

**BEFORE THE
FLORIDA HOUSING FINANCE CORPORATION**

**SOUTHPORT DEVELOPMENT, INC.,
d/b/a SOUTHPORT DEVELOPMENT
SERVICES, INC., and GARDEN TRAIL
APARTMENTS 2013, LLC,**

Petitioners,

vs.

**FLORIDA HOUSING FINANCE
CORPORATION,**

**FHFC Case No. 2013-039BP
FHFC RFA No. 2013-002
Petitioner's Application No. 2014-128C
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 conferred with counsel for Petitioners and Respondent; counsel for Respondent does not oppose intervention, and counsel for Petitioners has not yet stated its position. 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 Garden Trail Apartments 2013, LLC (“Garden Trail”) was also an applicant for funding in RFA No. 2013-002, for a proposed development in Pinellas County to be known as Garden Trail. Petitioner Southport Development, Inc., d/b/a/ Southport Development Services, Inc. (“Southport”) is the named developer for that application. Garden Trail sought an award of \$1.09 million in annual allocation of housing credits. Garden Trail’s application was assigned application number 2014-128C and lottery number 8 by Florida Housing. FHFC has announced its intention not to award funding to Garden Trail. Garden Trail and Southport (collectively, “Petitioners”) filed a Formal Written Petition of Protest, 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 Southport had filed a notice of protest directed to this intended award on that date. Petitioners’ Formal Written Protest was filed on or about Monday, December 27, 2013. To the best of the undersigned’s knowledge, the Formal Written Protest 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 Petitioners may result in applications other than those initially selected for funding receiving a funding award.

8. Petitioners have not directly challenged the eligibility of Lingo Cove or Urban Landings to receive a funding award, but it has challenged two other applicants. If such challenges are successful, either alone or in combination with other challenges, Lingo Cove or Urban Landings (or both) may lose their announced awards of housing credits. This may occur as a result of operation of the "County Test," whereby other applicants from the same county as Lingo Cove or Urban Landings are 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 Petitioners are successful in challenging the intended awards, potentially resulting in either the award of funding to Garden Trail and the loss of funding to Intervenors, 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 Garden Trail was deemed eligible for consideration but was not selected 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. Petitioners' Formal Written Protest, at paragraphs 20 through 38, makes certain factual statements and conclusions regarding the eligibility of two other Pinellas County applicants for funding. Petitioners have further identified in paragraph 39, subparagraphs (a) through (l), 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 facts and conclusion. 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, Intervenors assert:
- (a) that Intervenors Lingo Cove and Urban Landings' applications submitted to the FHFC in this solicitation were properly selected for an award of funding;
 - (b) that FHFC's determination not to award funding to Garden Trail 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 Intervenors' applications were responsive to all material terms and conditions of the RFA;
 - (d) that FHFC's proposed award of the funding to Intervenors 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;

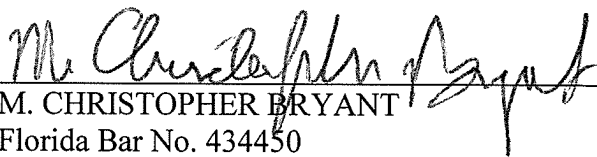
Intervenors Lingo Cove and Urban Landings seek entry of an order granting them status as Intervenors in support of Respondent, and seek entry ultimately of recommended and final orders denying the protest of Petitioners, and upholding the proposed awards of funding in this solicitation to Intervenors Lingo Cove and Urban Landings. Intervenors are 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. Intervenors reserve the right to seek an award of attorneys' fees and costs from Petitioners 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 Petitioners to attempt to resolve this matter by mutual agreement under Section 120.57(3)(d), Fla. Stat., Intervenors 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.



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ATTORNEYS FOR LINGO COVE PARTNERS,
LTD., and URBAN EDGE PARTNERS II, LTD.

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	Developers Tarpon, LLC; 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 Fountain 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.

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

SOUTHPORT DEVELOPMENT, INC.
d/b/a SOUTHPORT DEVELOPMENT
SERVICES, INC., and GARDEN TRAIL
APARTMENTS 2013 LLC,

Petitioners,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

FHFC Case No. 2013-039BP

RFA 2013-002

DOAH Case No. _____

**FORMAL WRITTEN PROTEST
AND PETITION FOR FORMAL ADMINISTRATIVE HEARING**

Petitioners, Southport Development, Inc. d/b/a Southport Development Services, Inc., and Garden Trail Apartments 2013 LLC (“Petitioners”), by and through undersigned counsel, file this Formal Written Protest and Petition for Formal Administrative Hearing (“Petition”) pursuant to Section 120.57(3), Florida Statutes, and Rule 28-110.003, Florida Administrative Code. This Petition challenges the intended decision of Respondent, Florida Housing Finance Corporation (“Florida Housing”) to award low-income housing tax credits (“Housing Credits”) in response to the Request for Applications 2013-002 for Affordable Housing Developments Located in Duval, Hillsborough, Orange and Pinellas Counties (the “RFA”).

Parties

1. Petitioner Southport Development, Inc., d/b/a Southport Development Services, Inc., is a Washington corporation authorized to transact business in Florida with an address at 2430 Estancia Blvd., Suite 101, Clearwater, Florida 33761. It is specifically named in the Notice of Intended Decision. Petitioner Garden Trail Apartments 2013 LLC, is a limited liability

corporation organized under the laws of the State of Florida. Both Petitioners are named in and submitted the application for the Garden Trail development to be located in Pinellas County (Application 2014-128C). For purposes of this proceeding, Petitioners' address and telephone number are those of its undersigned counsel.

2. Florida Housing is the agency affected by this Petition. Florida Housing's address is 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301.

Statement of Ultimate Facts

Background

3. 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 has the responsibility and authority to establish procedures for allocating and distributing Housing Credits. § 420.5099, Fla. Stat. (2013).

4. On September 19, 2013, Florida Housing issued the RFA seeking Applications from developments of affordable multifamily housing located in Duval County, Hillsborough County, Orange County and Pinellas County. [RFA, § 1, p. 2]. The RFA states that Florida Housing expects to award an estimated \$7,898,649 in Housing Credits for proposed developments in such counties. [RFA § 1, p. 2].

5. The RFA provides for a lottery number to be randomly assigned to each Application. [RFA § 3, p. 2].

6. The RFA also provides for the Applications to be evaluated and scored by a Review Committee. [RFA, § 5, pp. 37-38]. Each Application can receive a maximum of 27 points consisting of two different types of point items: (1) Proximity to Transit and Community Services, worth a maximum of 22 points; and (2) Local Government Contributions, worth a

maximum of 5 points. [RFA § 5, p. 38]. These scores play a significant role in Florida Housing's funding decisions. [RFA § 4.B., pp. 36-37].

7. The Funding Selection process as described in the RFA limits the developments eligible for funding to those that meet certain eligibility requirements described throughout the RFA, including a minimum Proximity Score and a minimum Transit Score that must be attained. [RFA § 4.B., p. 36]. Those Applications eligible for funding are then sorted and ranked in order from highest to lowest based on the following, applied in this order:

- a. Highest to lowest score awarded by the Review Committee (taking into consideration any Development Category Funding Preference);
- b. The Applicant's eligibility for the Per Unit Construction Funding Preference, with Applications that qualify for the preference ranked above those that do not;
- c. The Application's Leveraging Classification, with developments with a Classification of A as the top priority;
- d. The Application's eligibility for the Florida Job Creation Preference, with Applications that qualify for the preference ranked above those that do not; and
- e. Lottery number, with the lowest lottery number receiving the preference.

[RFA § 4.B., pp. 36-37]. A Funding Test and County Test is also applied. The Funding Test ensures that Applications are only selected if there is enough funding available to fully fund the Eligible Housing Credit Request Amount. [RFA § 4.B., p. 37]. Under the County Test, funding is limited to one Application per county unless the only eligible Applications that can meet the Funding Test are located in a county that has already been awarded. [RFA § 4.B., p. 37].

8. The RFA states that Florida Housing intends to fund one development that is eligible for the SunRail Station TOD Funding Preference which counts under the County Test for

Orange County and that the first Application considered for funding will be the highest scoring Application eligible for the SunRail Station TOD Funding Preference. Once this goal is met, or if no eligible Applications meet this goal, then the highest scoring eligible unfunded Applications will be considered for funding subject to the County Test and the Funding Test. If there is remaining funding available and no unfunded Applications meet both the County Test and the Funding Test, then the highest scoring eligible unfunded Application that meets the Funding Test will be selected for funding. [RFA § 4.B., p. 37].

9. The deadline for receipt of applications was 2:00 p.m. on October 30, 2013.

10. Florida Housing received 34 applications in response to the RFA, including Petitioners' application for Garden Trail development to be located in Pinellas County (Application 2014-128C).

11. Florida Housing's Executive Director designated the following five Florida Housing staff members to serve as the Review Committee for the RFA: Amy Garmon, Multifamily Programs Manager; Elizabeth O'Neill, Senior Policy Analyst; Bill Cobb, Multifamily Programs Manager; Jean Salmonsens, Housing Development Manager; and Tim Kennedy, Special Assets Administrator.

12. The Review Committee met on November 18, 2013 to discuss the applications and answer any questions of the Review Committee members.

13. The Review Committee met again on December 11, 2013 to submit their scores with respect to each application and to develop a recommendation to submit to Florida Housing's Board.

14. At the Board's December 13, 2013 meeting, the Review Committee presented its funding recommendation to the Board along with an RFA 2013-002 Sorting Order Chart

showing the Applications listed in order from highest to lowest total score as well as identifying Applications deemed ineligible for funding.

15. On December 13, 2013, Florida Housing's Board approved the recommendation of the Review Committee to select the following six Applications for funding and invite the Applicants to enter credit underwriting: Lexington Court Apartments (Orange County), Senior Citizen Village (Duval County), Eagle Ridge (Pinellas County), Flamingo West (Hillsborough County), The Fountains at Lingo Cove (Orange County), and Urban Landings (Pinellas County).

16. At 11:33 a.m. on December 13, 2013, Florida Housing posted on its website its Notice of Intended Decision, consisting of two documents: (1) a document entitled "RFA 2013-002 4 Large County Geographic Received Applications" (the "Received Applications Posting") showing the scores awarded to the Applications, the preferences for which they qualify, and their lottery number, and (2) a document entitled "RFA 2013-002 4 Large County Geographic RFA Recommendations" showing those Applications recommended for funding. A copy of the Intended Decision (consisting of both documents) is attached as Exhibit "A."

17. On December 17, 2013, Petitioners timely filed a notice of its intent to protest Florida Housing's Intended Decision.

18. In accordance with Section 120.57(3), Florida Statutes, and Chapter 28-110, Florida Administrative Code, this Petition is being filed within 10 days of the date on which the notice of intent to protest was filed.

19. The Received Applications Posting (included in Exhibit "A") indicates that Petitioners' Garden Trail application received the maximum 27 points and a lottery number of 8. Two other Applications for development proposed in Pinellas County also received the maximum score of 27 points, and qualify for the same preferences as Garden Trail, but have

lower lottery numbers than Garden Trail -- Eagle Ridge (Application 2014- 101C), with a lottery number of 4; and Whispering Palms (Application 2014-124C), with a lottery number of 7. Of these two developments, Eagle Ridge has been recommended for funding. Garden Trail, however, should be the development recommended for funding in Pinellas County because neither Eagle Ridge nor Whispering Palms is eligible for funding under the terms of the RFA.

Eagle Ridge is Not Eligible for Funding Under the RFA

20. Eagle Ridge is not eligible for funding under the RFA because: (1) the Eagle Ridge Application does not include an acceptable Surveyor Certification Form and, therefore, Eagle Ridge should have been deemed ineligible without receiving any Proximity Points; (2) even if the Development Location Point were appropriately located on the proposed Development Site, the application would not have achieved the required minimum transit points and therefore would not have been eligible for funding; and (3) the application is not eligible for funding (a) because the address used throughout the application is incorrect or (b) because the application does not provide evidence of site control for all parcels located at that address.

21. As described above, pursuant to the terms of the RFA an Application could receive a maximum of 22 Proximity Points. To be eligible for funding, an Application must receive an overall proximity score of at least 13.25¹ including a minimum Transit Services score of: (a) at least 1.5 points for Applications eligible for the Public Housing Authority (“PHA”) Proximity Point Boost; or (b) at least 2 points for all other Applications. [RFA § 4.A.5.b.(2), p. 12]. Eagle Ridge is not eligible for funding under the RFA because the Eagle Ridge Application

¹ Those Applications receiving a proximity score of at least 15.25 automatically received the maximum of 22 Proximity Points. [RFA, § 4.A.5b.(2), p. 12].

does not include an acceptable Surveyor Certification Form and, therefore, Eagle Ridge should have been deemed ineligible without receiving any Proximity Points.

22. The RFA states:

In order for an Application to be considered for any proximity points, the Applicant must provide an acceptable Surveyor Certification form, as Attachment 7 to Exhibit A, reflecting the information outlined below. (The Surveyor Certification form is provided in Exhibit B of this RFA.)

- A Development Location Point; and
- Services information for the Bus or Rail Transit Service and Community Services for which the Applicant is seeking points.

[RFA § 4.A.5., p. 11 (emphasis added)]. With respect to the Development Location Point, the RFA provides that: “The Applicant must identify a Development Location Point on the proposed Development site and provide the latitude and longitude coordinates determined in degrees, minutes and seconds, with degrees and minutes stated as whole numbers and the seconds truncated after one decimal place.” [RFA § 4.a.5., p. 11].

23. Section 4.C.5.c.(4) of the RFA addresses the required information for the Surveyor Certification Form. For the Development Location Point, the RFA states:

Coordinates must be a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For a Development which consists of Scattered Sites, this means a single point on the site with the *most* units that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development.

[RFA § 4.C.5.c.(4), p. 16].² The 2013 Surveyor Certification Form, which the RFA requires to be submitted by an Applicant as Attachment 7 to Exhibit A of the Application, defines “Scattered Sites” as follows:

² This definition of “Development Location Point” is virtually identical to that in Rule 67-48.002(33), Florida Administrative Code.

“Scattered Sites,” as applied to a single Development means a Development site that, when taken as a whole, is comprised of real property that is not contiguous (each such non-contiguous site within a Scattered Site Development, a “Scattered Site”). For purposes of this definition, “contiguous” means touching at a point or along a boundary. Real property is contiguous if the only intervening real property interest is an easement provided the easement is not a roadway or street.

...

[2013 Surveyor Certification Form, p. 3].³ Based on this definition, real property is not contiguous if there an intervening easement for a roadway or a street.

24. Eagle Ridge is not eligible for funding because it did not submit an acceptable Surveyor Certification Form as required by the RFA. The proposed Development site consists of Scattered Sites as defined in the RFA and Rule 67-48.002, Florida Administrative Code, because it is comprised of real property that is not contiguous because parts of the property are separated from each other by Mango Circle, a public roadway or street. Because Eagle Ridge is comprised of Scattered Sites, the RFA requires the Development Location Point to be a single point on the site with the *most* units. However, the Surveyor Certification form improperly shows the Development Location Point on the site with the *least* units (i.e., it is *not* on the site with the most units, as required).⁴

25. The proposed Development site is approximately 9.33 acres and includes two Scattered Sites, separated by Mango Circle. The first Scattered Site is located at the northwest corner of the described real property, consists of approximately 0.13 acres and includes two existing buildings. The second Scattered Site is considerably larger, consists of approximately 9.20 acres and includes 20 existing buildings. The conceptual site plan submitted to and

³ The definition of “Scattered Sites” on the 2013 Surveyor Certification Form is identical to that in Rule 67-48.002(101), Florida Administrative Code. The definition of “Development Location Point” in Section 4.C.5.c.(4) of the RFA and Rule 67-48.002(33, Florida Administrative Code, is also included on the 2013 Surveyor Certification Form.

⁴ As noted in Paragraph 26, if the Development Location Point were appropriately located on the proposed Development site, the applicant would not have achieved the required minimum transit points and therefore would not have been eligible for funding.

approved by the local government (attached hereto as Exhibit "B") shows that the first Scattered Site will include only 4 units and the second Scattered Site will include 102 units. However, the 2013 Surveyor Certification Form included in Attachment 7 to Exhibit A to the Eagle Ridge Application identifies the Development Location Point on the first Scattered Site, which is *not* the site with the most units. Thus, not only did Eagle Ridge receive Proximity Points based on a Development Location Point that fails to comply with the mandatory requirements of the RFA, but Eagle Ridge should not have received any Proximity Points whatsoever because the Surveyor Certification Form it submitted as part of its Application is unacceptable according to the criteria in the RFA. [RFA § 4.A.5., p. 11].

26. In addition, even if the Development Location Point were appropriately located on this proposed Development site--i.e., at an appropriate place on the second Scattered Site that is most favorable to the applicant-- the applicant still would not have achieved the required minimum transit points and therefore would not have been eligible for funding.

27. Moreover, Eagle Ridge is not eligible for funding (a) because the address used throughout the application is incorrect or (b) because the applicant does not provide evidence of site control for all parcels located at that address. The listed address, "701-737 Mango Circle," includes 703 Mango Circle, which is the address of a parcel on which the Oakhill Church of God in Christ is located and for which the applicant did not provide evidence of site control.⁵ Because the RFA requires the Applicant to provide the address of the development *and* to

⁵ The Property Appraiser's web site shows that the property at 703 Mango Circle is owned by Church of God in Christ of Tarpon Springs. Notably, the address listed in the applications previously submitted by Eagle Ridge in 2009 and 2011 did not include 703 Mango Circle.

demonstrate site control,⁶ the failure to provide either means that Eagle Ridge is not eligible for funding.

28. For each of the foregoing reasons, Eagle Ridge is not eligible for funding.

Whispering Palms is Not Eligible for Funding Under the RFA

29. Even if Florida Housing determines that Eagle Ridge is not eligible for funding, Whispering Palms would not be entitled to funding under the RFA for two reasons. First, Whispering Palms is not entitled to the minimum Transit Services score in the RFA. Second, the site for Whispering Palms is not appropriately zoned for the proposed development.

Whispering Palms Application Cannot Attain the Minimum Required Transit Services Score

30. As noted above, in order to be eligible for funding, an Application must achieve a minimum proximity score of 13.25 points of which at least 2 points must be for Transit Services. [RFA § 4.A.5.b.(2), p. 12].⁷ The RFA requires an Applicant to select one of five different types of Transit Services on which to base its Transit Score. [RFA § 4.A.5.c., pp. 12-13].

31. For Transit Service, the Whispering Palms Application identifies a Public Bus Transfer Stop as the Transit Services on which to base its Transit Score. The 2013 Surveyor Certification Form included in Attachment 7 to Exhibit A to the Application shows the latitude and longitude coordinates for the Whispering Palms Development Location Point as well as the Public Bus Transfer Stop.

32. The RFA describes a Public Bus Transfer Stop as follows:

This service may be selected by all Applicants, regardless of the Demographic Commitment selected at question 1 of Exhibit A of the RFA. For purposes of proximity points, a Public Bus Transfer Stop means a fixed location at which

⁶ The RFA provides that the Address of the Development Site is a Mandatory Item [RFA §5 at p. 38] and that “the Applicant must provide the Address of the Development Site [RFA §4.A.4 at p.6]. The RFA also provides that the Applicant must demonstrate site control. [RFA 7 at pp. 23-24]

⁷ The Whispering Palms Application indicates that it is not eligible for the PHA Proximity Point Boost.

passengers may access *at least three routes of public transportation via buses. Each qualifying route must have a scheduled stop at the Public Bus Transfer Stop at least hourly during the times of 7 am to 9 am and also during the times of 4 pm to 6 pm Monday through Friday, excluding holidays, on a year-round basis.* This would include both bus stations (i.e. hubs) and bus stops with multiple routes. Bus routes must be established or approved by a Local Government department that manages public transportation. Buses that travel between states will not be considered.

[RFA § 4.A.5.c.(1)(c), p. 13 (emphasis added)].

33. There are a total of three bus routes that stop at the Public Bus Transfer Stop identified in the Whispering Palms Application. One of the three routes is Route 98. According to the schedule attached to this Petition as Exhibit “C,” Route 98 is a commuter service. There is only one scheduled stop at the Public Bus Transfer Stop identified in the Whispering Palms Application that could possibly occur during the times of 7 a.m. and 9 a.m.--and the latest that single stop could occur is before 7:15 a.m.⁸ As such, Route 98 is not a qualifying route, and the stop identified in the Whispering Palms Application is not a qualified Public Bus Transfer Stop because there are not three qualifying routes each that have scheduled stops hourly between the hours of 7 a.m. and 9 a.m. on weekdays. Accordingly, the Whispering Palms Applications should not have received any points for Transit Services, which means that it could not attain the minimum Transit Services Score required for funding pursuant to the terms of the RFA.

The Site for Whispering Palms is Not Appropriately Zoned

34. The Application form included as Exhibit A to the RFA requires an Applicant to acknowledge and certify that within 21 Calendar Days of the date of the invitation to enter underwriting it will provide: “Certification of the status of site plan approval as of the Application Deadline and certification that *as of the Application Deadline the site is*

⁸ The stop identified in the application is located on Route 98 between the stops at “Clearwater Largo Rd & Rosary Rd” and “US 19 Northbound & Whitney Rd.” The latest scheduled stop at either location is at 7:15 a.m.

appropriately zoned for the proposed Development, as outlined in Item 13 of Exhibit C to the RFA.” [RFA, Ex. A, at p. 48 (emphasis added)].

35. Exhibit C to the RFA requires an Applicant selected for funding to provide to Florida Housing, within 21 Calendar Days of the invitation to enter credit underwriting, a “completed and executed 2013 Florida Housing Finance Corporation Local Government Verification that Development is Consistent with Zoning and Land Use regulations form . . .” . [RFA, Ex. C, p. 85]. This form requires confirmation that “on or before the submission deadline” for the RFA Application, “[t]he proposed number of units and intended use are consistent with current land use regulations and the referenced zoning designation. . . .”

36. Exhibit A to the RFA was required to be signed by the Applicant under penalties of perjury. Although the Whispering Palms Application includes the name and title of Matthew Rieger, Vice President, as the signatory, Exhibit A to the Whispering Palms Application is not signed.

37. Moreover, the representation made in Exhibit A to the Whispering Palms Application regarding the Applicant's ability to provide certification that as of the Application Deadline the site is appropriately zoned is false. Whispering Palms cannot make such a certification. As of the deadline for submission of Applications in response to the RFA, the zoning for the Whispering Palms site prohibits the development of affordable housing of the nature of the proposed Whispering Palms development. More specifically, the applicant proposes to set aside 100 percent of the units for affordable housing [see p.5 of 15 of the Application], but this is not allowed by the Largo Zoning Code, which restricts the total percentage of affordable units in a proposed development at this site to significantly less than 100 percent.

38. As of the Application Deadline, the site for Whispering Palms was not appropriately zoned for the proposed development. Accordingly, Whispering Palms cannot satisfy the mandatory requirements of the RFA and is not entitled to funding.

Disputed Issues of Material Fact

39. The disputed issues of material fact of which Petitioners are aware at this time include, but are not limited to:⁹

(a) Whether the Eagle Ridge Application does not include an acceptable Surveyor Certification Form;

(b) Whether Eagle Ridge is comprised of Scattered Sites;

(c) Whether the Development Location Point for Eagle Ridge is not on the parcel with the most units;

(d) Whether Florida Housing erred in awarding any Proximity Points to Eagle Ridge in light of the unacceptable Surveyor Certification Form in the Application;

(e) Whether the address provided by Eagle Ridge is invalid because the listed address, “701-737 Mango Circle,” incorrectly includes 703 Mango Circle;

(f) Whether Eagle Ridge failed to provide evidence of site control for all parcels located at the listed address, including 703 Mango Circle;

(g) Whether the Public Bus Transfer Stop as identified in the Whispering Palms Applications includes at least three routes that stop at least hourly during the times of 7 a.m. to 9 a.m.;

⁹ Petitioners reserve the right to amend or supplement this Petition, including but not limited to, the disputed issues of material fact, to the extent that Petitioners learn of additional issues of material fact in the course of discovery or preparation for final hearing in this matter.

(h) Whether Florida Housing erred in awarding any Transit Services points to the Whispering Palms Application;

(i) Whether the certifications in Exhibit A to the RFA were not signed in the Whispering Palms Application;

(j) Whether the site for the proposed Whispering Palms development was appropriately zoned for the proposed development as of the Application Deadline;

(k) Whether Florida Housing's Intended Decision is contrary to the RFA; and

(l) Whether Florida Housing's Intended Decision is clearly erroneous, contrary to competition, arbitrary or capricious.

Notice of Florida Housing's Proposed Action

40. The Notice of Intended Decision was posted on Florida Housing's website at 11:33 a.m. on December 13, 2013.

Substantial Interests Affected

Petitioners are adversely affected by Florida Housing's Intended Decision. Petitioners' Application for the Garden Trail development in Pinellas County complies with all of the requirements of the RFA, received the maximum number of points available, and has a lottery number of 8. But for the erroneous decisions described above regarding Eagle Ridge and Whispering Palms, Garden Trail instead would be recommended for funding as the eligible development in Pinellas County with the lowest lottery number. Accordingly, Petitioners will be adversely affected if Florida Housing awards funding to Eagle Ridge as proposed in the Notice of Intended Decision.

Statutes and Rules that Entitle Petitioners to Relief

41. Petitioners are entitled to relief pursuant to Sections 120.569 and 120.57, Florida Statutes, Chapters 28-106, 28-110, 67-48 and 67-60, Florida Administrative Code; and the established decisional law of Florida courts, the Division of Administrative Hearings, and Florida administrative agencies.

Demand for Relief

WHEREFORE, Petitioners respectfully request that Florida Housing:

- a. Provide an opportunity to resolve this Petition by mutual agreement within seven (7) business days, as provided in Section 120.57(3), Florida Statutes;
- b. Transfer this Petition to the Division of Administrative Hearings for a formal hearing conducted before an Administrative Law Judge pursuant to Sections 120.569 and 120.57, Florida Statutes, if this Petition cannot be resolved within seven (7) business days; and
- c. Ultimately issue a Final Order withdrawing the Intended Decision to award funding to Eagle Ridge and instead awarding funding to the Garden Trail development.

Respectfully submitted this 27th day of December, 2013.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Formal Written Protest and Petition for Formal Administrative Hearing was filed by hand-delivery with Ashley Black, Agency Clerk, and that a true and correct copy was provided by hand-delivery to Wellington Meffert, General Counsel, Florida Housing Finance Corporation 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301 all on this 27th day of December, 2013.



Lawrence E. Sellers, Jr.

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