

**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 8<sup>th</sup> day of January, 2014.

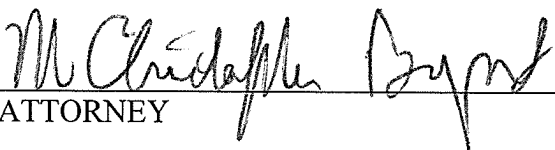
  
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ATTORNEYS FOR LINGO COVE PARTNERS,  
LTD., and URBAN EDGE PARTNERS II, LTD.

**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 8<sup>th</sup> 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 67-60.009, F.A.C. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

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 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. 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.<sup>1</sup> 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.

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<sup>1</sup> 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;<sup>2</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.

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.

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

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).<sup>4</sup>

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).<sup>5</sup>

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.

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<sup>3</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>4</sup> The applicant must identify a Development Location Point on the development site by latitude and longitude coordinates. (See RFA at 11).

<sup>5</sup> See also the 2013 Surveyor Certification Form. (See RFA at 56).

