

**BEFORE THE
FLORIDA HOUSING FINANCE CORPORATION**

**HTG PINELLAS 2, LLC,
(Whispering Palms)**

Petitioner,

vs.

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

**FHFC Case No. 2013-046BP
FHFC RFA No. 2013-002
Petitioner's Application No. 2014-124C
Intervenors' Applications No. 2014-105C and 107C**

**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 Petitioner and Respondent, and is authorized to represent that neither party opposes this 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, HTG Pinellas 2, LLC was also an applicant for funding in RFA No. 2013-002, for a proposed development in Pinellas County to be known as Whispering Palms. Petitioner sought an award of \$947,486 in annual allocation of housing credits. Petitioner's application was assigned application number 2014-124C and lottery number 7 by Florida Housing. FHFC has announced its intention not to award funding to Petitioner. Petitioner has filed a Formal Written Protest, copy (without exhibits) attached hereto as Exhibit "B," and an Amended Formal Written Protest, copy attached as Exhibit "C," 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 Formal Written Protest was filed on or about Monday, December 30, 2013; and an Amended Formal Written Protest on Wednesday, January 8, 2014. To the best of the undersigned's knowledge, the Amended 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 Petitioner would result in applications other than those initially selected for funding receiving a funding award.

8. Petitioner has specifically raised as an issue the eligibility of Lingo Cove to receive an award of funding. As a result, Intervenor Lingo Cove may lose its announced award of housing credit funding as a result of this proceeding, if it is found to be ineligible.

9. Petitioner has not directly challenged the eligibility of Urban Landings to receive a funding award, but it has challenged several other applicants (including Lingo Cove). If such challenges are successful, Urban Landings may lose its 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 Urban Landings is selected for funding instead of Urban Landings; or indirectly by affecting the amount of funding available through the “Funding Test,” as explained more fully below.

10. 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 either the award of funding to Petitioner and the loss of funding to Intervenors, or the rejection of Intervenor Lingo Cove’s proposal, or the rejection of all proposals, then neither Intervenor will be able to construct its development.

Four Large County RFA Ranking and Selection Process

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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 Mango Cove was deemed eligible for consideration but was not selected for funding.

18. 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.

19. 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

20. Petitioner's Amended Formal Written Protest, at paragraphs 16 through 46, identifies "Statements of Ultimate Facts" that Petitioner has raised. Petitioner has further identified in paragraph 47, subparagraphs (a) through (n), 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. Intervenors specifically deny and dispute the allegations of Petitioner's paragraphs 19, 20, 25, 26, and 47 (a) through (f) of the Amended Petition. 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

21. 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 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 Intervenors' applications were responsive to all material terms and conditions of the RFA;
 - (d) that any variance in Intervenor Lingo Cove's proposal from the provisions of the RFA was a waivable minor irregularity which was properly waived or should be waived;


- (e) 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 Petitioner Mango Station, 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 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

22. If Florida Housing holds a meeting with Petitioner Mango Station 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.

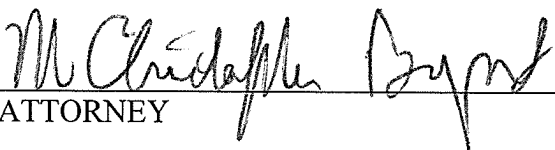

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ATTORNEYS FOR LINGO COVE PARTNERS,
LTD., and URBAN EDGE PARTNERS II, LTD.

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

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	Fleming 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 28-120, F.A.C., and Rule 67-60009, 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

HTG PINELLAS 2, LLC,

Petitioner

v.

FHFC Case No. 2013-044 BP
DOAH Case No: _____
FHFC Application No.: 2014-124C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

FORMAL WRITTEN PROTEST AND PETITION
FOR FORMAL ADMINISTRATIVE HEARING

Petitioner, HTG Pinellas 2, LLC ("HTG"), by and through undersigned counsel, files this Formal Written Protest and Petition for Formal Administrative Hearing ("Petition") pursuant to Section 120.57(3), Florida Statutes, Rules 28-110.003 and 67-60.009, Florida Administrative Code, challenging the Notice of Intent to Award issued by Florida Housing Financing Corporation ("Florida Housing") regarding Request for Applications 2013-002 for Affordable Housing Developments located in Duval, Hillsborough, Orange and Pinellas counties. In support of its Petition, HTG states as follows:

Parties

1. Petitioner HTG is a Florida limited liability company, authorized to transact business in Florida with an address at 3325 Aviation Avenue, Suite 602, Miami, Florida, 33133. HTG's address, phone number and email address for purposes of this proceeding, are that of its undersigned counsel.

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

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 low-income housing tax credits ("Housing Credits") §420.5099, Florida Statutes (2013).

4. Florida Housing has adopted Chapter 67-60, Florida Administrative Code which details the procedures for administering the competitive solicitation process for the Housing Credit Program authorized by section 42 of the IRC and section 420.5099, Florida Statutes.

5. The Request for Applications 2013-002 for Affordable Housing Developments located in Duval, Hillsborough, Orange and Pinellas counties (hereinafter "RFA"), was issued on September 19, 2013. A copy of the RFA is attached hereto as Exhibit "A".

6. Through the RFA, Florida Housing anticipated awarding up to an estimated \$7,898,649 of Housing Credits to developments proposed in Duval, Hillsborough, Orange and Pinellas counties (See RFA at 2).

7. Only eligible applications are considered for funding (See RFA at 36).

8. The RFA provides that review committee members independently evaluate and score their assigned portions of the submitted eligible applications based on various Mandatory and Point items (See RFA at 37-38).

9. According to the RFA, once an application is deemed eligible for funding,

The highest scoring Applications will be determined by first sorting all eligible Applications from highest score to lowest score, with any scores that are tied separated first by the Application's eligibility for the Development Category Funding Preference which is outlined in Section Four A.4.c.(1)(a) of the RFA (with Applications that qualify for the preference listed above Applications that do not qualify for the preference), then by the Applications eligibility for the Per Unit Construction Funding Preference which is outlined in Section Four A.9.e. of the RFA, (with Applications that qualify for the preference listed above, Applications to [sic] do not qualifying for the preference), then by the Applications Leveraging Classification (applying the multipliers outlined in Exhibit C below and having the Classification be the top priority), then by the Application's eligibility for the Florida Job Creation Preference which is outlined in Exhibit C below (with Applications that qualify for the preference listed above Applications that do not qualify for the preference), and then by lottery number, resulting in the lowest lottery number receiving preference.

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.

(See RFA at 36, 37)

10. HTG timely submitted its application for the Whispering Palms Development in Pinellas County to Florida Housing before 2:00 p.m. on October 30, 2013. Whispering Palms was deemed an eligible application for funding.

11. The review committee met at two public meetings, held on November 18, 2013 and December 11, 2013. At the December 11th meeting, the review committee scored and ranked the applications received and recommended certain applications to the Florida Housing Board of Directors for funding and approval by The Florida Housing Board. The Florida Housing Board approved those Developments recommended for funding at its meeting on Friday, December 13, 2013.

12. Of the six (6) recommended applications only one met the Transit Oriented Development (TOD) goal, Lexington Court Apartments (Application No. 2014-109C) in Orange County. The other Developments recommended and approved for funding are,

Senior Citizens Village (Application No. 2014-129C), Duval County;

Eagle Ridge (Application No. 2014-101C), Pinellas County;

Flamingo West (Application No. 2014-111C), Hillsborough County;

The Fountains at Lingo Cove (Application No. 2014-107C), Orange County;

Urban Landings (Application No. 2014-105C), Pinellas County.

13. Florida Housing posted Notice of its Intent to Award resulting from Request for Applications No. 2013-002, for Affordable Housing and Developments located in Duval, Hillsborough, Orange and Pinellas counties ("RFA"), on Friday, December 13, 2013 on the Florida Housing website. A copy of this posted Notice is attached hereto as Exhibit "B". Petitioners received notice of the agency decision through this posting. On Wednesday, December 18, 2013, HTG timely filed its Notice of Intent to Protest with the Florida Housing agency clerk; a copy of the Notice is attached hereto as Exhibit "C".

14. In accordance with Section 120.57(3), Florida Statutes, Chapter 28-110 and Rule 67-60.009, Florida Administrative Code, this Petition is being filed within 10 days of the date that HTG filed its Notice of Protest.

15. Florida Housing's actions in terms of scoring are clearly erroneous, contrary to competition, arbitrary and/or capricious, and in violation of the terms of the RFA.

Statement of Ultimate Facts

Flamingo West (Application No. 2014-111C)

16. The RFA requires an Applicant to demonstrate site control through either an Eligible Contract, a Deed or Certificate of Title or a Lease. (See RFA at 23-24).

17. Blue HC 53, LLC ("Blue HC") is the applicant proposing Flamingo West, a proposed rehabilitation of a development in Hillsborough County.

18. As evidence of site control, Blue HC submitted an Agreement for Sale and Purchase between Flamingo West Apartments, Inc. and Blue HC 54, LLC dated October 3, 2013 (the "Agreement"). The Agreement was executed by a representative for Flamingo West, as the Seller, on September 30, 2013 and Shawn Wilson on behalf of Blue HC, as the Buyer, on October 3, 2013.

19. The Articles of Organization filed for Blue HC reflect that they were filed with the Florida Secretary of State's office on October 7, 2013 at 8:00 a.m.¹ A copy of the Articles of Organization are attached hereto as Exhibit "D".

20. On October 3, 2013, the date of the Agreement, there was no legally formed entity known as Blue HC 54, LLC thus there is no valid eligible contract and site control has not been met.

21. In addition, paragraph 40 of the Agreement provides,

40. Offer and Acceptance- This Agreement **shall first be executed in full by Purchaser** for presentation to Seller. If this Agreement is not executed by Seller and delivered to Purchaser OR THE FACT OF EXECUTION communicated in writing by Seller to Purchaser within ten (10) days after the date of execution by Purchaser, then in such event this Agreement shall be **null and void and of no further force and effect**... (emphasis supplied).

22. Contrary to the express terms of paragraph 40 of the Agreement, Seller executed the Agreement on September 30, 2013, well before the Purchaser did on October 3, 2013.

¹ The Articles filed on October 7, 2013 provide that the effective date for the filing shall be October 1, 2013.

23. By its own terms, the Agreement upon which HC relies to establish site control is null and void and of no force and effect. Accordingly, Florida Housing should have deemed this applicant ineligible for funding.

24. Lastly, Blue HC is proposing to rehab seventy two (72) units as part of its rehabilitation development.

25. Pursuant to the applicable current zoning code, development would be restricted to sixty four (64) units.

26. Rule 67.48.004(3)(i), Florida Administrative Code, provides that the total number of units cannot be decreased *after* the application submission.

27. Blue HC's Exhibit A to RFA 2013-002, proposing 72 units is in direct contravention to the applicable zoning code and Rule 67-48.004(3)(i) which prohibits any decrease in proposed number of units.

28. Blue HC has failed to demonstrate site control which is a mandatory item, cannot rehab 72 units as per the current zoning code and thus its application should have been deemed ineligible for funding by Florida Housing.

29. Florida Housing's failure to deem the application of Blue HC ineligible for funding is clearly erroneous, contrary to competition, arbitrary and/or capricious and in violation of the terms of the RFA.

The Fountains at Lingo Cove (Application No. 2014-107C)

30. Lingo Cove Partners, LTD ("LCP") is the applicant proposing The Fountains at Lingo Cove in Orlando, Florida.

31. As evidence of site control, LCP submitted several documents:

- (a) Standard Contract for Sale and Purchase between New Earth Properties, LLC (as "Seller") and Southern Investment Group, L.L.L.P. (as "Buyer"), dated March 7, 2013 (as amended, the "Underlying Contract");
- (b) Amendment to Standard Contract for Sale and Purchase between New Earth Properties LLC, ("Seller") and Southern Investment Group, L.L.L.P. ("Buyer"), dated August 19, 2013;
- (c) The Second Amendment to Standard Contract for Sale and Purchase between New Earth Properties, LLC ("Seller") and Southern Investment Group, L.L.L.P. ("Buyer") was executed on August 30, 2013;² and
- (d) The Purchase Agreement between Southern Investment Group, L.L.L.P., as seller, and Lingo Cove Partners, LTD, (hereinafter referred to as "Subsequent Purchase Agreement") was executed on October 28, 2013.

32. The Seller, under the Underlying Contract, New Earth Properties, LLC does not and never has existed as a legally formed entity within the State of Florida.

33. Additionally, New Earth Properties, LLC does not own the subject parcel, thus site control has not been met. The Orange County Property Appraisers Office confirms ownership of the subject parcel in a different legal entity. A copy of the Property Records for the subject parcel are attached hereto as Composite Exhibit "E".

34. LCP has failed to provide a valid and enforceable contract and therefore has failed to demonstrate site control which is a mandatory item and thus its application should have been ineligible for funding by Florida Housing.

² The Standard Contract for Sale and Purchase, and its amendments shall be referred to herein as the "Underlying Contract".

35. In addition, an Eligible Contract as defined by the RFA requires that the "...buyer MUST be the Applicant unless **an assignment of the eligible contract which assigns all of the buyers rights, title and interest** in the eligible contract to the Applicant is provided." (See RFA at 24). (Emphasis supplied).

36. As stated herein, the Underlying Contract was between New Earth Properties, LLC, as seller, and Southern Investment Group, L.L.L.P., as buyer.

37. The Subsequent Purchase Agreement is between Southern Investment Group, L.L.L.P., as seller, and Lingo Cove Partners, Ltd. as purchaser.

38. The Subsequent Purchase Agreement contains the following provision,

20. Underlying Contract. There is an underlying contract between the Seller and the current owner of the premises. Seller shall fully comply with the terms of the underlying contract and, at Purchaser's sole option, Purchaser shall have the absolute right to comply with any such term including the making of any payment on Seller's behalf.

39. Notwithstanding Section 20, the Subsequent Purchase Agreement does not contain language which "assigns all of the buyer's rights, title and interest in the eligible contract to the Applicant." Thus, it is not an Eligible Contract and LCP is not an eligible applicant for funding.

40. Florida Housing's failure to deem the application of LCP ineligible for funding due to failure to provide an enforceable contract which demonstrates site control is clearly erroneous, contrary to competition, arbitrary, and/or capricious and in violation of the terms of the RFA.

Eagle Ridge (Application No. 2014-101C)

41. Eagle Ridge Apartments, LLC ("Eagle Ridge") is the applicant proposing to develop Eagle Ridge, a 94 unit development, in Pinellas County, Florida.

42. Eagle Ridge is being proposed for development upon scattered sites.³ Lots 1, 2, and 3 of Block C of the Plat (the "Northwest Scattered Site") are not contiguous to the remainder of the premises described within the legal description provided as Exhibit A of the Ground Lease as amended dated April 28, 2009. (Attachment 8 to the Application of Eagle Ridge).

43. According to the RFA, in order for an application to be considered for proximity points, the applicant must provide an acceptable Surveyor Certification Form, reflecting a Development Location Point. (See RFA at 11).⁴

44. The RFA further provides that the coordinates for the Development Location Point,

"...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." (Emphasis supplied).

(See RFA at 16).⁵

45. According to Eagle Ridge's Surveyor Certification Form, the Development Location Point is located on the Northwest Scattered Site. The area of the Northwest Scattered Site is approximately .29 acres of the total 9.33 acre parcel legally described within Eagle Ridge's site control documents. Pursuant to Resolution No. 2013-29, density is restricted to a maximum 11.25 units per acre, which would allow a total of 3.25 units. Therefore, the Northwest Scattered Site cannot contain the most units.

³ A development site is a scattered site if, "...when taken as a whole, is comprised of real property that is not contiguous..." 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. (See RFA at 56).

⁴ The applicant must identify a Development Location Point on the development site by latitude and longitude coordinates. (See RFA at 11).

⁵ See also the 2013 Surveyor Certification Form. (See RFA at 56).

46. Florida Housing improperly scored Eagle Ridge since they failed to comply with the specifications of the RFA. Eagle Ridge did not properly identify a Development Location Point and thus should not have received proximity points and was ineligible for scoring purposes.

Springfield Plaza (Application No. 2014-114C)

47. Applicant, RST Springfield Plaza, LP proposes to develop Springfield Plaza in Duval County.

48. The RFA requires each applicant to submit a 2013 Surveyor Certification Form, reflecting services information for the Bus or Rail Transit Services and Community Services for which the Applicant is seeking points. (See RFA at 11). Proximity points will be based on the distance between the Development Location Point and the location of the Community Services selected on the Surveyor Certification Form.

49. Applicants may select four (4) of five (5) Community Services; grocery store, public school, senior center, medical facility or pharmacy. (See RFA at 14). One of the five Community Services selected by RST Springfield Plaza, LLP was a Medical Facility.

50. The RFA specifically defines a Medical Facility as:

“...a medically licensed facility that: (i) employs or has under contractual obligation at least one physician licensed under Chapter 458 (Medical Practice) or 459 (Osteopathic Medicine), Florida Statutes, available to treat patients by walk-in or by appointment and (ii) provides general medical treatment to any physically sick or injured person. Facilities that specialize in treating specific classes of medical conditions or specific classes of patients, including emergency rooms affiliated with specialty or Class II hospitals and clinics affiliated with specialty or Class II hospitals will not be accepted. (See RFA at 15).

51. Class II hospitals are those which offer the same range of services offered by general hospitals, however are restricted to a defined age or gender group including children and/or women. Rule 59A-3.252, F.A.C.

52. The Medical Facility listed on the 2013 Surveyor Certification Form for Springfield Plaza is the Jacksonville Health Department, 515 W. 6th Street, Jacksonville, Florida 32206. Florida Housing awarded Springfield 3.5 Community Service proximity points based upon its proximity to this address.

53. There is no medical facility located at the 515 W. 6th Street address named "Jacksonville Health Department."

54. The Florida Department of Health does operate the "Central Health Plaza" located at the same address. The facility houses the "Center for Women and Children at Central Health Plaza", the "Boulevard Comprehensive Care Center", the "Central Dental Center" and the Duval County Public Health Unit Center for Prevention. The Boulevard Comprehensive Care Center manages the Department's Infectious Disease Clinic, the Center for Prevention Clinic, the Refugee Health Clinic, Disease Control Administration, the Ryan White Program (AIDS Prevention/Treatment), the Clinical Research Program, Mental Health Services, and Epidemiology program.

55. According to the Florida Agency for Health Care Administration ("AHCA") the only medically licensed facility at the 515 W. 6th Street address is the Duval County Health Unit Center for Prevention which is licensed as a clinical laboratory.

56. As the applicant named a facility on its application which does not exist, Florida Housing should not have awarded any proximity points for a Medical Facility to the applicant.

57. Even if the applicant had correctly named the Department of Health facilities which provide some form of health care services located at the 515 W. 6th Street address, none of the Department's programs housed at that address meet the definition of a Medical Facility as required by the RFA. Specifically, there is no facility that "provides general medical treatment to any physically sick or injured person" as required by the RFA. All the services provided by the Department of Health at this address are highly specialized in nature and limited to very specific classes of medical conditions or specific classes of patients. For example, there is no general medical treatment available to men at the facility. The RFA is clear that facilities providing specialized care or care limited to specific classes of patients "will not be accepted". Accordingly, Florida Housing improperly awarded Springfield Plaza Community Service proximity points to which it was not entitled and which unfairly inflated Springfield's application when compared to the Petitioner. Florida Housing's actions in this regard are clearly erroneous, contrary to competition, arbitrary and/or capricious and in violation of the explicit terms of the RFA.

58. Additionally, the RFA requires the Applicant to execute the Applicant Certification and Acknowledgement of Exhibit A,

The copy of the Application labeled "original hard copy" must reflect an **original signature** (blue ink is preferred).

(See RFA at 36). (Emphasis supplied).

59. Pursuant to a public records request to Florida Housing, HTG has confirmed that the Original Applicant Certification and Acknowledgement Form is not signed by the Applicant.

60. Florida Housing should have deemed this application ineligible since it failed to submit an Executed Applicant Certification and Acknowledgement form with an original signature.

Garden Trail (Application No. 2014-128C)

61. Garden Trail Apartments 2013, LLC ("Garden Trail") is the applicant proposing Garden Trail in Pinellas County, Florida.

62. The RFA requires each Applicant to identify the Principals, both for the Applicant and the Developer on Attachment 3.⁶

63. In the RFA, Florida Housing provided charts to assist Applicants in providing the required Principal information for each Applicant. (See RFA at 63, 64). In addition, Applicants were encouraged to participate in the advance-review process, in which Applicants could submit this information to Florida Housing, in advance of the Application Deadline, for review and approval. The Application requires for a Limited Liability Company applicant to, "...provide a list identifying the following: (i) the Principals of the Applicant as of the Application Deadline and (ii) the Principals for each Developer as of the Application Deadline...". (See RFA at 5).

64. Garden Trail is a Limited Liability Company which did not participate in the advance-review process offered by Florida Housing.

65. In Attachment 3 submitted by Garden Trail, it provided the following information,

Member of Garden Trail Apartments 2013, LLC:

J. David Page (99.99% Interest)

The sole member, the person or entity.

Manager of Garden Trail Apartments 2013, LLC:

⁶ "Principal" is defined in Rule 67.48.002(89), F.A.C.

Garden Trail Manager, LLC, A Florida Limited Liability Company (0.01% interest).⁷

66. Garden Trail has identified J. David Page as its sole member, however the corresponding ownership interest as stated on is only 99.99%. As such, J. David Page is not the sole member.

67. In addition, it is alleged that Garden Trail Manager, LLC has a 0.01% membership interest, yet it is only identified as a manager and not a member.

68. The Applicant Information submitted by Garden Trail is incorrect and deficient on its face. Garden Trail identifies J. David Page as its sole member when Garden Trail Manager, LLC may have a membership interest. Garden Trail's application is ineligible for funding for its inaccuracies on its face and its failure to identify all of its members.⁸

Peyton Ridge (Application No. 2014-100C)

69. Peyton Ridge Community, Ltd ("Peyton Ridge") is the applicant proposing Peyton Ridge in Duval County, Florida.

70. The Application provides as follows for an applicant to use an Equity Proposal as a funding source:

For the purpose of this RFA, to be counted as a source an equity proposal...must: (i) if syndicating/selling the Housing Credits meet the requirements outlined in (b) below...

(b) If syndicating/selling the Housing Credits:

(i) A Housing Credit equity proposal must also meet the following criteria:

- Be executed by all parties, including the Applicant;

⁷ A copy of Attachment 3 is attached hereto as Exhibit "F".

⁸ This failure is more egregious based on the failure of the Applicant to avail itself of the advance-review process offered by Florida Housing.

- **Include specific reference to the Applicant as the beneficiary of the equity proceeds;**

- State the anticipated Eligible Housing Credit Request Amount;
- **State the anticipated dollar amount of Housing Credit allocated to be purchased;**

(Emphasis Supplied). (See RFA at 35).

71. As evidence of its non-corporation funding, Peyton Ridge submitted as Attachment 12, correspondence from Raymond James Tax Credit Funds, Inc., dated October 25, 2013. A copy of this correspondence is attached hereto as Exhibit "G".

72. The letter provides in part,

Based upon the Partnership receiving \$1,355,897 in annual low income housing tax credits, and further based on terms and conditions as set forth below, the anticipated total equity investment of the RJTCF Fund in the Project is \$12,879,730 or \$0.95 per low income housing tax credit allocated to the RJTCF fund, subject to market conditions. **HTG Broward 3, LLC, Applicant is the beneficiary of the equity proceeds.** The RJTCF Fund anticipates purchasing \$13,557,615 (99.99%) of the total low income housing tax credits **allocated to HTG Broward 3, LLC.** (Emphasis Supplied).⁹

73. Florida Housing should not have counted the above referenced equity proposal as a source because it failed to include specific reference to Peyton Ridge as the Applicant as the beneficiary of the equity proceeds as required by the RFA. Additionally, the anticipated dollar amount of Housing Credits allocated to be purchased is solely related to HTG Broward 3, LLC as the applicant thus there is no statement as to the anticipated dollar amount of Housing Credit allocation to be purchased from Peyton Ridge Community, Ltd.

⁹ RJTCF is Raymond James Tax Credit Funds, Inc.

74. Florida Housing's scoring of the Peyton Ridge Application is clearly erroneous, contrary to competition, arbitrary and/or capricious and in violation of the terms of the RFA.

Disputed Issues of Material Fact and Law

75. The disputed issues of material fact and law raised in this proceeding are as follows:

- a. Whether Florida Housing's scoring of the application submitted by Blue HC 54, LLC was contrary to the RFA specifications, clearly erroneous, contrary to competition, arbitrary and capricious.
- b. Whether Florida Housing's scoring of the application submitted by Lingo Cove Partners, LTD was contrary to the RFA specifications, clearly erroneous, contrary to competition, arbitrary and capricious.
- c. Whether Florida Housing's scoring of the application submitted by Eagle Ridge Apartments, LLC was contrary to the RFA specifications, clearly erroneous, contrary to competition, arbitrary and capricious.
- d. Whether Florida Housing's scoring of the application submitted by RST Springfield Plaza, LP was contrary to the RFA specifications, clearly erroneous, contrary to competition, arbitrary and capricious.
- e. Whether Florida Housing's scoring of the application submitted by Garden Trail was contrary to the RFA specifications, clearly erroneous, contrary to competition, arbitrary and capricious.

Petitioners Substantial Interests

76. Petitioner timely filed its application seeking to be among the firms selected for funding. Petitioner's substantial interests are impacted by the Florida Housing's improper and erroneous scoring of Flamingo West, Fountains at Lingo, Eagle Ridge, Springfield Plaza, Garden Trail and Peyton Ridge applications in that, had Florida Housing properly scored these applications, HTG's ranking would be more than sufficient to receive funding for its application. The cumulative and/or partially cumulative impact of Florida Housing's errors directly and substantially impacts the interests of the Petitioner in that it will be unable to avail itself of funding necessary to proceed with the Whispering Palms development.

Request to Resolve by Mutual Agreement

77. Petitioner requests the opportunity to meet with Florida Housing within seven (7) working days after filing this protest, pursuant to Section 120.57(3)(d), Florida Statutes.

Reservation of Right to Amend

78. Petitioner reserves the right to amend this Petition as discovery proceeds.

Statutes/Rules that Entitle Petitioner to Relief

79. Petitioner is entitled to relief pursuant to sections 120.569 and 120.57, Florida Statutes, Chapters 28-106, 28-110 and 67-60, Florida Administrative Code and the established decisional law of Florida Courts, the Division of Administrative Hearings, Florida Administrative Hearings, and Florida administrative agencies.

Demand for Relief

Wherefore, Petitioner respectfully requests that Florida Housing:

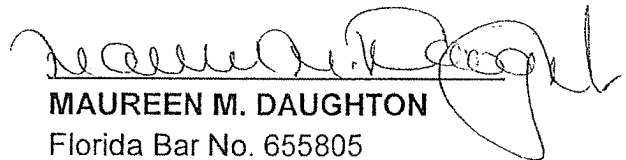
a. Refer this matter to DOAH for a hearing with an administrative law Judge involving disputed issues of material facts.

b. That the administrative law Judge should enter an Order recommending that Florida Housing re-score and re-rank the proposals taking into consideration the issues raised in this protest.

c. For such further relief as the administrative law Judge deem appropriate.

Dated this 30 day of December, 2013.

Respectfully submitted,



MAUREEN M. DAUGHTON

Florida Bar No. 655805

E-mail: mdaughton@sniffenlaw.com

MARK K. LOGAN

Florida Bar No. 494208

E-mail: mlogan@sniffenlaw.com

SNIFFEN & SPELLMAN, P.A.

123 North Monroe Street

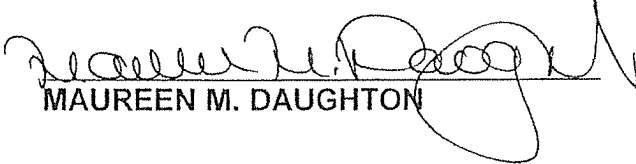
Tallahassee, Florida 32301

Telephone: (850) 205-1996

Facsimile: (850) 205-3004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via hand delivery to the Ashley Black, Clerk, at the Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301 on this 30 day of December, 2013.


MAUREEN M. DAUGHTON

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

HTG PINELLAS, 2, LLC,

Petitioner

v.

DOAH Case No: _____
FHFC Application No.: 2014-124C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

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

Petitioner, HTG Pinellas, 2, LLC ("HTG 2"), by and through undersigned counsel, files this Amended Formal Written Protest and Petition for Formal Administrative Hearing ("Petition") pursuant to Section 120.57(3), Florida Statutes, Rules 28-110.003 and 67-60.009, Florida Administrative Code, challenging the Notice of Intent to Award issued by Florida Housing Financing Corporation ("Florida Housing") regarding Request for Applications 2013-002 for Affordable Housing Developments located in Duval, Hillsborough, Orange and Pinellas counties. In support of its Amended Petition, HTG 2 states as follows:

Parties

1. Petitioner HTG 2 is a Florida limited liability company, authorized to transact business in Florida with an address at 3325 Aviation Avenue, Suite 602, Miami, Florida, 33133. HTG 2's address, phone number and email address for purposes of this proceeding, are that of its undersigned counsel.

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

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 low-income housing tax credits ("Housing Credits") §420.5099, Florida Statutes (2013).

4. Florida Housing has adopted Chapter 67-60, Florida Administrative Code which details the procedures for administering the competitive solicitation process for the Housing Credit Program authorized by section 42 of the IRC and section 420.5099, Florida Statutes.

5. The Request for Applications 2013-002 for Affordable Housing Developments located in Duval, Hillsborough, Orange and Pinellas counties (hereinafter "RFA"), was issued on September 19, 2013. A copy of the RFA is attached hereto as Exhibit "A".

6. Through the RFA, Florida Housing anticipated awarding up to an estimated \$7,898,649 of Housing Credits to developments proposed in Duval, Hillsborough, Orange and Pinellas counties (See RFA at 2).

7. Only eligible applications are considered for funding (See RFA at 36).

8. The RFA provides that review committee members independently evaluate and score their assigned portions of the submitted eligible applications based on various Mandatory and Point items (See RFA at 37-38).

9. According to the RFA, once an application is deemed eligible for funding,

The highest scoring Applications will be determined by first sorting all eligible Applications from highest score to lowest score, with any scores that are tied separated first by the Application's eligibility for the Development Category Funding Preference which is outlined in Section Four A.4.c.(1)(a) of the RFA (with Applications that qualify for the preference listed above Applications that do not qualify for the preference), then by the Applications eligibility for the Per Unit Construction Funding Preference which is outlined in Section Four A.9.e. of the RFA, (with Applications that qualify for the preference listed above, Applications to [sic] do not qualifying for the preference), then by the Applications Leveraging Classification (applying the multipliers outlined in Exhibit C below and having the Classification be the top priority), then by the Application's eligibility for the Florida Job Creation Preference which is outlined in Exhibit C below (with Applications that qualify for the preference listed above Applications that do not qualify for the preference), and then by lottery number, resulting in the lowest lottery number receiving preference.

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.

(See RFA at 36, 37)

10. HTG 2 timely submitted its application for the Whispering Palms Development in Pinellas County to Florida Housing before 2:00 p.m. on October 30, 2013. Whispering Palms was deemed an eligible application for funding.

11. The review committee met at two public meetings, held on November 18, 2013 and December 11, 2013. At the December 11th meeting, the review committee scored and ranked the applications received and recommended certain applications to the Florida Housing Board of Directors for funding and approval by The Florida Housing Board. A copy of the spreadsheet identifying eligible and non-eligible applicants as deemed by Florida Housing is attached hereto as Exhibit "B". The Florida Housing Board approved those Developments recommended for funding at its meeting on Friday, December 13, 2013.

12. Of the six (6) recommended applications only one met the Transit Oriented Development (TOD) goal, Lexington Court Apartments (Application No. 2014-109C) in Orange County. The other Developments recommended and approved for funding are,

Senior Citizens Village (Application No. 2014-129C), Duval County;

Eagle Ridge (Application No. 2014-101C), Pinellas County;

Flamingo West (Application No. 2014-111C), Hillsborough County;

The Fountains at Lingo Cove (Application No. 2014-107C), Orange County;

Urban Landings (Application No. 2014-105C), Pinellas County.

13. Florida Housing posted Notice of its Intent to Award resulting from Request for Applications No. 2013-002, for Affordable Housing and Developments located in Duval, Hillsborough, Orange and Pinellas counties ("RFA"), on Friday, December 13, 2013 on the Florida Housing website. A copy of this posted Notice is attached hereto as Exhibit "C". Petitioners received notice of the agency decision through this posting. On Wednesday, December 18, 2013, HTG timely filed its Notice of Intent to Protest with the Florida Housing agency clerk; a copy of the Notice is attached hereto as Exhibit "D".

14. In accordance with Section 120.57(3), Florida Statutes, Chapter 28-110 and Rule 67-60.009, Florida Administrative Code, this Petition is being filed within 10 days of the date that HTG filed its Notice of Protest.

15. Florida Housing's actions in terms of scoring are clearly erroneous, contrary to competition, arbitrary and/or capricious, and in violation of the terms of the RFA.

Statement of Ultimate Facts

The Fountains at Lingo Cove (Application No. 2014-107C)

16. Lingo Cove Partners, LTD ("LCP") is the applicant proposing The Fountains at Lingo Cove in Orlando, Florida.

17. As evidence of site control, LCP submitted several documents:

- (a) Standard Contract for Sale and Purchase between New Earth Properties, LLC (as "Seller") and Southern Investment Group, L.L.L.P. (as "Buyer"), dated March 7, 2013 (as amended, the "Underlying Contract");
- (b) Amendment to Standard Contract for Sale and Purchase between New Earth Properties LLC, ("Seller") and Southern Investment Group, L.L.L.P. ("Buyer"), dated August 19, 2013;
- (c) The Second Amendment to Standard Contract for Sale and Purchase between New Earth Properties, LLC ("Seller") and Southern Investment Group, L.L.L.P. ("Buyer") was executed on August 30, 2013;¹ and
- (d) The Purchase Agreement between Southern Investment Group, L.L.L.P., as seller, and Lingo Cove Partners, LTD, (hereinafter referred to as "Subsequent Purchase Agreement") was executed on October 28, 2013.

18. The Seller, under the Underlying Contract, New Earth Properties, LLC does not and never has existed as a legally formed entity within the State of Florida.

19. Additionally, New Earth Properties, LLC does not own the subject parcel, thus site control has not been met. The Orange County Property Appraisers Office confirms ownership of the subject parcel in a different legal entity. A copy of the Property Records for the subject parcel are attached hereto as Composite Exhibit "E".

¹ The Standard Contract for Sale and Purchase, and its amendments shall be referred to herein as the "Underlying Contract".

20. LCP has failed to provide a valid and enforceable contract and therefore has failed to demonstrate site control which is a mandatory item and thus its application should have been ineligible for funding by Florida Housing.

21. In addition, an Eligible Contract as defined by the RFA requires that the "...buyer MUST be the Applicant unless an assignment of the eligible contract which assigns all of the buyers rights, title and interest in the eligible contract to the Applicant is provided." (See RFA at 24). (Emphasis supplied).

22. As stated herein, the Underlying Contract was between New Earth Properties, LLC, as seller, and Southern Investment Group, L.L.L.P., as buyer.

23. The Subsequent Purchase Agreement is between Southern Investment Group, L.L.L.P., as seller, and Lingo Cove Partners, Ltd. as purchaser.

24. The Subsequent Purchase Agreement contains the following provision,

20. Underlying Contract. There is an underlying contract between the Seller and the current owner of the premises. Seller shall fully comply with the terms of the underlying contract and, at Purchaser's sole option, Purchaser shall have the absolute right to comply with any such term including the making of any payment on Seller's behalf.

25. Notwithstanding Section 20, the Subsequent Purchase Agreement does not contain language which "assigns all of the buyer's rights, title and interest in the eligible contract to the Applicant," it merely gives Purchaser the option to comply with any term of the Underlying Contract but does not transfer to the Purchaser the rights possessed by the Underlying Buyer. Thus, it is not an Eligible Contract and LCP is not an eligible applicant for funding.

26. Florida Housing's failure to deem the application of LCP ineligible for funding due to failure to provide an enforceable contract which demonstrates site control is

clearly erroneous, contrary to competition, arbitrary, and/or capricious and in violation of the terms of the RFA.

Eagle Ridge (Application No. 2014-101C)

27. Eagle Ridge Apartments, LLC (“Eagle Ridge”) is the applicant proposing to develop Eagle Ridge, a 94 unit development, in Pinellas County, Florida.

28. Eagle Ridge is being proposed for development upon scattered sites.² Lots 1, 2, and 3 of Block C of the Plat (the “Northwest Scattered Site”) are not contiguous to the remainder of the premises described within the legal description provided as Exhibit A of the Ground Lease as amended dated April 28, 2009. (Attachment 8 to the Application of Eagle Ridge).

29. According to the RFA, in order for an application to be considered for proximity points, the applicant must provide an acceptable Surveyor Certification Form, reflecting a Development Location Point. (See RFA at 11).³

30. The RFA further provides that the coordinates for the Development Location Point,

“...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.*” (Emphasis supplied).

(See RFA at 16).⁴

² A development site is a scattered site if, “...when taken as a whole, is comprised of real property that is not contiguous...” 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. (See RFA at 56).

³ The applicant must identify a Development Location Point on the development site by latitude and longitude coordinates. (See RFA at 11).

⁴ See also the 2013 Surveyor Certification Form. (See RFA at 56).

31. According to Eagle Ridge's Surveyor Certification Form, the Development Location Point is located on the Northwest Scattered Site. The area of the Northwest Scattered Site is approximately .29 acres of the total 9.33 acre parcel legally described within Eagle Ridge's site control documents. Pursuant to Resolution No. 2013-29, density is restricted to a maximum 11.25 units per acre, which would allow a total of 3.25 units. Therefore, the Northwest Scattered Site cannot contain the most units.

32. Florida Housing improperly scored Eagle Ridge since they failed to comply with the specifications of the RFA. Eagle Ridge did not properly identify a Development Location Point and thus should not have received proximity points and was ineligible for scoring purposes.

Garden Trail (Application No. 2014-128C)

33. Garden Trail Apartments 2013, LLC ("Garden Trail") is the applicant proposing Garden Trail in Pinellas County, Florida.

34. The RFA requires each Applicant to identify the Principals, both for the Applicant and the Developer on Attachment 3.⁵

35. In the RFA, Florida Housing provided charts to assist Applicants in providing the required Principal information for each Applicant. (See RFA at 63, 64). In addition, Applicants were encouraged to participate in the advance-review process, in which Applicants could submit this information to Florida Housing, in advance of the Application Deadline, for review and approval. The Application requires for a Limited Liability Company applicant to, "...provide a list identifying the following: (i) the Principals of the Applicant as of the Application Deadline and (ii) the Principals for each Developer as of the Application Deadline...". (See RFA at 5).

⁵ "Principal" is defined in Rule 67.48.002(89), F.A.C.

36. Garden Trail is a Limited Liability Company which did not participate in the advance-review process offered by Florida Housing.

37. In Attachment 3 submitted by Garden Trail, it provided the following information,

Member of Garden Trail Apartments 2013, LLC:

J. David Page (99.99% Interest)

The sole member, the person or entity.

Manager of Garden Trail Apartments 2013, LLC:

Garden Trail Manager, LLC, A Florida Limited Liability Company (0.01% interest).⁶

38. Garden Trail has identified J. David Page as its sole member, however the corresponding ownership interest as stated is only 99.99%. As such, J. David Page is not the sole member.

39. In addition, it is alleged that Garden Trail Manager, LLC has a 0.01% membership interest, yet it is only identified as a manager and not a member.

40. The Applicant Information submitted by Garden Trail is incorrect and deficient on its face. Garden Trail identifies J. David Page as its sole member when Garden Trail Manager, LLC may have a membership interest. Garden Trail's application is ineligible for funding for its inaccuracies on its face and its failure to identify all of its members.⁷

Peyton Ridge (Application No. 2014-100C)

41. Peyton Ridge Community, Ltd ("Peyton Ridge") is the applicant proposing Peyton Ridge in Duval County, Florida.

⁶ A copy of Attachment 3 is attached hereto as Exhibit "F".

⁷ This failure is more egregious based on the failure of the Applicant to avail itself of the advance-review process offered by Florida Housing.

42. The Application provides as follows for an applicant to use an Equity Proposal as a funding source:

For the purpose of this RFA, to be counted as a source an equity proposal...must: (i) if syndicating/selling the Housing Credits meet the requirements outlined in (b) below...

(b) If syndicating/selling the Housing Credits:

(i) A Housing Credit equity proposal must also meet the following criteria:

- Be executed by all parties, including the Applicant;
- **Include specific reference to the Applicant as the beneficiary of the equity proceeds;**

- State the anticipated Eligible Housing Credit Request Amount;
- **State the anticipated dollar amount of Housing Credit allocated to be purchased;**

(Emphasis Supplied). (See RFA at 35).

43. As evidence of its non-corporation funding, Peyton Ridge submitted as Attachment 12, correspondence from Raymond James Tax Credit Funds, Inc., dated October 25, 2013. A copy of this correspondence is attached hereto as Exhibit "G".

44. The letter provides in part,

Based upon the Partnership receiving \$1,355,897 in annual low income housing tax credits, and further based on terms and conditions as set forth below, the anticipated total equity investment of the RJTCF Fund in the Project is \$12,879,730 or \$0.95 per low income housing tax credit allocated to the RJTCF fund, subject to market conditions. **HTG Broward 3, LLC, Applicant is the beneficiary of the equity proceeds.** The RJTCF Fund anticipates purchasing \$13,557,615 (99.99%) of the total low income housing tax credits **allocated to HTG Broward 3, LLC.** (Emphasis Supplied).⁸

45. Florida Housing should not have counted the above referenced equity proposal as a source because it failed to include specific reference to Peyton Ridge as the

⁸ RJTCF is Raymond James Tax Credit Funds, Inc.

Applicant as the beneficiary of the equity proceeds as required by the RFA. Additionally, the anticipated dollar amount of Housing Credits allocated to be purchased is solely related to HTG Broward 3, LLC as the applicant thus there is no statement as to the anticipated dollar amount of Housing Credit allocation to be purchased from Peyton Ridge Community, Ltd.

46. Florida Housing's scoring of the Peyton Ridge Application is clearly erroneous, contrary to competition, arbitrary and/or capricious and in violation of the terms of the RFA.

Disputed Issues of Material Fact and Law

47. The disputed issues of material fact and law raised in this proceeding are as follows:

- a. Whether Florida Housing's scoring of the application submitted by Lingo Cove Partners, LTD was contrary to the RFA specifications, clearly erroneous, contrary to competition, arbitrary and capricious.
- b. Whether New Earth Properties, LLC is a legally formed entity within the State of Florida.
- c. Whether New Earth Properties, LLC ever held an ownership interest in the subject Parcel of Application No. 2014-107C.
- d. Whether New Earth Properties, LLC conveyed anything to Southern Investment Group, L.L.L.P. in the underlying Agreement.
- e. Whether Southern Investment Group, L.L.L. P., conveyed anything to Lingo Cove Partners, Ltd. in the subsequent Purchase Agreement.

- f. Whether the subsequent Purchase Agreement is an Eligible Contract under the RFA.
- g. Whether Florida Housing's scoring of the application submitted by Eagle Ridge Apartments, LLC was contrary to the RFA specifications, clearly erroneous, contrary to competition, arbitrary and capricious.
- h. Whether Eagle Ridge is being proposed for development upon scattered sites.
- i. Whether the Eagle Ridge proposed site is contiguous.
- j. Whether Florida Housing's scoring of the application submitted by Garden Trail was contrary to the RFA specifications, clearly erroneous, contrary to competition, arbitrary and capricious.
- k. Whether Garden Trail Manager, LLC is a member of Garden Trail.
- l. Whether J. David Page is the sole member of Garden Trail.
- m. Whether J. David Page holds all ownership interest in Garden Trail.
- n. Whether Florida Housing's scoring of Peyton Ridge was contrary to the RFA specifications, clearly erroneous, contrary to competition, arbitrary and capricious.

Petitioners Substantial Interests

48. Petitioner timely filed its application seeking to be among the firms selected for funding. Petitioner's lottery number is 7 and it is the second highest number in the Eligible Applications in Pinellas County. Petitioner's substantial interests are impacted by the Florida Housing's improper and erroneous scoring of Fountains at Lingo, Eagle Ridge, Garden Trail and Peyton Ridge applications in that, had Florida Housing properly scored these applications, HTG 2's ranking would be more than sufficient to receive

funding for its application. The cumulative and/or partially cumulative impact of Florida Housing's errors directly and substantially impacts the interests of the Petitioner in that it will be unable to avail itself of funding necessary to proceed with the Whispering Palms development.

Request to Resolve by Mutual Agreement

49. Petitioner requests the opportunity to meet with Florida Housing within seven (7) working days after filing this protest, pursuant to Section 120.57(3)(d), Florida Statutes.

Reservation of Right to Amend

50. Petitioner reserves the right to amend this Amended Petition as discovery proceeds.

Statutes/Rules that Entitle Petitioner to Relief

51. Petitioner is entitled to relief pursuant to sections 120.569 and 120.57, Florida Statutes, Chapters 28-106, 28-110 and 67-60, Florida Administrative Code and the established decisional law of Florida Courts, the Division of Administrative Hearings, Florida Administrative Hearings, and Florida administrative agencies.

Demand for Relief

Wherefore, Petitioner respectfully requests that Florida Housing:

- a. Refer this matter to DOAH for a hearing with an administrative law Judge involving disputed issues of material facts.
- b. That the administrative law Judge should enter an Order recommending that Florida Housing re-score and re-rank the proposals taking into consideration the issues raised in this protest.
- c. That Whispering Pines be selected for funding.

d. For such further relief as the administrative law Judge deem appropriate.

Dated this 8 day of January, 2014.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via hand delivery to the Ashley Black, Clerk, at the Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301 on this 8 day of January, 2014.



MAUREEN M. DAUGHTON