

**BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

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FLORIDA HOUSING
FINANCE CORPORATION

PASEO DEL RIO, LLC

Petitioner,
vs.

FHFC Case No. 2020-008BP
RFA No. 2019-112
Application No. 2020-126C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**FORMAL WRITTEN PROTEST AND
PETITION FOR ADMINISTRATIVE HEARING**

Petitioner, PASEO DEL RIO, LLC (“Paseo”), pursuant to sections 120.57(3), Florida Statutes (“F.S.”), and Rules 28-110 and 67-60, Florida Administrative Code (“FAC”) hereby files this Formal Written Protest and Petition for Administrative Hearing regarding the review, ranking, scoring and eligibility decisions of Respondent, FLORIDA HOUSING FINANCE CORPORATION (“Florida Housing”) in awarding funding pursuant to Request for Application 2019-112 Housing Credit Financing for Affordable Housing Developments Located in Miami-Dade County (the “RFA”). In support Paseo provides as follows:

1. Paseo is a Florida limited liability corporation in the business of providing affordable housing. Paseo is located at 315 S. Biscayne Boulevard, Miami, FL 33131.
2. Florida Housing is the allocating agency for the State of Florida that was granted the authority to issue the RFA for the purpose of construction, redevelopment, or rehabilitation of much needed affordable housing. Florida Housing's address is 227 North Bronough Street, Suite 500, Tallahassee, Florida 32301.

3. On August 20, 2019, Florida Housing issued the RFA which offered funding as follows:

SECTION ONE
INTRODUCTION

This Request for Applications (RFA) is open to Applicants proposing the development of affordable, multifamily housing located in Miami-Dade County.

Under this RFA, Florida Housing Finance Corporation (the Corporation) expects to have up to an estimated \$7,195,917 of Housing Credits available for award to proposed Developments located in Miami-Dade County. The Corporation is soliciting applications from qualified Applicants that commit to provide housing in accordance with the terms and conditions of this RFA, inclusive of all Exhibits, applicable laws, rules and regulations, and the Corporation's generally applicable construction and financial standards.

4. Through the issuance of the RFA, Florida Housing sought to solicit proposals from qualified applicants that would provide affordable housing consistent with the terms and conditions of the RFA, applicable laws, rules, and regulations.

5. On October 10, 2019, Paseo submitted its Application in response to the RFA that included information concerning the development of a 125 unit complex in Miami Dade County, Florida, named Paseo del Este Apartments.

6. Through the Application, Paseo was requesting funding to supplemental funding to develop affordable housing. Florida Housing received 63 applications in response to the RFA.

7. As the owner and developer of a project seeking funding through the RFA, Paseo is substantially affected by the review, scoring, and ranking of the responses to the RFA. The results of this proceeding as well as others that may be filed affects Paseo's ability to obtain funding through the RFA. Consistent with the primary mission and goal of the RFA, Paseo seeks to provide much needed affordable housing in Miami Dade County. Without the funds provided

by the RFA, Paseo will be unable to provide this much needed housing. Accordingly, Paseo's substantial interests are affected by the decisions made by Florida Housing.

8. On January 9, 2020, the designated Review Committee met and considered the Applications submitted in response to the RFA. At the meeting the Review Committee orally listed and manually input the scores for each section of the Application and ultimately made a recommendation to the Board for their consideration. The Review Committee consisted of Florida Housing staff. During the meeting, the Review Committee found Paseo's application to be eligible. The Review Committee however did not award Paseo Application funding instead the Committee recommended funding to the following applications:

2020-101C – Harbour Springs

2020-148C – Orchid Pointe

2020-0117C – Residences at Naranja Lakes

9. A reconvened Review Committee Meeting was held on January 21, 2020, at which time the Orchid Pointe Application was replaced by 2020-122C – Slate Miami. Slate Miami had previously been deemed ineligible.

10. On January 23, 2020, the Florida Housing Board of Directors accepted and approved the Review Committee's ranking and funding recommendation.

11. On January 29, 2020, Paseo timely filed its Notice of Intent to Protest. This Formal Written Protest is being timely filed and Florida Housing has waived the bid protest bond requirement for the RFA. As a Developer of affordable housing in need of supplemental funding, Paseo's substantial interests are affected by Florida Housing's decisions in this case and others to award funding pursuant to the RFA. In this action Paseo challenges the eligibility determination made by Florida Housing as it relates to the Applications submitted by Slate Miami (Application

No. 2020-122C), and Orchid Pointe (Application No. 2020-148C) If successful in its challenge Paseo will move into the funding range.

12. Paseo challenges Slate Miami's Application as being ineligible because of an arrearage issue and Orchid Pointe for its violation of the 3 Application limitation found at RFA Section Four (A)

13. As to the first issue the RFA provides at Section Five (A)(1) as follows:

Financial Arrearage Requirement

An Application will be deemed ineligible for funding if, as of close of business the day before the Committee meets to make a recommendation to the Board, there remains any financial obligations for which an Applicant or Developer or Principal, Affiliate or Financial Beneficiary of the Applicant or Developer is in arrears to the Corporation or any agent or assignee of the Corporation as reflected on the most recently published Past Due Report posted to the Corporation's Website under the link Property Owners & Managers/Past Due Reports (also accessible by clicking here), but not more recently than five business days prior to the date the Committee meets to make a recommendation to the Board.

14. As of the Application Deadline it is believed that Slate Miami had an outstanding arrearage that was not satisfied and was therefore Slate Miami should have remained ineligible.

15. Paseo next challenges the Application of Orchid Pointe as violating the provisions of the RFA limiting the number of Priority Applications that may be submitted by an applicant.

16. Specifically the RFA at Section Four (A) provides as follows:

"Applicants may submit no more than three (3) Priority I Applications. There is no limit to the number of Priority II Applications that can be submitted; however, no Principal can be a Principal, as defined in Rule Chapter 67-48.002(94), F.A.C., or more than three (3) Priority Applications.

For purposes of scoring, Florida Housing will rely on the principals of the Applicant and Developer(s) Disclosure Form (Rev. 05-2019) outlined below in order to determine if a Principal is a Principal on more than three (3) Priority I Applications. If during scoring it is determined that a Principal is disclosed as a Principal on more than

three (3) Priority I Applications, all such Priority I Applications will be deemed Priority II.

If it is later determined that a Principal, as defined in Rule Chapter 67-48.002(94), F.A.C., was not disclosed as a Principal and the undisclosed Principal causes the maximum set forth above to be exceeded, the award(s) for the affected Application(2) will be rescinded and all Principals of the affected Applications may be subject to material misrepresentation, even if the Applications were not selected for funding, were deemed ineligible, or were withdrawn.”

17. Based on information and belief it appears that Orchid Pointe has violated this RFA requirement as more detailed in Exhibit A which was read into the record at the review committee meeting dated January 9, 2020. Because of these application limitation issues and others that may be found in discovery Orchid Pointe’s Application must be deemed a Priority II Application.

18. Paseo reserves the right to amend this Petition as necessary.

19. Material Issues in Dispute

- a. Whether Florida Housing’s review and actions taken concerning the Slate Miami and Orchid Pointe Applications in response to the RFA was arbitrary or capricious, clearly erroneous or contrary to competition.
- b. Whether the review of the Slate Miami and Orchid Pointe Applications was inconsistent with the RFA requirements.
- c. Whether Slate Miami as of the Application Deadline had arrearages.
- d. Whether Orchid Pointe should be deemed a Priority II Application.

WHEREFORE, Paseo requests that a settlement meeting be scheduled and to the extent no settlement is reached a hearing scheduled and ultimately the entry of a Recommended and Final Order determining that Florida Housing's review and scoring of applications was contrary to the RFA specifications and to Florida Housing's governing statutes, rules and policies to such an extent

as to be arbitrary, capricious, contrary to competition, and clearly erroneous and awarding funding to Paseo.

Respectfully submitted,

CARLTON, FIELDS

/s/ Michael P. Donaldson

MICHAEL P. DONALDSON

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Formal Written Protest and Petition for Administrative Proceedings has been filed by e-mail with the Corporation Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301, this 10th day of February 2020.

/s/ Michael P. Donaldson

MICHAEL P. DONALDSON

Section Four A. of RFA 2019-112 states:

“Applicants may submit no more than three (3) Priority I Applications. There is no limit to the number of Priority II Applications that can be submitted; however, no Principal can be a Principal, as defined in Rule Chapter 67-48.002(94), F.A.C., of more than three (3) Priority 1 Applications.

For purposes of scoring, Florida Housing will rely on the Principals of the Applicant and Developer(s) Disclosure Form (Rev. 05-2019) outlined below in order to determine if a Principal is a Principal on more than three (3) Priority I Applications. If during scoring it is determined that a Principal is disclosed as a Principal on more than three (3) Priority I Applications, all such Priority I Applications will be deemed Priority II.

If it is later determined that a Principal, as defined in Rule Chapter 67-48.002(94), F.A.C., was not disclosed as a Principal and the undisclosed Principal causes the maximum set forth above to be exceeded, the award(s) for the affected Application(s) will be rescinded and all Principals of the affected Applications may be subject to material misrepresentation, even if the Applications were not selected for funding, were deemed ineligible, or were withdrawn.”

The following Priority I designated Applications contain Principals of the Applicant and Developer(s) Disclosure Forms with separate designations:

Authorized Principal Representative: Mathew Rieger	Authorized Principal Representative: Randy Rieger	Authorized Principal Representative: Cara Balogh	Authorized Principal Representative: Orli Teitelbaum	Authorized Principal Representative: Robert Balogh
2020-097C	2020-102C	2020-091C	2020-132C	2020-095C
2020-109C	2020-115C	2020-100C	2020-148C	2020-103C
2020-146C	2020-105C	2020-130C	2020-149C	2020-133C

The Principals of the Applicant and Developer(s) Disclosure Forms for these Applications do not reflect a Principal designated on more than 3 Priority 1 Applications. However, the designated Priority I Applications share the following organizational commonalities, including:

- Under Section Three A.4.b., of the RFA, all 15 Applications submitted an Application Fee provided by HTG United, LLC from the same account number.
- Under Section Three A.4.a., of the RFA, all 15 Applications were submitted with hard copy binders under the cover sheet of Housing Trust Group, with the address of Aviation Avenue, Coconut Grove, Florida.
- Under Section Four A.3.c.2., of the RFA, all 15 of the Advance Review of Principal Disclosure Form requests for the Applications were submitted from individuals associated with Housing Trust Group, LLC at the address 3225 Aviation Avenue, Coconut Grove, Florida.
- Under Section Four A.3.e.2., of then RFA, all of the Applications share the same operational Contact Person, Scott Osman, associated with Housing Trust Group, LLC, at 3225 Aviation Avenue, Coconut Grove, Florida.
- With the exception of Application 2020-109C, under Exhibit C Section 3 of the RFA, all of the Applications share the exact same Corporation Funding Per Set Aside Amount.

Handwritten signature and date 1/9/2020