

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

OCDC PALM VILLAGE, L.P.,  
PRESTWICK DEVELOPMENT  
COMPANY, LLC and OKALOOSA  
COMMUNITY DEVELOPMENT  
CORPORATION,

Petitioners,

vs.

FHFC Case No. 2013-042BP  
Application No. 2014-011C

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent,

and

KATIE MANOR, LTD.,

Intervenor.

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**MOTION TO INTERVENE**

Pursuant to Rule 28-106.205, Florida Administrative Code, Intervenor, Katie Manor, Ltd., files this Motion to Intervene in this proceeding and states:

1. Katie Manor, Ltd. ("Katie Manor") is a Florida Limited Partnership authorized to do business in the State of Florida. Katie Manor's address is 3030 Hartley Road, Suite 310, Jacksonville Florida 32257. The telephone number is 904-288-7770.

2. Counsel for Katie Manor and Intervenor's address for this proceeding is:

Douglas Manson, Esq.  
Craig Varn, Esq.  
Manson & Bolves, P.A.  
1101 West Swan Avenue  
Tampa, Florida 33606  
Telephone: 813-514-4700  
Facsimile: 813-514-4701  
Email: [dmanson@mansonbolves.com](mailto:dmanson@mansonbolves.com)  
Email: [cvarn@mansonbolves.com](mailto:cvarn@mansonbolves.com)

Michael G. Maida, Esq.  
Michael G. Maida, P.A.  
1709 Hermitage Blvd., Ste 201  
Tallahassee, Florida 32308  
Telephone: 850-425-8124  
Facsimile: 580-681-0789.  
Email: [mike@maidalawpa.com](mailto:mike@maidalawpa.com)

3. Because the demand for HC funding exceeds that which is available under the HC Program, qualified affordable housing developments must compete for this funding. To assess the relative merits of proposed developments, Florida Housing Finance Corporation (“Florida Housing”) has established a competitive solicitation process.

4. Katie Manor timely submitted an application in response to RFA 2013-001 and was awarded funding by Florida Housing.

5. On December 30, 2013, OCDC Palm Village L.P. (“Palm Village”) filed a Formal Written Protest and Petition for Administrative Hearing challenging Florida Housing’s Final Agency Action. Palm Village’s application was determined to have failed to meet a threshold requirement of financing and, therefore, is not eligible for funding. By its Petition, Palm Village is seeking to change this determination and, if successful, would potentially be eligible for funding.

6. Although Katie Manor’s application scored the same as Palm Village’s application, because Palm Village has a higher lottery number, if successful, Palm Village would take Katie Manor’s place for funding. Therefore, this proceeding affects Katie Manor’s substantial interests and it is entitled to intervene. Attached to this Motion, and incorporated herein by reference, is Intervenor’s Petition for Intervention which explains in more detail Katie Manor’s substantial interests and the issues which will be raised in this matter. See Attachment A.

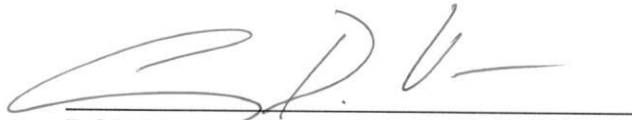
7. Katie Manor supports Florida Housing’s decision that Palm Village’s application failed to meet a threshold requirement of financing and, therefore, is not eligible for funding. Florida Housing’s determination as to Palm Village’s application failing to meet a threshold

requirement of financing is reasonable and consistent with Florida Housing's Request for Applications and applicable rules.

8. The undersigned has conferred with all other parties of record and they have no objection to the motion.

**WHEREFORE**, Katie Manor requests entry of an order granting its Motion to Intervene and accepting the attached Petition for Intervention.

Respectfully submitted this 7th day of January, 2014.




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Tallahassee, FL 32308  
850-425-8124 (phone)  
850-681-6788 (fax)

**CERTIFICATE OF SERVICE**

I certify that true and correct copy of the foregoing has been served by electronic mail on the Agency Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301 ([Della.Harrell@floridahousing.org](mailto:Della.Harrell@floridahousing.org)), Hugh Brown ([hugh.brown@floridahousing.org](mailto:hugh.brown@floridahousing.org)), and Michael P. Donaldson, ([mdonaldson@cfjblaw.com](mailto:mdonaldson@cfjblaw.com)) this 7th day of January, 2014.

  
\_\_\_\_\_  
Craig Varn

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

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**PETITION TO INTERVENE**

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3. Because the demand for HC funding exceeds that which is available under the HC Program, qualified affordable housing developments must compete for this funding. To assess the relative merits of proposed developments, Florida Housing Finance Corporation (“Florida Housing”) has established a competitive solicitation process.

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5. On December 30, 2013, OCDC Palm Village L.P. (“Palm Village”) filed a Formal Written Protest and Petition for Administrative Hearing challenging Florida Housing’s Final Agency Action. Palm Village’s application was determined to have failed to meet a threshold requirement of financing and, therefore, is not eligible for funding. By its Petition, Palm Village is seeking to change this determination and, if successful, would potentially be eligible for funding.

6. Although Katie Manor’s application scored the same as Palm Village’s application, because Palm Village has a higher lottery number, if successful, Palm Village would take Katie Manor’s place for funding. Therefore, this proceeding affects Katie Manor’s substantial interests and it is entitled to intervene.

#### **DEFECTS IN THE PALM VILLAGE APPLICATION**

7. In accordance with the RFA requirements, applicants intending to syndicate/sell housing credits must provide prescribed information as part of their application. Failure to submit this information in accordance with RFA requirements results in Florida Housing not counting this syndication of credits as a source of funding.

8. Applicants are further required to state the amount of equity proceeds that are to be paid prior to construction completion. Specifically, page 14 of the application provides

Construction or Rehab Funding Sources:

[Housing Credit] Equity Proceeds Paid Prior to Completion of Construction which is Prior to Receipt of Final Certificate of Occupancy or in the case of Rehabilitation, prior to placed-in-service date as determined by the Applicant.

9. Palm Village entered \$2,127,118 as the amount of Housing Credits that would be paid prior to receipt of final certificate of occupancy. (See Exhibit "A").

10. In order to be counted as a source of funding, an equity proposal must meet the following criteria if the applicant is syndicating/selling the Housing Credits:

- Be executed by all parties, including the Applicant;
- Include specific reference to the Applicant as the beneficiary of the equity proceeds;
- **State the proposed amount of equity to be paid prior to construction completion;**
- State the anticipated Eligible Housing Credit Request Amount;
- State the anticipated dollar amount of Housing Credit Allocation to be purchased; and
- State the anticipated total amount of equity to be provided.

(RFA 2013-001 @ pg. 36) (Emphasis added).

11. At Attachment 13 to its Application, Palm Village provided an equity proposal in the form of term sheet from Sun Trust Community Capital LLC ("Sun Trust") (see attached Exhibit "B"). The Sun Trust equity proposal fails to provide for adequate funding during construction. Florida Housing properly determined that Palm Village's construction financing was under-sourced and that there was a gap in construction funding.

12. The term sheet provides a list **and timing** of capital contributions to be made by Sun Trust. Although the proposal purports to claim the proposed amount of equity to be paid prior to construction completion is \$2,127,118, this figure is expressly contradicted by the

installment payments listed in the equity proposal. The above figure is made up of two installment payments identified in the proposal as “Capital Contribution #1” and “Capital Contribution #2.”

13. Under “Capital Contribution #1”, the term sheet provides that \$1,160,246 will be paid “prior to or simultaneously with the closing of the Construction Loan/Perm Loan.” (See Exhibit B.)

14. Under the section “Capital Contribution #2,” the term sheet provides that \$966,872 in equity will **not** be paid until all three criteria are satisfied: “1) Final Certificates Of Occupancy on all units by the appropriate authority, 2) certification by [Sun Trust] Construction Inspector that the Project was completed in accordance with the plans and specifications, and 3) acknowledgement by Lender of completion of the Project in accordance with the Project documents.” (See Exhibit B).

15. By its very terms, none of the \$966,872 capital contribution is to be made until after construction is completed.

16. Therefore, the statement that “The proposed amount of equity to be paid prior to construction completion is \$2,127,118” is clearly incorrect as \$966,872 of that total will not be paid until *after* construction is completed. Only \$1,160,246 is identified as the amount to be paid prior to construction completion.

17. When scoring the Application, Florida Housing properly concluded the equity figure of \$1,160,246 was proper amount to be considered as a source of financing during construction, as this is the only identified installment payment to be made prior to construction completion.



18. Florida Housing properly concluded the \$966,872 equity figure could not be considered as a source of financing during the construction phase. By its terms, the equity proposal states that this payment will, among other conditions, not be made until “receipt of final Certificates of Occupancy on all units.” As a result of this gap in funding, the Palm Village has a construction shortfall and therefore did not meet Application/RFA threshold requirements.

19. Katie Manor supports Florida Housing’s decision that Palm Village’s application failed to meet a threshold requirement of financing and, therefore, is not eligible for funding. Florida Housing’s determination as to Palm Village’s application failing to meet a threshold requirement of financing is reasonable and consistent with Florida Housing’s Request for Applications and applicable rules.

**Disputed Issues of Material Fact**

20. Disputed issues of material fact include those matters pled in this petition, and include but are not limited to the following:

- a) Whether Palm Village’s equity proposal fails to provide for adequate funding prior to construction completion;
- b) Whether Palm Village’s equity proposal provides for a commitment of \$1,160,246 to be paid prior to construction completion;
- c) Whether Palm Village’s equity proposal requires that Final Certificates Of Occupancy on all units by the appropriate authority be issued as a condition of paying \$966,872 in housing credit proceeds
- d) Whether as a condition of paying \$966,872 in housing credit proceeds Palm Village’s equity proposal requires that Sun Trust Construction Inspector certify that the Project is completed in accordance with the plans and specifications
- e) Whether as a condition of paying \$966,872 in housing credit proceeds Palm Village’s equity proposal requires acknowledgement by Lender of completion of the Project in accordance with the Project documents;
- f) Whether \$966,872 housing credit proceeds may be considered as a source of prior to completion construction financing;

- g) Whether there is construction funding deficiency in Palm Village application;
- h) Whether the Palm Village application stated the anticipated dollar amount of Housing Credit Allocation to be purchased;
- i) Whether Florida Housing properly determined that Palm Village's construction financing was under-sourced and that there was a gap in construction funding;
- j) Whether, as a result of the information supplied by Palm Village, its application was nonresponsive to RFA 2013-002; and
- k) Whether the Palm Village's application failed to meet a threshold requirement of financing and, therefore, is not eligible for funding.

**Statement of Ultimate Facts and Law**

21. As a matter of ultimate fact Florida Housing Finance Corporation properly determined that Palm Village is not entitled to claim \$966,872 in housing credit proceeds as a source of construction financing.

22. As a matter of ultimate fact Palm Village failed to complete its application in accordance with the competitive solicitation; its application was nonresponsive; and, therefore, its application should not be considered for funding.

23. As a matter of ultimate fact Florida Housing Finance Corporation properly determined that Palm Village's application was not completed in accordance with the competitive solicitation; was not responsive to the RFA; and, was not eligible for funding under the RFA.

24. As a matter of ultimate fact and law, Florida Housing properly determined that Palm Village was ineligible for funding.

**WHEREFORE**, Katie Manor requests entry of an order concluding that Palm Village's application was not completed in accordance with the competitive solicitation; was not responsive to the RFA; and, was not eligible for funding under the RFA.

Respectfully submitted this 7th day of January, 2014.



DOUGLAS MANSON

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Brian Womble  
First Vice President

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Fax 404.230.5534  
brian.womble@suntrust.com

October 1, 2013

OCDC Palm Village, L.P.  
Attn: James Robbins  
Executive Director  
Okaloosa Community Development Corporation  
2014 Cloverdale Blvd  
Fort Walton Beach, FL 32547

Re: **Palm Village, new construction of a 38 unit HTC apartment complex**  
**Location: Villa Palms Circle, at the intersection of Patrick Drive and Villa Palms Circle,**  
**Fort Walton Beach, Okaloosa County, FL**

Dear Mr. Robbins,

This Term Sheet is for discussion purposes only and sets forth general terms and conditions of a proposed equity investment in a Limited Partnership that will construct, develop, own and operate the property described below. This Term Sheet does not represent or imply an offer to invest nor does it limit the terms and provisions that would be set forth in an amended and restated Partnership Agreement and related documents prepared by SunTrust Community Capital, LLC's ("STCC") counsel (the "Project Documents"). No commitment exists until STCC completes all due diligence, underwriting, credit, management and regulatory approvals, and final Project Documents are signed by all respective parties.

**Partnership Name:** OCDC Palm Village, LP, a Florida limited partnership ("Partnership"). The Partnership is the Applicant for RFA 2013-001 to Florida Housing Finance Corporation ("FHFC") and is to be the beneficiary of the equity proceeds.

**Project Name/Description:** Palm Village. New Construction- 38 unit apartment complex with related site amenities, located in Fort Walton Beach, Okaloosa County, Florida (the "Project").

**General Partner:** Community Housing of Okaloosa County, LLC, a Florida limited liability company, is the General Partner. Okaloosa Community Development Corporation, a 501(c)3 not for profit corporation, is the sole member of the GP entity. The General Partner will have a .01% interest in the 1) operating profits and losses, 2) depreciation, 3) Low Income Housing Tax Credits (the "Tax Credits"), and shall have an interest in Cash Flow and proceeds from Capital Transactions as elsewhere described. The General Partner has certain rights and duties as described in the Project Documents and will agree to serve as the sole general partner of the Partnership for the entire Partnership term. All obligations of the General Partner under the Project Documents shall be guaranteed by financially responsible persons or entities acceptable to STCC in its sole discretion.

**Investor Limited Partner:** An affiliate of SunTrust Community Capital, LLC ("STCC") will have a 99.99% limited partner interest in the 1) operating profits and losses, 2) depreciation, 3) Low Income Housing Tax Credits (the "Tax Credits"),

Exhibit B

depreciation, 3) Low Income Housing Tax Credits (the "Tax Credits"), and shall have an interest in Cash Flow and proceeds from Capital Transactions as elsewhere described. The Investor Limited Partner will have certain rights as described in the Project Documents.

**Special Limited Partner:**

An affiliate of SunTrust Community Capital, LLC ("STCC") will act as the Special Limited Partner with rights, powers and obligations defined in the Partnership Agreement.

**Developer:**

Prestwick Development Company, LLC and Okaloosa Community Development Corporation will act as the Developers of the property, pursuant to a Development Agreement acceptable to STCC

**Housing Tax Credits**

The anticipated annual Federal Low Income Housing Tax Credit ("LIHTC") amount is **\$420,431**. 100% of the units are expected to qualify under Section 42 of the Internal Revenue Code (the "Code"). 90% of the units will be rent restricted and set aside for tenants earning not more than 60% of the Area Median Income and 10% of the units for tenants earning not more than 33% of the Area Median Income. The unit mix will be: 38 3 BR/2 BA units. STCC's investment is subject to, among other things, the Project's receipt of a reservation for \$420,421 LIHTC's from the Florida Housing Finance Corporation, of which STCC will purchase an anticipated amount of \$420,379 (rounded to the nearest dollar).

**Estimated LIHTC:**

The project's Federal LIHTC's are estimated to be \$4,204,210 over the Tax Credit Period; based on a tax credit rate of 7.57%, and information you or your agents provided to STCC. STCC's investment is predicated on the Tax Credit Authority's award and allocation of LIHTC's of not less than this amount.

**LIHTC Purchase Price:**

**\$.92** per Federal Tax Credit dollar earned and properly allocable to STCC.

**Estimated STCC Capital:**

Estimated to be **\$3,867,488** based on information provided by you or your agents. The Capital Contribution will be reduced by, among other things, any reduction in the Partnership's qualified basis.

**STCC Pay In Schedule:**

**Capital Contribution #1: (30%)** Estimated to be **\$1,160,246** at Admission to the Partnership (contemplated to close prior to or simultaneously with the closing of the Construction Loan/Perm Loan). Funds will be made available for closing and via a monthly draw process. Prior to Admission, STCC shall have received and approved all due diligence requested by it, including without limitation, evidence of the Project's eligibility for LIHTC's acceptable to STCC, and an Accountant's Pro Forma Certificate indicating an anticipated Annual Credit of not less than \$420,421 per year, which Accountant and Certificate to be acceptable to STCC.

**Capital Contribution #2: (25%)** Estimated to be **\$966,872** upon receipt of 1) final Certificates of Occupancy on all units by the appropriate authority, 2) certification by STCC Construction Inspector that the Project was completed in accordance with the plans and specifications, and 3) acknowledgement by Lender of completion of the Project in accordance with the Project documents.

***The proposed amount of equity to be paid prior to construction completion is \$2,127,118.***

**Capital Contribution #3: (10%)** Estimated to be \$386,749 upon the latest to occur: 1) evidence that application has been made for Forms 8609 on all LIHTC units, 2) final Accountant's Cost Certification certifying the amount of the Annual Credit of not less than \$420,421 per year, and all costs, 3) physical occupancy of 90% of the units by qualified tenants at pro forma rents and qualified leases, and 4) achievement of debt service coverage of all contemplated payments of principal and interest of 1.0X for a period of three (3) consecutive calendar months.

**Capital Contribution #4: (35%)** Estimated to be \$1,353,821 upon the latest to occur of: 1) receipt of properly executed Forms 8609 representing all LIHTC units, 2) stabilized physical occupancy of 93% of the units by qualified tenants at pro forma rents and qualified leases for 90 consecutive days, 3) all permanent loans have closed on the property and have begun amortizing and 4) debt service coverage of all payments of principal and interest of 1.20X for three (3) consecutive calendar months.

**Construction/Perm Loan:**

The Partnership shall obtain construction bridge loan financing in an amount not to exceed \$2,706,000, and a perm loan in the amount of \$1,526,925, with terms and conditions acceptable to STCC. It is the understanding that SunTrust Bank will provide the Construction/Perm Loan.

The Partnership shall also obtain a SHIP loan in an amount of \$25,300 and a NSP award of \$629,200, with terms and conditions acceptable to STCC.

**OTHER FINANCING:** Any financing, refinancing, or substitute credit enhancement will be subject to terms and conditions acceptable to STCC.

**Asset Management Fee:**

\$3,000 annual fee paid to SunTrust Bank for its services from available cash flow and the extent not paid from cash flow, paid from the distributions of Capital Transactions. The amount of the Asset Management Fee shall increase by 3% per annum.

**Incentive Management Fee:**

The Partnership shall pay to the Supervisory Management Agent (an affiliate of the General Partner) and Incentive Management Fee for management supervision service as described in the Supervisory Management Agreement. Such fee will be 50% of cash flow and shall be payable in accordance with the provisions of the Supervisory Management Agreement, as approved by STCC.

**Reserve Requirements:**

1) **Working Capital Reserve:** \$143,159. This Reserve will be available to fund operating deficits, and capital improvements not paid from the Capital Replacement Reserve and shall be funded from Capital Contribution #4. If there is insufficient cash available from the proceeds of Capital Contribution #4, then the funding of the Working Capital Reserve will be the obligation of the Guarantors. Any draws from this Reserve shall be replenished from Cash Flow or by the Guarantors as set forth in the Project Documents.

2) **Capital Replacement Reserve:** The Partnership will establish and maintain a reserve for capital replacements at the higher of \$300 per unit per year (increased annually by 3%) or an amount required by the permanent lender.

**Cash Flow:**

After payment of all operating expenses and debt service, cash flow (after the stabilization of the Project) will be distributed within ninety (90) days after the end of each fiscal year, in the following priority:

- (i) Pay STCC for any amounts due as a result of any unpaid Credit Adjuster amount to be outlined in the Project Documents and not reimbursed by the Guarantors
- (ii) Restore Working Capital Reserve
- (iii) Distribute funds to the Partners as necessary to enable them to pay taxes on their respective shares of taxable income from the Partnership
- (iv) Voluntary Partner Loans
- (v) Asset Management Fee
- (vi) Deferred Developer Fee
- (vii) Negative Cash Flow Loans;
- (viii) Incentive Management Fee, if applicable 50%
- (ix) The balance, 80% to the General Partner and 20% to STCC

**Capital Transactions:**

During the LIHTC compliance period, STCC must approve terms and conditions related to any financing, refinancing or substitute credit enhancement of the Project. Use of proceeds from any sale, financing or refinancing would be prioritized as follows:

- (i) Debts and obligations, including expenses associated with sale or refinancing
- (ii) Pay STCC for any amounts due as a result of any unpaid Credit Adjuster amount to be outlined in the Project Documents and not reimbursed by the Guarantors
- (iii) Funding of any required Reserves (if refinancing)
- (iv) Voluntary Partner Loans
- (v) Asset Management Fees
- (vi) Deferred Developer Fee
- (vii) Negative Cash Flow Loans
- (viii) \$1,000 to the Special Limited Partner
- (ix) The balance, 90% to the General Partner and 10% to STCC.

**Attorney Matters:**

STCC shall rely upon the opinion of its legal counsel and other professionals as to its status as a partner, the availability of the Tax Credits to the Partnership, the taxation of the Partnership, the non-recourse nature of the mortgage loans and the absence of any risk of loss on any party or related person, the allocation of the low income tax credits and other tax items to STCC, and other matters, including the enforceability of guarantees and indemnities required by STCC, covered under the Project Documents. Such legal and other professional fees for STCC shall be paid by the Partnership.

**Accountants:**

Independent CPA acceptable to STCC and at the expense of the Partnership.

**Reporting:**

Monthly balance sheet, income statement, rent roll; annual Audit draft due by March 15 of each year; tax return draft due by February 15 of each year, with final tax return due March 1; annual budget due by December 1 of the preceding year. Because of STCC's need for timely, accurate tax and Audit information, failure to provide the tax return and Audit within the specified time period shall result in a fine to be paid by



the General Partners of not less than \$250 per day for every day past the due date. In addition, failure to deliver to STCC final cost certification for the Project within forty (90) days of the Completion Date for the Project shall result in a fine to be paid by the General Partner of not less than \$250 per day for every day past the due date.

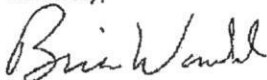
**Project Accounts:**

All operating and reserve accounts to be maintained with SunTrust Bank or an affiliate, for the entire 15-year Compliance Period.

This entire offer is made based on representations by the General Partner, the Developer, and/ or their agents, as to all facts regarding the Project, including but not limited to , the credit worthiness and financial viability of the General Partner, project Partnership, and the Guarantors. STCC's investment is subject to receipt, review and approval of all environmental and geological reports, site inspections, appraisal, market study, personal and / or corporate financial statements of the Guarantors and General Partners, revised construction budgets, revised development budget and total project costs, plans and specifications, financing sources, cash flow projections, the construction contract and other items deemed necessary by STCC to make an informed investment decision. Terms are subject to change upon the completion of STCC's due diligence, and changes to the financial projections and other pertinent information provided by you or your agents. STCC's investment is contingent upon final STCC approval, regulatory approval, and mutually acceptable terms and conditions contained in the Project Documents. The Project Documents will supercede this letter.

**Unless accepted, this offer will expire on October 15, 2013. Once accepted, the offer will remain until July 31, 2014.**

Sincerely,



Brian Womble  
First Vice President

Acknowledged and accepted:

**OCDC Palm Village, L.P., a Florida limited partnership**

By: Community Housing of Okaloosa County, LLC, its General Partner

By: Okaloosa Community Development Corporation, its sole member

By:   
James Robbins, Executive Director

Date: 10/11/13