

**BEFORE THE
FLORIDA HOUSING FINANCE CORPORATION**

**PEYTON RIDGE COMMUNITY,
LTD.,**

Petitioner,

vs.

**FLORIDA HOUSING FINANCE
CORPORATION,**

**FHFC Case No. 2013-040BP
FHFC RFA No. 2013-002
Petitioner's Application No. 2014-100C
Intervenors' Applications No. 2014-105C and 107C**

Respondent.

**LINGO COVE PARTNERS, LTD., AND URBAN EDGE PARTNERS II, LTD'S
PETITION FOR LEAVE TO INTERVENE**

Pursuant to Sections 120.569 and 120.57(1) and (3), Fla. Stat., and Rules 28-106.205, 28-106.201(2), and Rule Chapter 28-110, Fla. Admin. Code, Intervenors Lingo Cove Partners, Ltd., and Urban Edge Partners II, Ltd. (collectively, "Intervenors"), applicants selected for funding in Florida Housing Finance Corporation RFA No. 2013-002, the "Four Large County Geographic RFA", hereby petition for leave to intervene in this proceeding in support of the position of Respondent Florida Housing Finance Corporation. Undersigned counsel for Intervenors has contacted counsel for Petitioner and Respondent; Petitioner opposes intervention at this time, but Respondent does not oppose intervention. In support of this petition for leave to intervene, Intervenors state as follows:

Parties

1. The agency affected is the Florida Housing Finance Corporation (the "Corporation", "Florida Housing," or "FHFC"), whose address is 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The solicitation number assigned to this process for the award of competitive federal law income housing tax credits ("housing credits" or "HC")

in the Four Large Counties of Hillsborough, Orange, Duval, and Pinellas, is RFA 2013-002. By notice of award dated December 13, 2013, and posted on FHFC's website on that date, copy attached hereto as Exhibit "A," FHFC has given notice of its intent to award funding to six applicants including Intervenors Lingo Cove.

2. Intervenor Lingo Cove Partners, Ltd., ("Lingo Cove") is a Florida limited partnership, whose business address is 335 Knowles Avenue, Suite 101, Winter Park, Florida 32789. Lingo Cove submitted an application, #2014-107C, in RFA 2013-002 seeking \$1,815,156 in annual allocation of housing credits to finance the construction of a 110-unit residential rental development for low income residents in Orange County, to be known as The Fountains at Lingo Cove. Lingo Cove's application was assigned lottery number 5 by Florida Housing.

3. Intervenor Urban Edge Partners II, Ltd., is a Florida limited partnership, whose business address is 335 Knowles Avenue, Suite 101, Winter Park, Florida 32789. Urban Edge Partners II submitted an application, #2014-105C, in RFA 2012-002 seeking \$616,041 in annual allocation of housing credits to finance the construction of a 40-unit residential rental development in Pinellas County to be known as Urban Landings; 32 of the units will be designated for low income residents. (Intervenor Urban Edge Partners II, Ltd. will be referred to in this Petition as "Urban Landings.") Urban Landings was assigned lottery number 19 by Florida Housing.

4. FHFC has announced its intention to award funding to both Lingo Cove and Urban Landings. For purposes of this proceeding, Intervenors address is that of its undersigned counsel, M. Christopher Bryant, Oertel, Fernandez, Bryant & Atkinson, P.A., P.O. Box 1110,

Tallahassee, Florida 32302-1110, telephone number 850-521-0700, facsimile number 850-521-0720.

5. Petitioner, Peyton Ridge Community, Ltd., was also an applicant for funding in RFA No. 2013-002, for a proposed development in Duval County to be known as Peyton Ridge. Petitioner sought an award of \$1,355,897 in annual allocation of housing credits. Petitioner's application was assigned application number 2014-100C and lottery number 9 by Florida Housing. FHFC has announced its intention not to award funding to Petitioner. Petitioner has filed a Formal Written Protest of Award, copy (without exhibits) attached hereto as Exhibit "B," challenging FHFC's proposed action.

Notice

6. On or about Friday, December 13, 2013, Intervenors received notice that FHFC intended to select Intervenors and other applicants for awards of tax credits in RFA No. 2013-002 (subject to satisfactory completion of the credit underwriting process, which is required of all applicants selected for funding). Intervenors received notice on or about Wednesday, December 18, 2013, upon inquiry to Florida Housing's Office of General Counsel, that Petitioner had filed a notice of protest directed to this intended award on that date. Petitioner's Petition Requesting Informal Hearing was filed on or about Friday, December 27, 2013. To the best of the undersigned's knowledge, the Petition has not yet been referred to the Division of Administrative Hearings ("DOAH") or scheduled for an administrative hearing.

Substantial Interest Affected

7. Intervenors' substantial interests will be affected by the instant proceeding because Intervenors are intended recipients of housing credit funding as announced by FHFC.

The relief sought by Petitioner may result in applications other than those initially selected for funding receiving a funding award.

8. Petitioner has not directly challenged the eligibility of either Lingo Cove or Urban Landings to receive a funding award, but it has challenged the award to another Duval County applicant. If Petitioner's challenge is successful, either alone or in combination with other challenges, Lingo Cove and Urban Landings may lose their announced award of housing credits. This may occur as a result of operation of the "County Test," whereby another applicant from the same county as Lingo Cove or Urban Landings is selected for funding instead of Lingo Cove or Urban Landings; or indirectly by affecting the amount of funding available to fund Lingo Cove or Urban Landings (or both) through the "Funding Test," as explained more fully below.

9. Neither Intervenor can develop its proposed development without the award of the requested housing credit funding. If Petitioner is successful in challenging the intended awards, potentially resulting in the award of funding to Petitioner and the loss of funding to Intervenor, or the rejection of all proposals, then neither Intervenor will be able to construct its development.

Four Large County RFA Ranking and Selection Process

10. Through the Four Large County RFA cycle, FHFC seeks to award up to \$7,898,649 in annual housing credits to qualified applications seeking to construct low income rental housing in one of those Four Large Counties. The applications were received, processed, scored, and ranked pursuant to the terms of RFA 2013-002; FHFC Rule Chapters 67-48 and 67-60, Fla. Admin. Code; and applicable federal regulations. Applicants request in their applications a specific dollar amount of housing credits to be given to the Applicant each year for a period of 10 years; Applicants typically sell the rights to that future stream of income tax

credits to an investor to generate the majority of the capital necessary to construct the development. The amount of housing credits an applicant may request is based on several factors, including but not limited to a certain percentage of the projected Total Development Cost; a maximum funding amount per development based on the county in which the development will be located; and whether the development is located within certain designated areas of some counties.

11. Many applicants achieve tie scores, and in anticipation of that occurrence FHFC designed the RFA and rules to incorporate a series of “tie breakers,” the last of which is randomly assigned lottery numbers. Lottery numbers have historically played a significant role in the outcome of FHFC’s funding cycles, and they were determinative of funding selections in this RFA.

12. FHFC established in the Four Large County Cycle a funding goal of one Transit-Oriented Development (“TOD”) in Orange County near a SunRail Station (provided certain criteria related to proximity to services, funding request amount, and number of residential units are met). Lottery numbers were not to be considered in the selection of a TOD development for funding, unless there were two or more developments submitted for funding as TOD’s; however, only one Applicant applied as a TOD development in the RFA 2013-002 cycle. After funding of an eligible SunRail TOD, FHFC proposed to award funding to other applicants in the order of highest scoring applications (including consideration of Lottery numbers) until the available funding is exhausted.

13. FHFC also applied a “County Test” in the selection of non-TOD applications for funding in this RFA. The County Test was designed to insure that none of the Four Large Counties included in this RFA would receive a disproportionate number of awards for funding,

to the exclusion of one or more of the other counties. Generally, the County Test means that none of the Four Large Counties would receive a second award for funding until each county received at least one award.

14. FHFC further established a “Funding Test” to be used in the selection of applications for funding in this RFA. The “Funding Test” requires that the amount of tax credits remaining (unawarded) when a particular application is being considered for selection must be enough to fully fund that applicant’s request amount, and partial funding would not be given. FHFC would skip over a potential “partially funded” applicant and look for the next highest scoring applicant that could be fully funded. For example, if an applicant requested, in its application, \$1.6 million in housing credits, and only \$1.5 million was available from FHFC after funding higher scoring applicants, then the \$1.6 million requester would be skipped over. If the next highest scoring applicant had requested \$1.1 million, that applicant would be selected for funding, subject to application of the County Test.

15. FHFC’s RFA at page 37, explained the application of the Funding Test and the County Test, in pertinent part, as follows:

Applications will be selected for funding only if there is enough funding available to fully fund the Eligible Housing Credit Request Amount (Funding Test).

Funding will be limited to 1 Application per county (County Test), unless the only eligible Applications that can meet the Funding Test are located in a county that has already been awarded. This exception is further outlined below. Any Application selected to meet the SunRail Station TOD Funding Preference... will count for purposes of the County Test for Orange County.

* * *

The first Application considered for funding will be the highest scoring eligible Application that is eligible for the SunRail Station TOD Funding Preference. Once this goal is met, or, if there are no

eligible Applications that are eligible for this goal, then the highest scoring eligible unfunded Applications will be considered for funding subject to the County Test and the Funding Test. If an Application cannot meet both the County Test and the Funding Test, the next highest scoring eligible unfunded Application will be considered subject to both the County Test and the Funding Test.

If funding remains and no eligible unfunded Applications meet both the County Test and the Funding Test, then the highest scoring eligible unfunded Application that can meet the Funding Test will be tentatively selected for funding, without regard to the County Test. If none of the eligible unfunded Applications meet the Funding Test, no further Applications will be considered for funding and any remaining funding will be distributed as approved by the Board.

16. Thirty-four (34) applicants submitted applications for funding in RFA 2013-002; only one such applicant, 2014-109C, applied as a TOD. After scoring and evaluation, Florida Housing staff found that twenty-seven (27) of the applications were “eligible” to be considered for funding, and that seven (7) of the Applications were “ineligible” for consideration for various reasons. Petitioner Arbours at Ambassador Place was deemed ineligible for consideration, and thus was not selected by Florida Housing for funding.

17. On December 13, 2013, FHFC posted on its website a spreadsheet of Funding Recommendations generated by FHFC staff. The Recommendations were approved by FHFC’s Board of Directors that morning, prior to posting. The applications selected for funding, along with the County where located, annual housing request amount, and lottery number (for those not meeting the SunRail TOD goal), were:

2014-109C, Lexington Court, Orange (SunRail TOD), \$2.11 million

2014-129C, Senior Citizen Village, Duval, \$850,000, Lottery No. 3

2014-101C, Eagle Ridge, Pinellas, \$1.66 million, Lottery No. 4

2014-111C, Flamingo West, Hillsborough, \$680,000, Lottery No. 10

2014-107C, Fountains at Lingo Cove, Orange, \$1,815,156, Lottery No. 5

2014-105C, Urban Landings, Pinellas, \$616, 041, Lottery No. 19

The December 13 notice also advised all unsuccessful applicants of their right to file a notice of protest and formal written protest in accordance with Section 120.57(3), Fla. Stat.; Rule Chapter 28-110, F.A.C.; and FHFC Rule 67-60.009, F.A.C. The notice further advised all persons that failure to file a protest within the time prescribed in Section 120.57(3) would constitute a waiver of administrative proceedings.

18. It is not clear at this time whether Florida Housing will again apply the County Test, Funding Test, and other RFA provisions to select applications for funding at the conclusion of this and related administrative proceedings. However, for purposes of establishing their standing to intervene, Intervenors must assume that Florida Housing will apply the County Test, Funding Test, and other RFA provisions.

Disputed Issues of Material Fact

19. Petitioner's Formal Written Protest, at paragraphs 24 through 26, identifies "Statements of Ultimate Facts and Law" that Petitioner has raised. Petitioner has further identified in paragraph 23, subparagraphs (a) through (d), disputed issues of material fact. Intervenors do not necessarily accept all issues identified by Petitioner as valid issues, and do not necessarily agree to Petitioner's statements of ultimate fact. By intervening, Intervenors do not seek to obtain any relief beyond upholding the funding selections announced by FHFC on December 13; however, Intervenors reserve the right to present additional evidence and argument as to the correctness of those selections, even if such evidence and argument are not the same as what FHFC initially relied upon in making its selections. Intervenors expressly

reserve the right to raise disputed issues of material fact should they arise during discovery and case preparation.

Concise Statement of Ultimate Facts, Relief Sought, and Entitlement to Relief

20. As its concise statement of ultimate fact, Intervenor asserts:
- (a) that Intervenor Lingo Cove and Urban Landings' applications submitted to the FHFC in this solicitation were properly selected for awards of funding;
 - (b) that FHFC's determination not to award funding to Petitioner is a correct application of the RFA provisions and applicable rules, and was not arbitrary, capricious, contrary to competition, clearly erroneous, or contrary to FHFC's RFA or its governing statutes or rules.
 - (c) that Intervenor's applications were responsive to all material terms and conditions of the RFA;
 - (d) that FHFC's proposed award of the funding to Intervenor is not arbitrary, capricious, contrary to competition, clearly erroneous, contrary to FHFC's governing statutes, contrary to FHFC's rules or policies, or contrary to the RFA provisions;

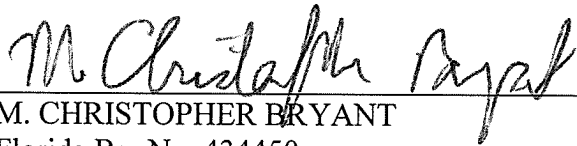
Intervenor Lingo Cove and Urban Landings seek entry of an order granting them status as Intervenor in support of Respondent, and seek entry ultimately of recommended and final orders denying the protest of Petitioner Peyton Ridge, and upholding the proposed awards of funding in this solicitation to Intervenor Lingo Cove and Urban Landings. Intervenor is entitled to this relief by the terms and conditions of the FHFC's RFA; by FHFC Rule Chapters 67-48 and 67-60, Fla. Admin. Code; and by Chapters 120 and 420, Florida Statutes, including but not limited to Sections 120.569, 120.57(1) and (3), Florida Statutes. Intervenor reserves the right to seek an

award of attorneys' fees and costs from Petitioner pursuant to Sections 57.105, 120.569(2)(e) and 120.595(1), Florida Statutes, and any other applicable provision of law, if warranted and supported in this proceeding.

Request to Participate in Settlement Meeting

21. If Florida Housing holds a meeting with Petitioner Peyton Ridge to attempt to resolve this matter by mutual agreement under Section 120.57(3)(d), Fla. Stat., Intervenor request advance notice of such a meeting and request the opportunity to attend and participate in such meeting.

FILED AND SERVED this 8th day of January, 2014.



M. CHRISTOPHER BRYANT
Florida Bar No. 434450
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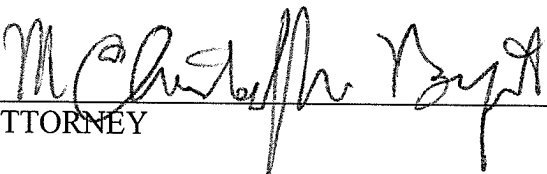
CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that the original has been transmitted by electronic transmission and hand delivery to the Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, and a copy via Electronic Transmission and U.S. Mail to the following this 8th day of January, 2014:

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ATTORNEY

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RFA 2013-002 4 Large County Geographic RFA
Recommendations

Total HC Available for RFA	7,898,649
Total HC Allocated	7,731,197
Total HC Remaining	167,452

Application Number	Name of Development	County	Name of Contact Person	Name of Developers	Demo. Commitment	Total Set Aside Units	HC Funding Amount	Eligible For Funding?	Eligible for SunRail TOD Goal?	Total Points	Development Category Funding Preference	Per Unit Construction Funding Preference	NC or R List for Leveraging?	Total Corp Funding Per Set-Aside	Leveraging Classification	Florida Job Creation Preference	Lottery Number
2014-109C	Lexington Court Apartments	Orange	Jay P. Brock	Atlantic Housing Partners, L.L.P.	F	97	\$2,110,000.00	Y	Y	27	Y	Y	NC	\$118,216.89	A	Y	29
2014-129C	Senior Citizen Village	Duval	Joseph Chambers J. Chambers	The Michaels Development Company I, LP	E	101	\$850,000.00	Y	N	27	Y	Y	R	\$58,263.52	A	Y	3
2014-101C	Eagle Ridge	Pinellas	David O. Deutch	Tarpon Springs Development, LLC	F	94	\$1,660,000.00	Y	N	27	Y	Y	NC	\$105,753.68	A	Y	4
2014-111C	Flamingo West	Hillsborough	Shawn Wilson	Blue Sky Communities, LLC	F	72	\$680,000.00	Y	N	27	Y	Y	R	\$65,384.62	A	Y	10
2014-107C	The Fountains at Lingo Cove	Orange	Jay P. Brock	Atlantic Housing Partners, L.L.P.	F	110	\$1,815,156.00	Y	N	27	Y	Y	NC	\$114,240.59	A	Y	5
2014-105C	Urban Landings	Pinellas	Jay P. Brock	Atlantic Housing Partners, L.L.P.	F	32	\$616,041.00	Y	N	27	Y	Y	NC	\$104,623.31	A	Y	19

On December 13, 2013, the Board of Directors of Florida Housing Finance Corporation approved the Review Committee's motion to select the above Applications for funding and invite the Applicants to enter credit underwriting. Any unsuccessful Applicant may file a notice of protest and a formal written protest in accordance with Section 120.57(3), Fla. Stat., Rule Chapter 28-110, F.A.C., and Rule 67-60.009, F.A.C. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

PEYTON RIDGE COMMUNITY, LTD.,

Petitioner,

FHFC Case No. 2013-040BP

vs.

APPLICATION NO: 2014-100C
REQUEST FOR APPLICATIONS: 2013-002

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

FORMAL WRITTEN PROTEST OF AWARD

Pursuant to sections 120.57(3) and 120.569, Florida Statutes, and Rules 28.110 and Rule 28-106.201, Florida Administrative Code, Petitioner, Peyton Ridge Community, Ltd. ("Peyton Ridge"), files this Formal Written Protest of Award and states:

Affected Agency

1. The agency affected is the Florida Housing Finance Corporation ("Florida Housing"), 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The telephone number is 850-488-4197.

Petitioner

2. The Petitioner is Peyton Ridge Community, Ltd. Petitioner's address is 3030 Hartley Road, Suite 310, Jacksonville, Florida 32257. The telephone number is 904-288-7770.

Petitioner's Counsel

3. Counsel for Peyton Ridge and Petitioner's address for this proceeding is:

Douglas Manson, Esq.
Craig Varn, Esq.
MansonBolves, P.A.
1101 West Swann Avenue
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Background

4. Florida Housing administers various affordable housing programs including the Housing Credit (HC) Program pursuant to Section 42 of the Internal Revenue Code and Section 420.5099, Florida Statutes, under which Florida Housing is designated as the Housing Credit agency for the state of Florida within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code, and Chapters 67-48 and 67-60, Florida Administrative Code.

5. Florida Housing administers a competitive solicitation processes to implement the provisions of the housing credit program under which developers apply for funding. Chapter 67-60, Florida Administrative Code.

6. The failure of an application to be completed in accordance with the competitive solicitation shall be grounds for a determination of no responsiveness and the application will not be considered for funding. Rule 67-60.006, Florida Administrative Code.

7. Furthermore, by submitting an application, each applicant certifies that:

Proposed Developments funded with Housing Credits will be subject to the requirements of the RFA, the Application requirements outlined in Rule Chapter 67-60, F.A.C., the credit underwriting and HC Program requirements outlined in

Rule Chapter 67-48, F.A.C. and the Compliance requirements of Rule Chapter 67-53, F.A.C.

(RFA 2013-002 at Pg. 3).

8. 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 has established a competitive solicitation process known as the Request for Applications (“RFA”) pursuant to Chapters 67-48 and 67-60, Florida Administrative Code.

9. Specifically, Florida Housing’s solicitation process for the 2013-002 RFA, as set forth in rule 67-60.001 - .009, Florida Administrative Code, involves the following:

- a. Florida Housing publishes its competitive solicitation (RFA) in the Florida Administrative Register;
- b. applicants prepare and submit their response to the competitive solicitation;
- c. Florida Housing appoints a scoring committee to evaluate the applications;
- d. the scoring committee makes recommendations to Florida Housing’s Board, which are then voted on by the Board; and
- e. applicants not selected for funding may protest the results of the competitive solicitation process.

Notice of Agency Action

10. Peyton Ridge received notice of Florida Housing’s Final Agency Action entitled “RFA 2013-002 4 Large County Geographic RFA Recommendations” dated December 13, 2013 (“Corporation’s Notice”), on or about December 14, 2013. See attached Exhibit A.

Notice of Protest

11. On December 17, 2013, Peyton Ridge timely filed its Notice of Protest in which it challenged the selection of the applications in the Corporation’s Notice, including the application

submitted by Senior Citizen Village Preservation Associates, LLC, a Florida limited liability company (“Senior Citizen”), Application #2014-129C. See attached Exhibit B.

Substantial Interests

12. Peyton Ridge timely submitted an application in response to RFA 2013-002. Pursuant to Application #2014-100C, Petitioner applied for an allocation of \$1,355,897.00 in annual federal tax credits¹ to help finance the development of its project, a 120-unit garden apartment complex. Florida Housing scored Peyton Ridge as eligible for funding and awarded it 27 points, the maximum allowed point total. See RFP 2013-002 Large County Geographic Received Applications, attached hereto as Exhibit C.

13. As discussed below, Senior Citizen failed to submit a responsive application and should not have been considered for funding. But for Florida Housing’s error in its scoring and award decision, Peyton Ridge would have been in the funded range and would have been entitled to an allocation of housing credits from the 2013-002 RFA.

Procedural History

14. Senior Citizen timely submitted an application in response to RFA 2013-002. Pursuant to Application #2014-129C, Senior Citizen applied for an allocation of \$850,000 in annual federal tax credits to help finance the development of its project, a 101-unit garden

¹ The United States Congress has created a program, governed by Section 42 of the IRC, by which federal income tax credits are allotted annually to each state on a per capita basis to help facilitate private development of affordable low-income housing for families. These tax credits entitle the holder to a dollar-for-dollar reduction in the holder’s federal tax liability, which can be taken for up to ten years if the project continues to satisfy IRC requirements. The tax credits allocated annually to each state are awarded by state “housing credit agencies” to single-purpose applicant entities created by real estate developers to construct and operate specific multi-family housing projects. The applicant entity then sells this ten-year stream of tax credits, typically to a syndicator, with the sale proceeds generating much of the funding necessary for development and construction of the project. The equity produced by this sale of tax credits in turn reduces the amount of long-term debt required for the project, making it possible to operate the project at below-market-rate rents that are affordable to low-income and very-low-income tenants. Pursuant to section 420.5099, F.S., Florida Housing is the designated “housing credit agency” for the state of Florida and administers Florida’s tax credit program under its Housing Credit (HC) Program. Through the HC Program, Florida Housing allocates Florida’s annual fixed pool of federal tax credits to developers of affordable housing.

apartment complex. Florida Housing scored Senior Citizen as eligible for funding and awarded it 27 points, the maximum allowed point total. See RFP 2013-002 Large County Geographic Received Applications, attached hereto as Exhibit C.

15. At Part 1 (Demographic Commitment) of its application, Senior Citizen identifies the development as committed to serving “Elderly” residence. See Senior Citizen Village Preservation Associates, LLC Application 2014-129C, at Pg. 1.

16. At Part 4.c.(1) (Development Category) of its application, Senior Citizen’s identifies the development as “Acquisition and Rehabilitation,” meaning that the development is “acquisition and less than 50% of the units are new construction.” See Senior Citizen Village Preservation Associates, LLC Application 2014-129C, at Pg. 2.

17. At Part 4.c.(2) (Development Category) of its application, Senior Citizen’s states that the existing buildings to be rehabilitated were NOT originally built prior to 1994. See Senior Citizen Village Preservation Associates, LLC Application 2014-129C, at Pg. 3.

18. The RFA requires that applicants demonstrate site control. To that end, Senior Citizen included within its application an Agreement of Sale dated October 28, 2013 wherein Senior Citizen Village Associates, Ltd, a Florida limited partnership, is identified as the Seller and Senior Citizen is identified as the buyer. See attached Exhibit D. The Agreement of Sale includes a legal description for the site (“Subject Property”).

19. The Subject Property is encumbered by an Extended Low-Income Housing Agreement dated December 3, 1993 that was entered into between Florida Housing and Senior Citizen Village Associates, Ltd, a Florida limited partnership, and recorded in Official Records

Book 7728, Page 2196 of the Public Records of Duval County, Florida.² See attached Exhibit E. Senior Citizen Village Associates, Ltd is also the identified seller in the Agreement of Sale. The legal description in the Extended Low-Income Housing Agreement is identical to the legal description in the Agreement of Sale.

20. Rule 67.48.023, Florida Administrative Code, lists general program requirements for Housing Credits. The rule provides, in relevant part:

(1) Unless otherwise permitted in a competitive solicitation process, an Applicant is not eligible to apply for Competitive Housing Credits if any of the following pertain to the proposed Development:

...

(c) The proposed Development site or any part thereof is subject to any Land Use Restriction Agreement or Extended Use Agreement, or both, in conjunction with any Corporation affordable housing financing intended to foster the development or maintenance of affordable housing, unless at least one (1) of the following exceptions applies:

1. A LURA recorded in conjunction with the Predevelopment Loan Program or the Elderly Housing Community Loan Program or

2. A LURA or EUA, or both, for an existing building or buildings, originally **constructed at least 25 years prior to the deadline to apply for the applicable Competitive Housing Credits**, where, in the current Application, the Applicant has selected and qualified for the **Homeless demographic** commitment with a Development category of Rehabilitation, Acquisition and Rehabilitation, Preservation, or Acquisition and Preservation.

(emphasis added).

21. RFA 2012-002 does not “otherwise” permit an applicant to apply for housing credits where its development site is encumbered by an Extended Use Agreement. Therefore, in the absence of the limited exceptions enumerated in rule 67-48.003, Florida Administrative

² Although not relevant to the issues raised in the Petition, the Extended Low Income Housing Agreement was amended on or about February 2, 1995.

Code, an applicant in RFA 2012-002 cannot receive an allocation of housing credits where its development site is encumbered by an Extended Use Agreement. Senior Citizen did not “select and qualify” for the “Homeless” demographic commitment. Moreover the buildings on the Subject Property were NOT “originally constructed at least 25 years prior to the deadline to apply” for RFA 2012-002. Accordingly, Senior Citizen it is not exempt from the proscriptions contained in rule 67-48.023, Florida Administrative Code, and, therefore, it is not eligible for funding. As such, Senior Citizen should never have been selected for funding.

22. Contrary to the proscriptions contained in rule 67-48.0023, Florida Administrative Code, Florida Housing selected Senior Citizen for an allocation of housing credits in the final selection. See Corporation’s Notice attached as Exhibit A.

Disputed Issue of Material Fact

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

- a) Whether the Subject Property is encumbered by an Extended Use Agreement;
- b) Whether construction of any of the existing buildings on the Subject Property was completed twenty-five or fewer years prior to October 30, 2013, the RFA 2013-002 Application Deadline;
- c) Whether Senior Citizen selected and qualified for the Homeless demographic commitment in RFA 2013-002; and,
- d) Whether Senior Citizen selected and qualified for Elderly demographic commitment in RFA 2013-002.

Statement of Ultimate Facts and Law

24. As a matter of ultimate fact Senior Citizen failed to complete its application in accordance with the competitive solicitation; its application was nonresponsive; its application failed to comply with rule 67.48.023, Florida Administrative Code; and, therefore, its application should not have been considered for funding.

25. As a matter of ultimate fact Florida Housing Finance Corporation improperly determined that Senior Citizen Village's application was completed in accordance with the competitive solicitation; was responsive to the RFA; and, was eligible for funding under the RFA.

26. As a matter of ultimate fact and law, Florida Housing improperly determined that Senior Citizen was eligible for funding and, but for this error, Peyton Ridge would have been entitled to an allocation of its requested tax credit funding.

Statutes and Rules

27. Statutes and rules governing this proceeding are sections 120.57(3), 120.569, and Chapter 420, Florida Statutes, and Chapters 28-106, 67-48 and 67-40, Florida Administrative Code.

WHEREFORE, Peyton Ridge requests that:

A. Florida Housing refer this Petition to the Division of Administrative Hearings for a formal administrative hearing and the assignment of an Administrative Law Judge pursuant to Section 120.57(3), Florida Statutes,;

B. The Administrative Law Judge enter a Recommended Order determining that:

- a) Senior Citizen Village failed to complete its application in accordance with the competitive solicitation; that its application was nonresponsive; that its application fails to comply with rule 67.48.023, Florida Administrative Code, and that its application should not have been considered for funding;
- b) Florida Housing Finance Corporation improperly determined that Senior Citizen Village's application was completed in accordance with the competitive solicitation;

- c) Florida Housing Finance Corporation improperly determined that Senior Citizen Village's application was responsive to the RFA;
- d) Florida Housing Finance Corporation improperly determined that Senior Citizen Village's application was eligible for funding under the RFA;

C. The Administrative Law Judge enter a Recommended Order recommending Florida Housing to award Peyton Ridge its requested tax credit funding;

D. Florida Housing enter a Final Order awarding Peyton Ridge its requested tax credit funding; and,

E. It be granted such other relief as may be deemed appropriate.

Respectfully submitted this 27th day of December, 2013.

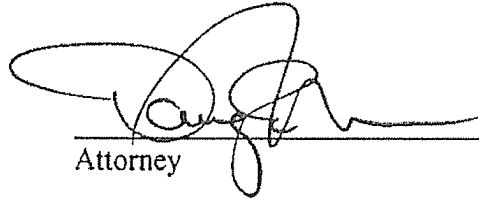


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CERTIFICATE OF SERVICE

I certify that the original of the foregoing has been filed by Hand Delivery with the Agency Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301 and a copy furnished to Wellington H. Meffert, II, Esq., Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301 this 27th day of December, 2013.



Attorney