

**BEFORE THE
FLORIDA HOUSING FINANCE CORPORATION**

**ARBOURS AT AMBASSADOR
PLACE, LLC,**

Petitioner,

vs.

**FLORIDA HOUSING FINANCE
CORPORATION,**

**FHFC Case No. 2013-041BP
FHFC RFA No. 2013-002
Petitioner's Application No. 2014-117C
Intervenors' Applications No. 2014-105C and 107C**

Respondent.

**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 contacted counsel for Petitioner and Respondent regarding intervention; Respondent does not oppose this Intervention, and counsel for Petitioner has not advised counsel for Intervenors of his position, 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, Arbours at Ambassador Place, LLC was also an applicant for funding in RFA No. 2013-002, for a proposed development in Duval County. Petitioner sought an award of \$1,076,122 in annual allocation of housing credits. Petitioner's application was assigned application number 2014-117C and lottery number 1 by Florida Housing. FHFC has announced its intention to fund Petitioner ineligible for consideration for funding. Petitioner has filed a Petition Requesting Informal Hearing and Grant of the Relief Requested, copy (without exhibits) attached hereto as Exhibit "B," 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 Petition Requesting Informal Hearing was filed on or about Thursday, December 26, 2013. To the best of the undersigned's knowledge, the Petition 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 may result in applications other than those initially selected for funding receiving a funding award.

8. Petitioner has not directly challenged the eligibility of either Lingo Cove or Urban Landings to receive a funding award; instead it has only challenged the ineligibility determination of its own application. If Petitioner's challenge is successful, either alone or in combination with other challenges filed to the proposed awards, Lingo Cove and Urban Landings may lose their 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 Lingo Cove or Urban Landings is selected for funding instead of Lingo Cove or Urban Landings (or both); or indirectly by affecting the amount of funding available through the "Funding Test," as explained more fully below.

9. 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 the award of funding to Petitioner and the loss of funding to one or both Intervenors, or the rejection of all proposals, then neither Intervenor will be able to construct its development.

Four Large County RFA Ranking and Selection Process

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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 Arbours at Ambassador Place was deemed ineligible for consideration, and thus was not selected by Florida Housing for funding.

17. 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.

18. 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

19. Because it requested an “Informal Hearing,” Petitioner’s Petition does not identify any disputed issues of material fact. However, it does, at paragraph 18, state “Ultimate Facts Alleged;” and at paragraphs 19 through 29 asserts “Facts which Warrant Reversal of Agency’s Proposed Action.” Intervenors do not necessarily accept all issues identified by Petitioner as valid issues, and do not necessarily agree to Petitioner’s statement of ultimate fact or statement of “facts which warrant reversal.” 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. Intervenor 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

20. As its concise statement of ultimate fact, Intervenor asserts:
- (a) that Intervenor Lingo Cove and Urban Landings' applications submitted to the FHFC in this solicitation were properly selected for awards 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 Intervenor's applications were responsive to all material terms and conditions of the RFA;
 - (d) that FHFC's proposed award of the funding to Intervenor 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;

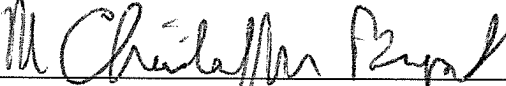
Intervenor Lingo Cove and Urban Landings seek entry of an order granting them status as Intervenor in support of Respondent, and seek entry ultimately of recommended and final orders denying the protest of Petitioner Arbours at Ambassador Place, and upholding the proposed awards of funding in this solicitation to Intervenor Lingo Cove and Urban Landings. Intervenor 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. Intervenor 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

21. If Florida Housing holds a meeting with Petitioner Arbours at Ambassador Place to attempt to resolve this matter by mutual agreement under Section 120.57(3)(d), Fla. Stat., Intervenor request advance notice of such a meeting and request the opportunity to attend and participate in such meeting.

FILED AND SERVED this 8th day of January, 2014.

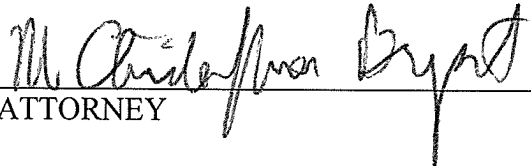

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ATTORNEYS FOR LINGO COVE PARTNERS,
LTD., and URBAN EDGE PARTNERS II, LTD.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that the original has been transmitted by electronic transmission and hand delivery to the Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, and a copy via Electronic Transmission and U.S. Mail to the following this 8th day of January, 2014:

Gary J. Cohen
Shutts & Bowen LLP
201 South Biscayne Boulevard
1500 Miami Center
Miami, Florida 33131
gjc@shutts.com

Hugh R. Brown, Deputy General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
Hugh.Brown@floridahousing.org



ATTORNEY

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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	Ashland 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, L.P.	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	Flamingo 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	Ashland 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	Ashland 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(9), 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.

BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

ARBOURS AT AMBASSADOR PLACE,
LLC,

Petitioner,

FHFC Case No. 2013-041BP

vs.

Application No. 2014-117C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

**PETITION REQUESTING INFORMAL HEARING
AND GRANT OF THE RELIEF REQUESTED**

Pursuant to Section 120.57(3), Florida Statutes (“Florida Statutes”), Rule Chapter 28-110, Florida Administrative Code (“FAC”) and Rule 67-60.009, FAC, Petitioner, ARBOURS AT AMBASSADOR PLACE, LLC (“Petitioner”) requests reconsideration and reversal of certain scoring determinations concerning the scoring by Florida Housing Finance Corporation (“FHFC”) of Petitioner’s Application No. 2014-117C, and to then grant the relief requested. In support of this Petition, Petitioner states as follows:

AGENCY AFFECTED

1. The name and address of the agency affected is Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The agency’s file or identification number with respect to this matter is 2014-117C.

PETITIONER

2. The Petitioner is Arbours at Ambassador Place, LLC, a Florida limited liability limited company. The address of the Petitioner is 33 Inverness Center Parkway, Suite LL130, Birmingham, Alabama 35242, telephone number (205) 981-3300. Petitioner's representative is Gary J. Cohen, Esq., whose address is c/o Shutts & Bowen LLP, 201 S. Biscayne Boulevard, Suite 1500, Miami, Florida 33131, telephone number (305) 347-7308.

3. Petitioner is engaged in the development of affordable housing in this state. Petitioner possesses the requisite skill, experience and credit-worthiness to successfully produce affordable housing. Through the principals of its managing member and affiliate entities, Petitioner regularly submits applications for public financing of affordable housing developments. The principals of the Petitioner's managing partner and their affiliated entities have successfully completed the construction and rehabilitation of numerous affordable housing developments in Florida using funding from programs administered by Respondent, Florida Housing Finance Corporation.

4. The affected agency in this proceeding 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 appear in Part V of Chapter 420, Florida Statutes. See, Sections 420.501-420.55, Florida Statutes.

6. As discussed in more detail below, on or about October 30, 2013, Petitioner timely submitted Application No. 2014-117C (the "Application") pursuant to Florida Housing's Request for Application 2013-002 ("RFA"). The Application sought an allocation of low

income housing tax credits (“Tax Credits” or “LIHTC”) to provide equity capital for a 63 unit apartment complex (Arbours at Ambassador Place, referred to as the “Complex”) in Jacksonville, Duval County, Florida. This Petition challenges the final scoring and ranking given to the Application by Florida Housing. Unless the final scoring and ranking of the Application is modified, Petitioner will not obtain an allocation of Tax Credits necessary to develop the Complex. Thus, Petitioner’s substantial interests are subject to determination in this proceeding.

7. Petitioner is unaware of any other individuals and/or entities having an interest in the outcome of these proceedings.

Background

Florida Housing’s Programs

8. Florida Housing administers several programs aimed at assisting developers to build or rehabilitate affordable housing in an attempt to protect financially marginalized citizens in the state from excessive housing costs. The programs through which Florida Housing allocates resources to fund affordable housing in this state include the federal low income housing tax credit program (the “Tax Credit Program”) established in Florida under the authority of Section 420.5099, Florida Statutes. These tax credits are allocated by Florida Housing to finance the construction or substantial rehabilitation of affordable housing.

Tax Credits

9. The Tax Credit Program was created in 1986 by the federal government. Every year since 1986, Florida has received an allocation of federal Tax Credits to be used to fund the construction or rehabilitation of affordable housing. Tax Credits are a dollar for dollar offset to federal income tax liability.

10. Developers who receive an allocation of Tax Credits get the awarded amount every year for ten years. The developer will often sell the future stream of tax credits to a

syndicator, who, in turn, sells them to investors seeking to shelter income from federal income taxes.

11. Florida Housing is the designated agency in Florida to allocate Tax Credits to developers of affordable housing in the state.

The RFA Process

12. Florida Housing has historically allocated funding for the Tax Credit Program through a single annual application process. Since 2002, Florida Housing has administered these programs through a combined competitive process known as the “Universal Cycle.” The Universal Cycle operates like an annual competitive bidding process in which applicants compete against other applicants to be selected for funding. However, in 2013, Florida Housing determined to conduct a series of competitions (requests for applications) allocating the Tax Credits through various geographic and demographic pools. The geographic pool in which Petitioner is contending is for applications for affordable housing developments located in Duval, Hillsborough, Orange and Pinellas Counties pursuant to the RFA.

13. Florida Housing has adopted rules which incorporate by reference the application forms and instructions for the RFA.

14. The RFA process is intended to equitably and reasonably distribute affordable housing throughout the four counties referenced above.

15. FAC Chapter 67-60 (Multi-Family Competitive Solicitation Funding Process) governs the RFA. The provisions of the RFA itself (issued September 19, 2013) set forth the process for submitting an application, and for awarding funding allocations thereunder. The ranking and award process is not at issue here; as such, further explanation of such process is not necessary. Rule 67-60.009(2) FAC (“Applicant Administrative Appeal Procedures”) provides that an applicant not selected for funding under the RFA may protest the results of the

competitive solicitation process pursuant to the procedures set forth in Section 120.57(3), Florida Statutes and Chapter 28-110, FAC. Petitioner is protesting the results pursuant to Rule 67-60.009(2).

PETITIONER'S SUBSTANTIAL INTERESTS

16. Petitioner's substantial interests will be affected by the determination of FHFC as follows:

(a) Petitioner has applied for an allocation of competitive 9% low-income housing Tax Credits under the RFA. The application was submitted in an attempt to assist in the financing of the Complex in Jacksonville, Duval County, Florida.

(b) The application was scored by FHFC in accordance with the provisions of Rule 67-60, FAC. By electronic posting on December 13, 2013, FHFC posted a Notice of Intended Decision with respect to the received applications, indicating which applications were eligible and which applications were ineligible. Petitioner's application was listed as ineligible.

(c) After submission of a public records request, the Petitioner received and reviewed scoring documents pertaining to its application, and also listened to a sound file containing an audio recording of the review committee meeting discussing the scoring of the applications in the RFA. On page 13 of FHFC's scoring notes for the application (attached as part of Exhibit "A"), FHFC stated that "the Applicant provided an equity letter from Raymond James which was based upon the Applicant receiving \$2,381,253.00 in historic tax credits and listed the amount at line 8 of the Pro Forma. However, no evidence of funding for the historic tax credits was provided and the \$2,381,523.00 cannot be counted as a source of financing". The Applicant had indicated (in the Construction or Rehab and Permanent Analysis on pages 13-14 of its Application) that \$2,238,632 of funding would be provided attributable to "Historic Tax Credits". As a result, FHFC determined that there was a construction and permanent financing

shortfall, resulting in the Application being determined to be ineligible. There is no other documentation in the materials received pursuant to the public records request indicating any other reason why the Application was determined to be ineligible.

(d) Under the Tax Credit program, the RFA applications are scored by FHFC. A finite amount of Tax Credits are allocated to applicants in the RFA. FHFC's Notice of Intended Decision indicates that Applicant had been awarded Lottery No. 1. Under the ranking criteria utilized in this RFA, among competing applicants with a perfect score of 27 points (which Applicant received) FHFC employs a series of ranking "tiebreakers". As a result of application of the foregoing tiebreakers, Petitioner would have been the top scoring Duval County application and would have been allocated funding, but for FHFC's determination that the Application was ineligible, due to a portion of the Raymond James equity letter being determined (by FHFC) to be insufficient. Petitioner's ability to finance the Complex will be jeopardized if Tax Credits are not obtained; accordingly, Petitioner's substantial interests are affected by this proceeding.

(e) The final scoring of Petitioner's Application (finding that the Application had failed to meet a threshold requirement of financing) caused the Application to not be eligible for funding and to not be eligible to receive an allocation of Tax Credits in the RFA. But for this single scoring determination, Petitioner's Application would have been within the funding range for an allocation of Tax Credits in the RFA. As set forth below, the Application should be found to have satisfied the foregoing threshold requirement, and should receive an allocation of Tax Credits in the RFA.

NOTICE OF AGENCY DECISION

17. Petitioner received notice of FHFC's determination that Petitioner's application was ineligible on or about December 13, 2013. Attached as Exhibit "B" is a copy of the Notice of Intended Decision setting forth the scoring, which scoring gives rise to this Petition.

ULTIMATE FACTS ALLEGED

18. In Petitioner's Application submitted on or about October 30, 2013 to FHFC, Petitioner included (as Attachment 13 to its Application), an equity financing commitment from Raymond James Tax Credit Funds, Inc. dated October 28, 2013 addressed to Mr. Sam Johnston (attached as Exhibit "C"). As referenced above, FHFC determined that this letter from Raymond James (the "Letter") did not satisfy the RFA requirements and determined that the Application was ineligible for funding, since there was a funding shortfall under the Construction and Permanent financing section of the Application. This result occurred because the amount of equity which Raymond James agreed to contribute in the Letter attributable to purchase of "historic tax credits" (\$2,238,634.00) was disregarded by FHFC. FHFC determined that "...no evidence of funding for the historic tax credits was provided...". See Pages 5 and 6 of FHFC's scoring notes for Petitioner's application, wherein (in analyzing construction financing and permanent financing) the FHFC scorer indicated that no money was being paid for the "historic tax credits", and that a construction and permitting financing shortfall resulted. See Exhibit "A" for pages 5, 6 and 13 of the FHFC scoresheets.

FACTS WHICH WARRANT REVERSAL OF AGENCY'S PROPOSED ACTION

The specific facts which warrant reversal of FHFC's proposed action are as follows:

19. FHFC has incorrectly determined that the Raymond James equity financing letter (the "Letter") failed to provide evidence of funding for the historic tax credits. In fact, it is clear

from the provisions of the Letter and FHFC's internal score sheets that Raymond James was providing the amount of \$2,238,634.00 in equity for the historic tax credits.

20. There are two possible reasons why FHFC determined that “. . . no evidence of funding for the historic tax credits was provided . . .”. Either (i) FHFC did not believe the historic tax credits would be available to Applicant, or (ii) FHFC did not believe that the provisions of the Letter specified the amount which Raymond James would pay to purchase the historic tax credits. As explained below, Petitioner believes both of these positions are incorrect.

21. Historic tax credits are provided for in Section 47 of the Internal Revenue Code of 1986, as amended. Pursuant to Section 47, a tax credit is available in an amount equal to 20% of the expenditures with respect to a “certified historic structure”. A “certified historic structure” means any holding which is listed in the National Register. The historic tax credit is “self operative”; that is, if a developer incurs the expenses the tax credit does not need to be “awarded” or “allocated”. Rather, the credit is claimed on the tax return of the applicant for the year in which the Complex is placed in service. Unlike the low income housing tax credit (“LIHTC”), the historic tax credit is a one-time credit, equal to 20% of qualifying expenditures. Attached (as Exhibit “D”) is a letter from Christian & Denaburg, P.C. accounting firm, evidencing the eligibility of the Complex for historic tax credits.

22. FHFC may have determined that “. . .no evidence of funding for the historic tax credits was provided. . .” because the provisions of the Letter did not break out the amount of equity being paid for the LIHTC from the amount of equity being paid for the historic tax credits; rather, the Letter provided that Raymond James would pay the aggregate amount of \$12,353,169.00 in exchange for receiving (i) \$1,076,122.00 in annual LIHTC (for ten years), and (ii) \$2,381,523.00 in historic tax credits (in one year, as explained above). As explained below,

the amount which Raymond James committed to pay for the historic tax credits (\$2,238,634.00) was clearly and easily ascertainable.

23. FHFC had no difficulty in determining the amount of equity being paid by Raymond James for the LIHTC, even though such amounts were not specifically stated in the Letter. See pages 5 and 6 of FHFC's scoring notes (attached as Exhibit "A") where FHFC scored as valid Raymond James' commitment to provide \$9,406,518.00 of equity proceeds for the LIHTC prior to the receipt of final certificate of occupancy, and \$10,114,135.00 of equity for the LIHTC in total. It is important to note that neither of these amounts was available or specified in the Letter. Rather, FHFC clearly "did the math" and multiplied the amount of annual LIHTC (\$1,076,122.00) times 99.99% (the amount of LIHTC being purchased, since Raymond James would be admitted as a 99.99% member) times the price (\$0.94 per \$1 of LIHTC times 10 years of credit delivery), giving rise to total equity for the LIHTC of \$10,114,535.00. This exactly equals the amount which the FHFC scorer entered on page 6 of the FHFC's scoring sheets, even though the Raymond James letter did not specify this amount in any way. FHFC further determined (see page 5 of the FHFC score sheet) that 93% of the Raymond James equity attributable to the LIHTC (\$9,406,518.00) was in fact payable prior to completion of construction; this amount is derived by multiplying the total equity commitment attributable to the LIHTC of \$10,114,535.00 times 93%, which is the amount of equity attributable to the LIHTC which Raymond James indicated they would pay prior to completion pursuant to the Letter. Once again, it is important to note that the amount of equity attributable to the LIHTC prior to completion (\$9,406,518.00) was nowhere specified in the Raymond James Letter; FHFC "did the math" from the provisions of the Letter and derived this amount (correctly) and gave Petitioner full credit therefore.

24. Since it is clear from the Letter that Raymond James is investing a total sum of \$12,353,169.00, and of that amount \$10,114,535.00 was attributable to equity syndication proceeds for the LIHTC (see FHFC's determination of same on pages 5 and 6 of their scoring notes), it was obvious that the remaining equity provided for in the Letter (\$2,238,634.00, equal to the total equity of \$12,353,169.00 less the amount of equity (\$10,114,535.00) attributable to the LIHTC) was being paid for the historic tax credits. This is further confirmed by multiplying the amount of historic tax credits indicated in the letter (\$2,381,523.00) times the purchase price specified in the Letter (\$0.94), which results (within \$2.00) in the amount of equity attributable to the historic tax credits (\$2,238,634.00). It is hard to understand, given the foregoing, how FHFC could determine that the Raymond James Letter provided "...no evidence of funding for the historic tax credits...", resulting in a shortfall in construction financing and permanent financing and a finding of ineligibility for Purchaser's application.

25. The references in the RFA requiring provision of evidence of a commitment for funding are contained on pages 32, 34, 35, and 47 of the RFA. It is important to note that there is no specific provision or instruction telling an applicant how to provide evidence of a commitment for equity financing that is not attributable to LIHTC; that is, there is no direction on how to provide evidence of equity funding for investment attributable to historic tax credits. Pages 34 and 35 provide the requirements for an equity proposal for a purchase of LIHTC which must be met, and these provisions were met. FHFC has not contended (in its scoring notes or elsewhere in its scoring materials) that the portion of the Raymond James Letter pertaining to their commitment to provide equity attributable to the LIHTC was in any way deficient. In fact, pages 5 and 6 of the FHFC's scoring notes specifically provide that the Raymond James Letter

was sufficient (and was given full credit) insofar as it related to the amount of equity being paid for the LIHTC.

26. In the absence of any specific directive from FHFC in the RFA as to how to evidence the amount of equity being paid for historic tax credits, the Letter provides all information necessary in order for FHFC to derive the following:

- (i) Who was paying for the historic tax credits (Raymond James);
- (ii) The price being paid for the historic tax credits (\$0.94); and
- (iii) The amount being paid for the historic tax credits.

As discussed above, the amount being paid for the historic tax credits was easily derived by subtracting from the total equity being paid for both the historic tax credits and the LIHTC (\$12,353,169.00) the amount being paid for the LIHTC (\$10,114,535.00, as easily derived by FHFC on page 6 of their scoring sheet), resulting in equity attributable to historic tax credits of \$2,238,634.00.

27. The Raymond James Letter did not specifically provide the amount being paid for the historic tax credits; rather, it provided for the aggregate amount being paid for both the historic tax credits and the LIHTC. Given that FHFC had no problem determining the amount being paid for the LIHTC, FHFC should have been equally able to determine the amount being paid for the historic tax credits. A simple mathematical computation was all that was required, yet FHFC determined that "...evidence of funding for the historic tax credit was not provided...". The evidence of funding for the historic tax credits was provided; the Raymond James Letter specifically stated that they were acquiring the LIHTC and historic tax credits and the amount they were paying for both. See Raymond James' reaffirmation of the foregoing, attached as Exhibit "E".

28. FHFC's determination that the Applicant's financing commitment did not provide evidence of funding for the historic tax credits is incorrect. A simple mathematic computation and FHFC's own internal score sheets show that FHFC was aware of how much was being paid for the historic tax credits, and was aware that the Raymond James Letter provided equity attributable to purchase of both the LIHTC and the historic tax credits. This is due to the fact that FHFC's internal score sheets recognize and give credit for an amount less than \$12,353,169.00 (which is the amount Raymond James said it was contributing to the transactions). The FHFC score sheets provide absolute evidence that there was an amount (in excess of the amount attributable to the LIHTC, which FHFC easily computed) attributable to the historic tax credits. If FHFC determined that no evidence of funding for the historic tax credits was provided because the Raymond James Letter did not provide the specific amount attributable to the historic tax credits, such determination is inconsistent with their internal determination that information as to the amount of equity attributable to the LIHTC was adequately provided. The amount being paid for the historic tax credits was easily determinable as evidenced by FHFC's own internal score sheets.

29. Failure to find that the Application satisfied the threshold requirement of evidencing sufficient sources of construction financing and permanent financing will effectively eliminate Petitioner's Complex from funding, and would elevate form over substance for no material reason and to a ridiculous level. In the instant case, Applicant clearly provided evidence of the amount being paid by Raymond James for both the LIHTC and the historic tax credits and, as such, FHFC's determination that "no evidence of funding for the historic tax credits was provided" should be overturned as clearly erroneous.

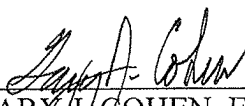
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30. The specific action which Petitioner wishes FHFC to take is to reverse its previous decision and determine that Petitioner has met the threshold requirement of evidencing sufficient sources of construction and permanent financing.

WHEREFORE, Petitioner respectfully requests FHFC:

1. Determine that Petitioner has satisfied the threshold requirement of evidencing sufficient sources of construction and permanent financing.
2. That the Application is entitled to an award of Tax Credits as a result of its position in the funding range for the RFA.
3. Such further relief as may be deemed necessary and appropriate.

Respectfully submitted,

By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and one copy of the foregoing have been filed with the Corporation Clerk of the Florida Housing Finance Corporation, and a copy to Hugh Brown, Deputy General Counsel, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301, on this 16th day of December, 2013.



GARY J. COHEN, ESQ.