

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

HTG PINELLAS, 2, LLC,

Petitioner

v.

FHFC Case No. 2013-046BP

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 11<sup>th</sup> 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;<sup>1</sup> 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".

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<sup>1</sup> 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.<sup>2</sup> 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).<sup>3</sup>

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).<sup>4</sup>

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<sup>2</sup> 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).

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

<sup>4</sup> 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.<sup>5</sup>

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).

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<sup>5</sup> "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).<sup>6</sup>

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.<sup>7</sup>

**Peyton Ridge (Application No. 2014-100C)**

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

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<sup>6</sup> A copy of Attachment 3 is attached hereto as Exhibit "F".

<sup>7</sup> 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...

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(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;**  
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(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).<sup>8</sup>

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

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<sup>8</sup> 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**