BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

HTG ADDISON II, LLC
Petitioner,

vs.

FLORIDA HOUSING
FINANCE CORPORATION.
Respondent.

FHFC Case No. 2020-020BP
RFA No. 2019-113
App. No. 2020-345C

FORMAL WRITTEN PROTEST AND PETITION
FOR ADMINISTRATIVE HEARING

Petitioner, HTG ADDISON II, LLC ("Petitioner" or "HTG Addison"), pursuant to sections 120.57(1) and (3), Florida Statutes ("F.S.") and Rules 28-110 and 67-60, Florida Administrative Code ("FAC") hereby files this Formal Written Protest and Petition for Administrative Hearing (the "Petition") regarding the scoring decisions of the Respondent, Florida Housing Finance Corporation ("Florida Housing") to award funding to responsive Applicants pursuant to RFA 2019-113 Housing Credit Financing for Affordable Housing Developments Located in Medium and Small Counties. (hereinafter the "RFA")

Introduction

1. This Petition is filed pursuant to sections 120.57(1) and (3), Florida Statutes, Rules 28-110 and 67-60, Florida Administrative Code.

Parties

2. Petitioner is a Florida limited liability company in the business of providing affordable housing. Petitioner’s address is 3225 Aviation Avenue, 6th Floor, Coconut Grove, Florida 33133.
Petitioner's address, telephone number and email address are those of its undersigned counsel for purposes of this proceeding.

3. The affected agency is Florida Housing Finance Corporation. Florida Housing's address is 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

Notice

4. On August 20, 2019 Florida Housing issued the RFA.

5. On September 20, 2019 the RFA was modified by Florida Housing and a Notice of Modification of RFA 2019-113 was issued.¹

6. Applications in response to the RFA were due on or before November 5, 2019.

7. Florida Housing received 184 applications in response to the RFA. Petitioner, in response to the RFA, requested an allocation of $1,548,225.00 in 9% tax credit funding for its proposed sixty-six (66) unit affordable housing development in Manatee County, Florida.

8. Petitioner received notice of the preliminary RFA scoring and rankings through electronic posting on Friday, March 6, 2020 at 9:35 am. A copy of the notices posted on the Corporations website are attached hereto as Exhibit "A". Petitioner was deemed eligible for funding.

9. On Wednesday, March 11, 2020 at 8:00 am., Petitioner timely submitted their Notice of Intent to Protest Florida Housing’s intended decision. A copy of that Notice of Intent is attached hereto as Exhibit “B”.

10. This Petition 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.

Background

¹The Notice of Modification of Request for Applications (RFA) 2019-113 was posted on the Corporations website and sent via electronic mail to persons registered on the Corporation's Multifamily Programs Registry.
11. 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. Florida Housing is designated as the Housing Credit agency for the State of Florida within the meaning of 42(h)(7)(A) of the IRC, and Chapters 67-48 and 67-60, Fla. Admin. Code.

12. Florida Housing administers a competitive solicitation process to implement the provisions of the housing credit program under which developers apply for funding. See Chapter 67-60, Fla. Admin. Code.

RFA 2019-113

13. This RFA was specifically targeted to provide much needed affordable housing in Medium and Small Counties within the State of Florida. The introduction provides as follows,

Under this RFA, Florida Housing Finance Corporation (the Corporation) expects to have up to an estimated $14,805,028 of Housing Credits available for award to proposed Developments that are located in Medium Counties and (ii) up to an estimated $1,413,414 of Housing Credits available for award to proposed Developments that are located in Small Counties.

(RFA at 2) (emphasis supplied)

14. Appointed Review Committee members independently evaluate and score their assigned portions of the submitted applications based on various mandatory and scored items. (RFA at 70)

The maximum point total that an applicant can receive is 10 points. (RFA at 68) Failure to meet all eligibility items results in an application being deemed ineligible. (RFA at 64).

15. The RFA provides the following funding goals,

a. The Corporation has a goal to fund four Medium County Developments that qualify for the Local Government Area of Opportunity Funding Goal outlined in Section Four A.11.a of the RFA.
b. The Corporation has a goal to fund two Developments with a Demographic commitment of Family that select and qualify for the Geographic Areas of Opportunity/SADDA Goal outlined in Section Four A.11.b of the RFA.

c. The Corporation has a goal to fund one (1) Development that qualifies for the Local Community Revitalization Initiative Goal outlined in Section Four A.11.c of the RFA.

16. The RFA provides that all eligible Applications will be sorted from highest to lowest score, with any scores that are tied separated as follows:

a. First, by the Applications eligibility for the Proximity Funding Preference (which is outlined in Section Four A.5.c of the RFA) with Applications that qualify for the preference listed above Applications that do not qualify for the preference.

b. Next, by the Application’s eligibility for the Per Unit Construction Funding Preference which is outlined in Section Four A.10.e of the RFA (with Applications that qualify for the preference listed above Applications that do not qualify for the preference);

c. Next, by the Application’s eligibility for the Development Category Funding Preference which is outlined in Section Four A.4.b (4) of the RFA (with Applications that qualify for the preference listed above Applications that do not qualify for the preference);

d. Next, by the Application’s Leveraging Classification, applying the multipliers outlined in item 3 of Exhibit C of the RFA (with Applications having the Classification of A listed above Applications having the Classification of B);

e. Next, by the Application’s eligibility for the Florida Job Creation Funding Preference which is outlined in item 4 of Exhibit C of the RFA (with Applications that qualify for the preference listed above Applications that do not qualify for the preference);

f. And finally, by lottery number, resulting in the lowest lottery number receiving preference.

(RFA at 68-69)

17. The RFA mandates the Funding Selection Process (hereinafter "Selection Process"), as follows,

(a) The first Application selected for funding will be the highest-ranking eligible Applications that qualifies for the Local Community Revitalization Initiative Goal.

(b) The next four Applications selected for funding will be the highest ranking eligible Medium County Applications that qualify for the Local Government Areas of Opportunity Funding Goal, subject to the Funding Test and the County Award Tally.
(c) The next two Applications selected for funding will be the highest-ranking eligible Family Applications that qualify for the Geographic Areas of Opportunity/HUD-designated SADDA Goal, subject to the Funding Test and the County Award Tally.

(d) The next Applications selected for funding will be the highest ranking eligible unfunded Small County Applications that (i) can meet the Small County Funding Test and (ii) have a County Award Tally that is less than or equal to any other eligible unfunded Small County Applications. If Small County funding remains and no unfunded eligible Small County Application can meet the Small County Funding Test, no further Small County Applications will be selected, and the remaining Small County funding will be added to the Medium County funding amount.

(e) The next Application(s) selected for funding will be the highest ranking eligible unfunded Medium County Applications that (i) can meet the Medium County Funding Test and (ii) have a County Award Tally that is less than or equal to any other eligible unfunded Medium County Applications.

(f) If Medium County funding remains and no unfunded eligible Medium County Application can meet the medium County Funding Test, no further Applications will be selected, and the remaining funding will be distributed as approved by the Board.

(RFA at 69-70)

18. The selection process was carried out by the members of the Review Committee at the initial public meeting held on February 18, 2020.

19. The following eligible applications were selected for funding by the Review Committee members on February 18, 2020,

- 2020-311C- Westside Phase I, LLLP (Medium)
- 2020-212C- Retreat at Cocoa Commons, LLC (Medium)
- 2020-202C- Diplomat South, LLC (Medium)
- 2020-313C- Amaryllis Park Place II, LLC (Medium)
- 2020-173C- Tranquility Milton, LLC (Medium)
- 2020-239C- HTG Bryce Landing, LLC (Medium)
- 2020-308C- HTG Oak Park Villas, LLC (Medium)
- 2020-335C- Weldon Crossings, LLC (Small)
- 2020-247C- HTG Edgewood, Ltd. (Medium)
-2020-250C-HTG Shoreline, Ltd. (Medium)
-2020-304C-Arbours at Merrillwood 1, LLLP (Medium)

HTG Addison II, LLC, Application 2020-345C, was deemed eligible but unfunded.

20. The scoring committee erroneously found Westside Phase I, LLLP ("Westside") (lottery number 6) eligible for funding pursuant to the Local Community Revitalization Initiative Goal. Had Westside been properly deemed not to have elected to compete for funding under the Local Community Revitalization Initiative Goal then HTG Addison (lottery Number 13) would have been selected for funding as meeting that Goal and Westside would have been selected as one of the four applicants meeting the goal for Local Government Areas of Opportunity Funding Goal.

**Westside Phase I, LLLP**

21. The RFA provides that an Applicant affirmatively indicate by election whether it intends to compete for the Local Community Revitalization Initiative Goal. The RFA provides in pertinent part,

c. Local Community Revitalization Initiative Goal (All Counties)

Applicants for proposed Developments that are part of a local revitalization plan may elect to compete for this goal. To qualify for this goal, the Applicant must submit the properly completed Florida Housing Finance Corporation Local Government/Community Redevelopment Agency Verification That Development is Part of a Local Community Revitalization Plan form (Form Rev. 08-2019) as Attachment 18. The form is available on the RFA Website.

Included with the form must be either (1) a link to the local community revitalization plan or (2) a copy of the local community revitalization plan. The plan must have been adopted on or before January 1, 2019.

(RFA at p. 64) (Emphasis supplied)

22. The Applicant is asked to answer a series of questions as follows to indicate its election of these goals,
11. Funding Goals

a. Is the proposed Development eligible for the Local Government Areas of Opportunity Funding Goal?

Choose an item

b. Is the proposed Development eligible to be considered for the Geographic Areas of Opportunity Funding Goal?

Choose an item

If "Yes", to qualify for the Goal, the Applicant must indicate which of the criteria has been met for the entire proposed Development site, including any Scattered Sites:

Choose an item

c. Is the proposed Development eligible for the Local Community Revitalization Initiative Goal?

Choose an item

If "Yes" provide the required information at Attachment 18. Attached to the form must be either (1) a link to the local community revitalization plan or (2) a copy of the local community revitalization plan. The plan must have been adopted on or before January 1, 2019.

(RFA at 85-86)

23. Westside answered the Funding Goals questions as follows,

a. Is the proposed Development eligible for the Local Government Areas of Opportunity Funding Goal?

Yes

b. Is the proposed Development eligible to be considered for the Geographic Areas of Opportunity Funding Goal?

No

c. Is the proposed Development eligible for the Local Community Revitalization Initiative Goal?

No

24. Even though Westside indicated that the proposed Development was not eligible for the Local Community Revitalization Initiative Goal it included an executed Florida Housing Finance
Corporation Local Government/Community Redevelopment Agency Verification that Development is Part of a Local Community Revitalization Plan at Attachment 18 of its Application.

25. Florida Housing in scoring Westside’s application noted during the Review Committee meeting that Westside “qualified” for the Local Community Revitalization Initiative Goal but failed to make the election. Notwithstanding this failure and acknowledgement of such by Florida Housing, Westside was found to have qualified for the Local Community Revitalization Initiative Goal.

26. Florida Housing by changing Westside’s election of the Local Community Revitalization Initiative Goal from a “No” to a “Yes” has amended Westside’s application and become an active participant in the application process.\(^2\)

**Substantial Interests Affected**

27. If Westside had been deemed not to have elected the Local Community Revitalization Initiative Goal than HTG Addison II, LLC would have been selected for funding as meeting that goal and Westside would have been selected as one of the four applications meeting the goal for Geographic Areas of Opportunity Funding.

28. Petitioner is substantially affected by the evaluation and scoring of the responses to the RFA. The results of the scoring have affected Petitioners ability to obtain funding through the RFA. Consequently, Petitioners have standing to initiate and participate in this and related proceedings.

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\(^2\) Florida Housing’s actions with regard to Westside’s application are in stark contrast to the scoring of HTG Grove View, Ltd. (“HTG Grove”), Application Number 2020-303C. Florida Housing deemed HTG Grove ineligible for failing to answer a question which requested a breakdown of the new construction vs., rehabilitation units. However, HTG Grove made it clear in the application, in multiple places, that the development was new construction only, with no rehabilitation of existing units.
29. Petitioner is 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.

**Disputed Issues of Material Fact and Law**

30. 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 Florida Housing’s actions in determining Westside elected to compete in the Local Community Revitalization Initiative Goal were arbitrary and capricious?

b. Whether Florida Housing’s actions in determining Westside elected to compete in the Local Community Revitalization Initiative Goal were contrary to competition?

c. Whether Westside elected to compete in the Local Community Revitalization Initiative Goal

d. Whether Westside should have been deemed as electing to compete in the Local Community Revitalization Initiative Goal, and

e. Such, other issues as may be revealed during the protest process.

**Statutes and Rules Entitling Relief**

31. Petitioner is entitled to relief pursuant to Section 120.569 and 120.57, Florida Statutes, Chapters 28-106, 28-110, and 67-60, Florida Administrative Code.

**Concise Statement of Ultimate Fact and Law, Including the Specific Facts Warranting Reversal of the Agency’s Intended Award**

32. Petitioner participated in the RFA process to compete for an award of Housing Credit funds based upon the delineated scoring and ranking criteria in the RFA. Westside did not elect to compete in the Local Community Revitalization Initiative Goal and thus should not have been selected for funding under this goal.
33. Unless the scoring and eligibility determination is corrected, and the preliminary allocation revised, Petitioner will be excluded from funding contrary to the provisions of the RFA and Florida Housing’s governing statutes and rules.

34. A correct application of the eligibility, scoring and ranking criteria will result in funding for the Petitioner.

**Right to Amend the Petition**

35. Petitioner reserves the right to amend this Petition if additional disputed issues of material fact are identified during the discovery process in this case.

**WHEREFORE,** pursuant to section 120.57(3), Florida Statutes, and rule 28-110.004. Florida Administrative Code, Petitioner’s request the following relief:

a) An 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 ("ALJ") pursuant to Section 120.57(1) and (3), Florida Statutes.

c) The ALJ enter a Recommended Order determining that the application of Westside Phase I, LLLP should not have been selected as electing the Local Community Revitalization Initiative Goal and award funding to the Petitioner as electing and meeting the Local Community Revitalization Initiative Goal.

d) That the Corporation adopt the Recommended Order of the ALJ.
FILED AND SERVED this 23rd day of March 2020.

Respectfully Submitted

[Signature]

Maureen M. Daughton, Esq.
FBN 0655805
Maureen McCarthy Daughton, LLC
1400 Village Square Blvd., Ste 3-231
Tallahassee, Florida 32312

HTG ADDISON II, LLC

CERTIFICATE OF SERVICE

I CERTIFY that the original of this Formal Written Protest and Petition for Administrative Hearing was filed by electronic mail with the Corporation Clerk and Hugh Brown, General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, on this 23rd day of March, 2020.

[Signature]

Maureen M. Daughton
### RFA 2019-113 - Review Committee Recommendations

#### Exhibit B, Page 1 of 1

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<th>County Size</th>
<th>Name of Authorized Principal Representative</th>
<th>Name of Developers</th>
<th>Demos</th>
<th>Total Units</th>
<th>Competitive HC Request Amount</th>
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Goal to fund two Family Demographic Applications that qualify for the Geographic Area of Opportunity / HUD-designated SADDA Funding Goal:

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*Note: The above table is a sample representation of a document page. The actual content may vary.*
Maureen McCarthy Daughton, LLC
MMD LAW

Maureen McCarthy Daughton, LLC
1400 Village Square Blvd., Ste 3-231
Tallahassee, Florida 32312

Via Email
March 11, 2020

Ms. Ana McGlamory (Ana.McGlamory@Floridahousing.org)
Corporation Clerk
Florida Housing Finance Corporation
227 North Bronough, Suite 5000
Tallahassee, Florida 32301

RE: Notice of Intent to Protest, Request for Applications (RFA) 2019-113 Proposed Funding Selections

Dear Corporation Clerk:

On behalf of Applicant, HTG Addison II, LLC Application No. 2020-345C, we hereby give notice of our intent to protest the Award Notice and Scoring and Ranking of RFA 2019-113 posted by Florida Housing Finance Corporation on March 6, 2020 at 9:35 a.m., concerning RFA 2019-113 Housing Credit Financing for Affordable Housing Developments located in Medium and Small Counties (See Attached).

A formal written petition will be submitted within ten (10) days of this Notice as required by law.

Respectfully Submitted,

Maureen M. Daughton

cc: Hugh Brown, General Counsel

Exhibit B
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**RFA 2019-113 - Board Approved Scoring Results**