the letter confirms to Florida Housing that the additional Lake Point Senior project is not within the identified PMA, but with no further explanation, concludes that it should be part of the calculation because it apparently is now in the "submarket." This conclusion is reached even though the term submarket is not defined or even used in the 2009 Study.

38. The Seltzer letter attempts to address this issue after the fact, asserting that the "CMA and submarket are synonymous." The letter also says, however, that properties located within the PMA establish the baseline for determining the subjects CMA. In other words, logically the CMA and therefore the submarket and the projects included must be the same or smaller than the PMA, which includes the baseline for the CMA. This confusion is in no small part generated by the lack of a definition of "submarket" and leaves total discretion and subjectivity to Florida Housing to define "submarket" or the new CMA as it sees fit with no expressed ability to question that determination.

39. On October 23, 2009, Florida Housing's Board of Directors considered Seltzer's letter and a staff recommendation and voted to rescind funding to RST because of the alleged failure to satisfy the 92% occupancy requirement (see Exhibit 8). This action effectively stopped the underwriting process. No written notice of this action or point of entry language has to date been received by RST. RST's substantial interests have been affected by Florida Housing's

action in that if the requested funding is not obtained, the Plata Lago project will not be constructed.

40. While RST timely filed its Petition here, it also intervened in a challenge to the provisions of the RFP. The challenge specifically involved a review of the 92% occupancy standard. *Elmwood Terrace Limited Partnership v. Florida Housing Finance Corporation*, DOAH, Case No. 09-4682 BID, FHFC Case No. 2009-027GA (Final Order entered December 7, 2009). On November 12, 2009, a Recommended Order was entered which held that the provision of the RFP which requires 92% occupancy is contrary to Florida Housing's governing statutes and rules. In essence, the Administrative Law Judge concluded that Florida Housing is limited to using the 90% occupancy test established at Rule 67-48.0072(10), F.A.C.

41. Florida Housing issued its Final Order on December 7, 2009 which is attached as Exhibit 9. Based on the ruling in the Final Order, Florida Housing has reevaluated the RST Market Study under the provisions of the 2009 Universal Cycle Rule which established a 90% occupancy test, Rule 67-48.0072(10), F.A.C. The rule does not define submarket or explain how a submarket is distinct from a PMA. Florida Housing has concluded that RST's Market Study now indicates a 87% occupancy rate. Accordingly, Florida Housing has not changed its previous position and has not allowed RST to move forward in the underwriting process. (See Exhibit 10.)

42. Florida Housing's action in halting the underwriting process and rescinding the award of ARRA funds is erroneous for several reasons. Initially, as a policy matter, the purpose of the ARRA funds at issue in this proceeding was to inject a stream of revenue into the system so that projects already structured but financially unable to proceed could continue with an eye

toward developing much needed affordable housing. To eliminate a viable project like Plata Lago from the process is inconsistent with that stated policy.

43. Additionally, while neither Florida Housing nor its hired underwriters have specifically defined submarket, they have established by their actions a definition, policy and practice as to what a "submarket" is and it's the same as the PMA or a "sub" market of the PMA.

44. Indeed, Florida Housing and its underwriters have considered at least 25 other projects to determine whether they have met the applicable occupancy requirement. The actions taken and conclusions reached in these other cases is not consistent with the actions taken and conclusions reached in the instant case. For example, in one instance the assigned underwriter determined that **"PMA" is used synonymously with the subject's submarket."** This makes sense given that a "sub" market should be part of the larger PMA. (See *Palafox Landing*, 2009-065 CTX attached as Exhibit 11). In this same letter, the underwriter also concluded that a particular project that was a comparable project should be excluded form the occupancy analysis **"as it is located outside of the subject's PMA."** Had this excluded project been added to the calculation, it is believed that the applicant would not have satisfied the 92% requirement. Clearly as it relates to this *Palafox Landing* applicant, the PMA and submarket were the same and projects not located in the PMA were not to be considered. Had this same reasoning been applied in the instant case, the Plata Lago project would have met the occupancy requirement.

45. In another letter, the underwriter (Seltzer) specifically excluded a project in the submarket with a low occupancy rate because of "management concerns." The excluded property in question had been operating at an occupancy rate of 80% or less for over a year and when added to the calculation, brought this particular project below the 92% requirement (see *Cypress Cove Apartments*, 2009-047 CTX, attached as Exhibit 12). Nonetheless, rather than

adding a project within the identified PMA with a low occupancy rate to the 92% calculation, the underwriter considered more than just the percentage. Indeed, the underwriter also considered why the occupancy rate was so low for the excluded project.

46. In another letter, the underwriter (Seltzer) flatly ignored the calculation of 91.2% in the CMA for comparable farmworker deals and added projects from a different demographic (family) with higher occupancy rates in a clear attempt to satisfy the 92% threshold. Ultimately, Seltzer recommended approval of the project to proceed through credit underwriting. In essence, here Seltzer located an acceptable project within the PMA to add to the calculation so that the 92% threshold could be achieved despite the fact that using a project from a different demographic was not allowed by the RFP. Seltzer here also once again concluded that the properties within the PMA establish the baseline for determining the CMA. In other words, the CMA was not determined to be larger than the PMA (*Orchid Grove Apartments*, 2009-061 CTX, attached as Exhibit 13)

47. In another letter, the underwriter (Seltzer) acknowledges the Market Studies' conclusion that the weighed occupancy rate for the CMA was 91 %. Rather than recommending that the applicant fail the 92% requirement, the underwriter conducted an independent recalculation of the rate based on "updated occupancy data." While not saying where that data came from or what authority it had to use the new data or even indicating what the new calculation was, the underwriter concluded that the new average occupancy rate met the minimum requirement (*Villas at Crowder Ridge*, 2009-046CTX, attached as Exhibit 14).

48. In considering how Florida Housing and its assigned underwriters have interpreted "submarket" in other cases, it is clear that the submarket is synonymous with the PMA. Indeed, in a specific Finding of Fact, the Administrative Law Judge in *Elmwood Terrace*,

found "submarket and primary market are synonymous terms." Florida Housing adopted this Finding of Fact in its Final Order without revision.

49. Further, only projects of the same demographic within the PMA should be considered for determining the calculation for occupancy. Additionally, even if a comparable project within the PMA has a low occupancy rate, consideration as to why the occupancy rate is low can be used to exclude that development from consideration in the occupancy calculation. In every case but one, the underwriter has taken steps to ensure that the 92% rate was met. The one case to date where that has not happened is the instant case.

50. Indeed, in the instant case, a project outside the PMA with an 81% occupancy rate was used in the occupancy calculation for Plata Lago. No investigation was apparently conducted to determine why the occupancy rate was 81% in the 2009 Study when it had been 94% in the 2008 Study. Ironically, the same appraiser and underwriter did not deem it necessary to add the Lake Point project in the 2008 Study when it actually would have helped the Plata Lago percentage. Rather, they deemed it appropriate to add it now when it for all intents and purposes ends any chance of funding. Florida Housing has not acted in a consistent manner or followed its own precedent in finding that the Plata Lago project did not meet the applicable occupancy requirement. Indeed, Florida Housing's actions in this case are arbitrary and capricious.

Disputed Issues of Material Fact and Laws

51. Disputed issues of material fact and law exist and entitle RST to a formal administrative hearing pursuant to Section 120.57(1), Florida Statutes. The disputed issues of material fact and law include, but are not limited to, the following.

a. Whether the proposed actions by Florida Housing in "rescinding" Exchange Funds and TCAP Funds is erroneous, arbitrary or capricious;

b. Whether the actions taken in the instant case are contrary to prior Florida Housing interpretations of the applicable statutes and administrative rules or the RFP;

c. Whether the underwriters were provided appropriate and sufficient criteria for comparison or evaluation of proposals that allow consistent evaluations in calculating the 90% occupancy rate;

d. Whether the RFP or applicable administrative rules adequately disclose the base or grounds upon which Exchange Funds and TCAP Funds will be rescinded for failing the 90% requirement;

e. Whether a submarket and primary market area are synonymous;

f. Whether a submarket can be larger than a primary market area;

g. Whether the use of a newly created competitive market area as a basis for failing to comply with the 90% occupancy requirements constitutes the use of agency policy which has not been adopted by rule.

h. Whether RST has satisfied the 90% requirement;

i. Whether the Lake Point Senior Apartment complex was appropriately considered in the 90% occupancy calculation;

j. Whether Florida Housing or its underwriter, consistent with established precedent, investigated management issues, etc., regarding Lake Point Senior; and

k. Such other issues as may be revealed during discovery and the deposition process.

WHEREFORE, for the reasons set forth above, RST requests that Florida Housing 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). Further, RST requests that recommended and final orders be issued requiring that the Plata Lago project be deemed to have met the 90% requirement. Also, RST requests that it be awarded attorneys' fees incurred in connection with Florida Housing's use of an unadopted rule as a basis for rejecting RST's request for funding.

RESPECTFULLY SUBMITTED this 10th day of February, 2010.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this original has been hand delivered to the Agency Clerk, Florida Housing Finance Corporation, and a copy to Wellington H. Meffert II, General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000 Tallahassee, Florida 32301; this 10th day of February, 2010.

MICHAEL P. DONALDSON