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April 2, 2015

Kate Flemming
Clerk
Florida Housing Finance Corporation
227 North Bronough Street
Suite 5000
Tallahassee, Florida 32301

Dear Ms. Flemming:

Attached for filing is a Formal Written Protest and Petition for Administrative Hearing filed on behalf of Madison Crossing II, LLC and American Residential Development, LLC for RFA 2014-114. Please contact me if you have any questions. We look forward to receiving information as to when the Settlement Conference is scheduled.

Sincerely,


J. Stephen Menton

JSM/rd

Enclosure

Copy: Hugh Brown, Esquire (w/enc.)

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FLORIDA HOUSING
FINANCE CORPORATION

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

MADISON CROSSING II, LLC and
AMERICAN RESIDENTIAL DEVELOPMENT, LLC
Application #2015-086C

Petitioners,

CASE NO.: 2015-008BP

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

FORMAL WRITTEN PROTEST AND PETITION FOR ADMINISTRATIVE HEARING

Madison Crossing II, LLC and American Residential Development, LLC (collectively, the "Petitioners") file this formal written protest to challenge the eligibility determinations, evaluations and proposed allocations set forth in the Notice of Intended Decision posted on March 20, 2015, by Respondent, Florida Housing Finance Corporation, for Request for Applications 2014-114. In support of this Petition, Petitioners state as follows:

Introduction

1. This is a formal written protest filed pursuant to Sections 120.57(1) and (3), Florida Statutes,¹ Rule 28-110.004 and Rule 67-60, Florida Administrative Code. The Division of Administrative Hearings has jurisdiction over the subject matter and parties to this proceeding. See, Sections 120.569, 120.57(1), 120.57(3), Fla. Stat., and Rules 67-60.009(1) and (2), Fla. Admin. Code.

¹All citations contained herein are to the official version of the 2014 Florida Statutes unless otherwise noted.

Parties

2. Petitioners are the owners and developers of a proposed affordable housing development to be located in Osceola County, Application #2015-0866. American Residential Development, LLC is a “Developer” as defined by Florida Housing Finance Corporation in Rule 67-48.002(28), Fla. Admin Code. Petitioners and its affiliated entities have successfully completed the construction of several affordable housing developments from funding sources allocated by Florida Housing Finance Corporation.

3. Petitioners’ address is 558 West New England Avenue, Suite 250, Winter Park, Florida 32789. For purposes of this proceeding, the Petitioners’ address is that of its undersigned counsel.

4. The affected agency is the Florida Housing Finance Corporation (“Florida Housing” or “Respondent”). Florida Housing’s address is 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

5. Florida Housing is a public corporation created by Section 420.504, Florida Statutes, to administer the governmental function of financing or refinancing affordable housing and related facilities in Florida. Florida Housing’s statutory authority and mandates are set forth in Part V of Chapter 420, Florida Statutes. See, Sections 420.501-420.55, Fla. Stat.

Background on Florida Housing’s Programs

6. Florida Housing administers several programs aimed at assisting developers in building affordable housing in the state in an effort to protect financially marginalized citizens from excessive housing costs. A portion of the units constructed with funding from these programs must be set aside for residents earning at or below a specified percentage of area median income (“AMI”).

7. One of the programs through which Florida Housing allocates resources to fund affordable housing is the State Housing Tax Credit Program (the “Tax Credit Program”), which is established in Florida under the authority of Section 420.5093, Fla. Stat. Florida Housing is the designated entity in Florida responsible for allocating federal tax credits to assist in financing the construction or substantial rehabilitation of affordable housing.

The RFA

8. Chapter 67-60, Fla. Admin. Code., establishes “the procedures by which the Corporation shall . . . [a]dminister the competitive solicitation processes to implement the provisions of the Housing Credit (HC) Program authorized by Section 42 of the IRC and Section 420.5099, F.S.” See, Rules 67-60.001 & 60.001(2), Fla. Admin. Code.

9. On November 21, 2014, Florida Housing issued Request for Applications 2014-114 (the “RFA”) seeking applications for tax credit funding of affordable housing projects located in Medium and Small Counties.² The RFA was issued pursuant to and in accordance with Rules 67-60.001 and 67-60.003, Fla. Admin. Code.

10. The RFA was issued by Florida Housing as the competitive selection method for allocating funding to competing affordable housing developments. The RFA solicited proposals from qualified applicants who had previously constructed affordable housing units utilizing funding awarded by Florida Housing. Under the RFA, up to an estimated \$12,914,730 in housing tax credits are to be allocated for projects located in the Medium Counties and an estimated \$1,513,170 in tax credits are to be allocated to proposed developments located in Small Counties. Applications in response to the RFA were due on January 22, 2015.

² Modifications to the RFA were posted on January 12 and January 14, 2015.

11. Florida Housing received approximately 82 applications in response to the RFA. Petitioners timely submitted an application in response to the RFA requesting financing for its affordable housing project from the funding that is proposed to be allocated through the RFA. More specifically, Petitioners requested an allocation of \$1,510,000 in annual tax credits for Petitioners' development located in Osceola County. Petitioners' application satisfies all of the required elements of the RFA and is eligible for a funding award.

12. The RFA sets forth the information required to be provided by an applicant and provides a general description of the type of projects that will be considered eligible for funding. See, RFA, pgs. 2-3. The RFA also delineates the funding selection criteria beginning on page 45. The RFA expressly provides that "Only Applications eligible for funding will be considered for funding selection." Page 49 of the RFA sets forth a list of Mandatory Items that must be included in a response.

13. The initial evaluation and scoring of the RFA responses was conducted by a Review Committee comprised of Florida Housing staff assigned to score specific portions of the responses. The Review Committee members consulted with non-committee Florida Housing staff and legal counsel as necessary. See, RFA, p. 48. The Review Committee scored the applications and developed a Chart listing the eligible and ineligible Applications in order from highest total score to lowest total score. The Review Committee also applied the funding selection criteria set forth in the RFA to develop a proposed allocation of housing tax credits to eligible applicants. The preliminary rankings and allocations were presented to and approved by the Florida Housing Board on March 20, 2015.

14. The RFA and applicable rules provide an opportunity for applicants to file administrative challenges to the scoring and rankings set forth in the preliminary allocations.

After the resolution of the administrative challenges, results will be presented to the Florida Housing Board for final approval prior to issuing invitations to the applicants in the funding range to enter the credit underwriting process.

15. As set forth below, the eligibility determinations, scoring and preliminary ranking of the applications did not recognize or take into account the failure of several applicants to respond to mandatory items required by the RFA. Consequently, a correct determination of the developments eligible for funding under the RFA has not been made. Because of errors in the eligibility determinations, scoring and ranking process, multiple applications have been included in the rankings that should have been disqualified.

16. Petitioners received notice of the preliminary RFA scoring and rankings through e-mail notification and electronic posting on March 20, 2015.

17. On March 23, 2015, Petitioners timely submitted their Notice of Intent to Protest the eligibility determinations, evaluation and scoring of multiple applications submitted in response to the RFA.³ This Formal Written Protest and Petition for Administrative Hearing is timely filed in accordance with the provisions of Section 120.57(3)(b), Florida Statutes, and Rules 28-110.004 and 67-60.009, Fla. Admin. Code.

18. As the owner and developer for a project seeking funding from the sources being allocated through the RFA, Petitioners are substantially affected by the eligibility, evaluation and scoring of the responses to the RFA. The results of this and related proceedings may affect Petitioners' ability to obtain funding through the RFA and may establish precedent for future RFAs in which Petitioners' and/or its affiliates request funding. Consequently, Petitioners have standing to initiate and participate in this and related proceedings.

³A true and correct copy of the Petitioner's Notice of Intent to Protest is attached hereto as Exhibit A.

Problems with Eligibility Determinations and the Preliminary Scoring and Evaluations

19. Based upon the information available to date, it appears inaccurate or incomplete applications were deemed eligible and allowed to be scored and considered for funding as reflected in the posted preliminary allocations. As a result, the proposed allocation of funding under the RFA is flawed, based on inaccurate and incomplete information and based on erroneous or faulty assumptions or conclusions as to eligibility.

20. The RFA specifically states that eligibility requirements include all “Mandatory Items.” See, RFA, page 45.

21. Exhibit A to the RFA expressly required applicants to respond to a number of specific questions. Question 6 on pages 54-55 of the RFA required an applicant to disclose whether it qualified for a proximity point boost. Based upon its preliminary review of the information available to date, Petitioners have identified several applicants that did not respond to this requirement in Question 6. This Mandatory Item provides important financing information for the development. The failure to respond to a Mandatory Item renders an applicant non-responsive and ineligible for funding. The applicants that failed to respond to Question 6 should not have been scored or ranked.

22. There may be additional Mandatory Items that certain applicants did not provide which similarly render their applications ineligible for funding. Petitioners reserve the right to amend their Petition to include any additional failures to respond to Mandatory Items.

23. The Review Committee met to adopt the preliminary funding recommendations. In the course of evaluating specific applications to develop funding recommendations, the Review Committee took into consideration the relative scores of the applications and also applied a number of ranking factors. However, the Review Committee failed to identify and

disqualify applicants who chose not to respond to Mandatory Items, including, but not necessarily limited to, Question 6A. As a result, the preliminary allocations are contrary to Florida Housing's governing statutes and rules, the RFA specifications, and are clearly erroneous, contrary to competition, arbitrary and/or capricious.

24. Under the state's procurement and bid protest processes, all applicants are entitled to be considered and ranked based upon disclosed, consistent criteria, ensuring a fair and open competition. Applicants are entitled to challenge their own scoring and ranking and can also contest the ranking of their competitors based upon the disclosed criteria and RFA specifications. The procurement process is halted and no awards are final until all challenges are resolved.

25. The failure to provide required financing information should result in the applications being deemed ineligible for funding. If the applicants that failed to respond to Question 6 and/or other Mandatory Items are deemed ineligible, then Petitioners would advance in the rankings and may be eligible for funding.

26. The rankings should be revised to reflect that applicants that failed to respond to Question 6A and/or other Mandatory Items are ineligible for an allocation.

27. In addition to the grounds set forth above, there may be additional grounds for reranking which may result in Petitioners being ranked in the funding range. Petitioners reserve the right to identify and raise additional scoring and ranking errors based upon information revealed during the protest process.

28. Petitioners are entitled to a formal administrative hearing pursuant to Sections 120.57(1) and 120.57(3), Florida Statutes, to resolve the issues set forth in this Petition. See, Fairbanks, Inc. v. State, Dep't of Transp., 635 So. 2d 58 (Fla. 1st DCA 1994).

Disputed Issues of Material Fact and Law

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

a. Whether legal authority exists to support the proposed funding for applications that failed to respond to Mandatory Items, including but not limited to Question 6A of the RFA;

b. Whether the provisions of the RFA have been followed in the preliminary allocation of the tax credits under the RFA and/or correct eligibility determinations have been made based on the provisions of the RFA;

c. Whether the eligibility determination and proposed allocations are consistent with the RFA, the requirements of a competitive procurement process and Florida Housing's rules and governing statutes;

d. Whether the criteria and procedures followed in reaching the proposed allocations are arbitrary, capricious, contrary to competition, contrary to the RFA requirements, and/or contrary to prior Florida Housing interpretations of the applicable statutes and administrative rules;

e. Whether the RFA's criteria for determining eligibility, ranking and evaluation of proposals were properly followed;

f. Whether the preliminary rankings properly determine the eligibility of potential applicants for funding in accordance with the standards and provisions of the RFA;

- g. Whether the proposed awards are consistent with the RFA and the disclosed bases or grounds upon which tax credits are to be allocated;
- h. Whether the proposed awards are based on a correct determination of the eligibility of the applicants;
- i. Whether the proposed awards are consistent with fair and open competition for the allocation of tax credits;
- j. Whether the proposed awards are based on clearly erroneous and/or capricious eligibility determinations, scoring or ranking;
- k. Whether the proposed awards improperly incorporate new policies and interpretations that impermissibly deviate from the RFA specifications, existing rules and/or prior Florida Housing interpretations and precedents;
- l. Such other issues as may be revealed during the protest process.

Statutes and Rules Entitling Relief

30. The statutes and rules which are applicable in this case and that require modification of the proposed allocations include, but are not limited to, Sections 120.57(3) and Chapter 420, Part V, Florida Statutes, and Chapters 28-110 and 67-60, Florida Administrative Code.

Concise Statement of Ultimate Fact and Law, Including the Specific Facts Warranting Reversal of Agency's Intended Action

31. Petitioners participated in the RFA process in order to compete for an award of tax credits with other developers based upon the delineated scoring and ranking criteria. Other developments have been incorrectly deemed eligible and unjustifiably elevated ahead of Petitioners in the preliminary allocations and Petitioners may be denied funding if the current proposed awards are allowed to become final.

32. Unless the eligibility determinations are corrected and preliminary allocations are revised, Petitioners may be excluded from funding and developers may be awarded tax credits contrary to the provisions of the RFA and Florida Housing's governing statutes and rules.

33. The RFA sets forth the process for determining the projects that are eligible to be selected for funding. A correct application of the eligibility, scoring and ranking criteria for the RFA results in a denial of funding to applicants that failed to respond to Question 6 and/or other mandatory requirements of the RFA.

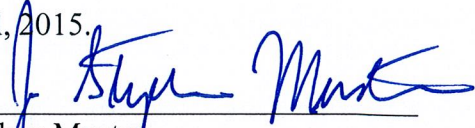
WHEREFORE, pursuant to Section 120.57(3), Florida Statutes, and Rule 28-110.004, Florida Administrative Code, Petitioners request the following relief:

a) A opportunity to resolve this protest by mutual agreement within seven days of the filing of this Petition as provided by Section 120.57(3)(d)1., Florida Statutes.

b) If this protest cannot be resolved within seven days, that the matter be referred to the Division of Administrative Hearings for a formal hearing to be conducted before an Administrative Law Judge pursuant to Sections 120.57(1) and (3), Florida Statutes.

c) Recommended and Final Orders be entered determining that applicants that failed to respond to Question 6 and/or other mandatory requirements of the RFA are ineligible for funding.

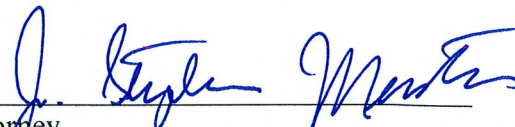
Respectfully submitted this 2nd day of April, 2015.



J. Stephen Menton
Fla. Bar No. 331181
Rutledge Ecenia, P.A.
119 South Monroe Street, Suite 202
Tallahassee, Florida 32301
(850) 681-6788; (850) 681-6515 (facsimile)
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this original has been hand delivered to the Agency Clerk, Florida Housing Finance Corporation, and a copy to Wellington Meffert, General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000 Tallahassee, Florida 32301; this 2nd day of April, 2014.



Attorney

AMERICAN RESIDENTIAL DEVELOPMENT, LLC

March 23, 2015

Kate Flemming
Agency Clerk
Florida Housing Finance Corporation
227 North Bronough Street
Tallahassee, FL 32301

Via: Email

Ref: RFA 2014-114, Application #2015-086C

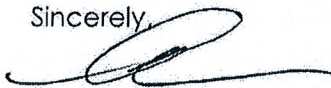
Dear Ms. Flemming:

As part of RFA 2014-114, American Residential Development, LLC hereby gives notice of intent to protest the agency's "eligible" determination of the following applications:

2015-028C – Village Point Apartments
2015-031C – Vista Point Apartments
2015-033C – Bella Oaks Apartments
2015-067C – The San Juan
2015-075C – Westbury Commons
2015-081C – Fort King Colony Senior Apartments
2015-082C – Bradford Villas

2015-083C – Pendelton Commons
2015-084C – Crestfield Manor
2015-087C – Warley Park
2015-088C – Denton Cove
2015-090C – Bromley Square
2015-091C – Kenwood Place

Sincerely,



Patrick E. Law
Manager

Cc: Hugh Brown

