

Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



TRANSMITTAL

To:	Ms. Elizabeth Napoli Executive Manager Guam Housing and Urban Renewal Authority 117 Bien Vendia Avenue Sinajana, Guam 96910 Phone: (671) 477-9851 Fax: (671) 300-7565 Email: efnapoli@ghura.org	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
		Pages:	19 (including cover page)
CC:	Ms. Joyce C.H. Tang, Esq Attorney for Appellants Summer Vista II DE, LLC and Summer Vista III DE, LLC Civile & Tang PLLC 330 Hernan Cortez Ave. Ste. 200 Hagåtña, Guam 96910 Phone: (671) 472-8868/69 Fax: (671) 477-2511 Email: jtang@civilletang.com	Date:	April 1, 2025
			(671) 475-0390 x. 204 (671) 472-7951

Re: OPA-PA-25-005 Notice of Receipt of Appeal

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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com



OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910

Phone: (671) 475-0390 / FAX: (671) 472-7951

April 1, 2025

Ms. Elizabeth Napoli
Executive Director
Guam Housing and Urban Renewal Authority
117 Bien Vendia Avenue
Sinajana, Guam 96910

VIA EMAIL: efnapoli@ghura.org

Re: Notice of Receipt of Appeal – OPA-PA-25-005

Dear Ms. Napoli,

Please be advised that Summer Vista II DE, LLC (hereinafter referred to as “Summer Vista II”) and Summer Vista III, DE, LLC (hereinafter referred to as “Summer Vista III”) filed an appeal with the Office of Public Accountability (OPA) on March 31, 2025, regarding the Guam Housing and Urban Renewal Authority’s (GHURA) denial of its protest decision (protest 3) related to the award of low income housing tax credits pursuant to its 2024 Low Income Housing Tax Credit QAP. OPA has assigned this appeal case number OPA-PA-25-005.

Immediate action is required of GHURA pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA’s office and on its website at www.opaguam.org. The first eleven pages of the notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeal. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required no later than **Tuesday, April 8, 2025**, five work days following this Notice of Receipt of Appeal. We also request one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Tuesday, April 15, 2025**, ten work days following receipt of this notice.

When filing all required documents with our office, please provide one original and one copy to OPA (**electronic filings will be acceptable and highly encouraged, and can be emailed to jhernandez@guamopa.com**), and serve a copy to Summer Vista II and Summer Vista III.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at jhernandez@guamopa.com or 475-0390 ext. 204 should you have any questions regarding this notice.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Benjamin J.F. Cruz', with a stylized flourish at the end.

Benjamin J.F. Cruz
Public Auditor

Enclosure: First 16 pages of the Notice of Appeal – OPA-PA-25-005

Cc: Joyce C.H. Tang, Esq., Attorney for Summer Vista II and Summer Vista III

1 **JOYCE C.H. TANG**
2 **HAIG T. HUYNH**
3 **CIVILLE & TANG PLLC**
4 330 Hernan Cortez Ave. Ste. 200
5 Hagatna, Guam 96910
6 Tel: (671) 472-8868/69
7 Fax: (671) 477-2511

8 *Attorneys for Appellants*
9 *Summer Vista II DE, LLC and*
10 *Summer Vista III DE, LLC*

11 **PROCUREMENT APPEAL**
12 **IN THE OFFICE OF PUBLIC ACCOUNTABILITY**

13
14
15
16 In the Appeal of

17
18 Summer Vista II DE, LLC and Summer Vista
19 III DE, LLC

20 Appellants
21

DOCKET NO. OPA-PA-25 _____

**NOTICE OF VERIFIED PROCUREMENT
APPEAL; PROCUREMENT APPEAL**

1 Summer Vista DE II, LLC and Summer Vista DE III, LLC (collectively referred to as
2 “Summer Vista”) hereby appeal a decision rendered by the Guam Housing and Urban Renewal
3 Authority (“GHURA”), an agency of the Government of Guam, on March 14, 2025, which denied
4 Summer Vista’s February 3, 2025 Protest 3 letter. *See Exhibit A* (3/14/25 Protest 3 Decision).
5 Protest 3 was timely submitted to GHURA on February 3, 2025, and is based on information Summer
6 Vista obtained relating to GHURA’s execution of the 2025 LIHTC Carryover Allocation Agreement
7 with Flores Rosa Gardens L.L.C. (“Flores Rosa”). *See Exhibit B* (2/17/25 Summer Vista’s Protest
8 3).

9 As discussed in Section III and IV below, GHURA purported award of the LIHTC contract
10 by signing the 2025 LIHTC Carryover Allocation Agreement (“2025 LIHTC Allocation Agreement”)
11 violated the automatic stay under 5 GCA § 5425(g), the Internal Revenue Code Section 42 LIHTC
12 Regulations, and the 2024 LIHTC Qualified Allocation Plan (“2024 QAP”). Furthermore, the
13 agreement constitutes an improper award from Guam’s 2025 State Housing Credit Ceiling made
14 outside a valid QAP.

15
16 **I. APPELLANTS’ INFORMATION**

17 **Name:** Summer Vista II DE, LLC
18 Summer Vista III DE, LLC¹

19 **Mailing Address:** 388 South Marine Corps Drive, Suite 400
20 Tamuning, Guam 96913

21 **Business Address:** 388 South Marine Corps Drive, Suite 400
22 Tamuning, Guam 96913

23 **Telephone Number:** (671) 473-5000

24 **Legal Counsel For This Appeal:** Joyce C.H. Tang, Esq.
25 Civile & Tang, PLLC,
26 330 Hernan Cortez Ave. Ste. 200,
27 Hagåtña, Guam 96910
Email: jtang@civilletang.com

28 ¹ Summer Vista II DE, LLC and Summer Vista III DE, LLC are collectively hereinafter referred to as
“Summer Vista” or “Appellants” and individually as “Summer Vista II” and “Summer Vista III.”

1
2 **II. APPEAL INFORMATION**

3 **Procuring/Soliciting Agency:** Guam Housing and Urban Renewal Authority
4 **Identification / Number:** 2024 Low Income Housing Tax Credit QAP
5 **Decision Being Appealed:** The decision being appealed, included in the Supporting
6 Documents attached hereto, was made on March 14,
7 2025, by Elizabeth F. Napoli, Executive Director of
8 GHURA and head of the relevant purchasing agency
9 (“Decision”). *See Exhibit A* (3/14/25 Protest 3
10 Decision).
11 Appeal is made from a Decision on Protest of Method,
12 Solicitation or Award.
13 **Date of Contract:** February 3, 2025 (GHURA awarded the LIHTC to
14 respond to Appellant’s January 24, 2025 Sunshine Act
15 Request required by 5 GCA §10103(d). *See Exhibit C*
16 (2025 LIHTC Allocation Agreement)
17 **Names of Competing Bidders:** (1) Flores Rosa Garden L.L.C. (“Flores Rosa”) the
18 bidder to which GHURA purported to award the 2024
19 LIHTC allocation of \$1,793,120.
20 (2) Rosewood Park L.L.C., the bidder which was
21 purported to be ranked #2 in a tie with Summer Vista II.
22 (3) Dos Amantes Development, LLC

23 **III. STATEMENT OF GROUNDS FOR APPEAL**

24 **A. GROUNDS FOR APPEAL**

25 Summer Vista brings this appeal of GHURA’s Decision to deny Summer Vista’s February 17,
26 2025 protest (“Protest #3). *See Exhibit B* (2/3/25 Summer Vista’s Protest 3). The grounds for
27 appeal are as follows:

28 **1. Denial of Protest based on Guam Procurement Law**

While GHURA correctly acknowledged that Guam procurement law applies, it incorrectly
calculated the filing deadline by failing to recognize that the executed carryover allocation agreement
was first disclosed on February 7, 2025. Under 5 GCA § 5425(a), the February 17, 2025 filing of
Protest #3 was timely, as it was submitted within fourteen (14) days of the date on which Summer

1 Vista first knew or reasonably should have known of the basis for this protest.

2 **2. Violation of Automatic Stay**

3 On February 3, 2025, GHURA unlawfully executed a LIHTC Carryover Allocation
4 Agreement with Flores Rosa in an attempt to award the low income housing tax credits to Flores
5 Rosa in violation of the automatic stay imposed under 5 GCA § 5425(g). The stay was triggered by
6 the timely filing of Protest #1 on January 6, 2025, and remained in effect at the time of the award,
7 rendering the action void under Guam procurement law.

8 **3. Failure to Comply with LIHTC Regulations and the 2024 QAP**

9 GHURA’s execution of the 2025 LIHTC Allocation Agreement on February 3, 2025 violated
10 both federal LIHTC regulations and the requirements of the 2024 QAP, each of which mandates that
11 the allocation be made no later than December 31, 2024. By finalizing the award after December 31,
12 2024, GHURA violated the 2024 QAP and the governing federal and local rules, rendering the
13 allocation void.

14 **4. Improper Allocation and Award from 2025 State Housing Credit Ceiling**

15 By executing the 2025 LIHTC Allocation Agreement on February 3, 2025, GHURA
16 impermissibly awarded LIHTC credits from Guam’s 2025 State Housing Credit Ceiling² without an
17 approved qualified allocation plan in effect for the 2025 calendar year or LIHTC solicitation. This
18 violated the requirements of 26 U.S.C. § 42(m)(1), which mandates that all LIHTC allocations be
19 made pursuant to a valid and effective QAP.

20 **B. Timeliness of Protest and Appeal**

21 This protest is timely under both GHURA’s Appeal Rules and Guam’s procurement laws
22 because the purported LIHTC “award” occurred on February 3, 2025—the date GHURA executed
23 the 2025 LIHTC Allocation Agreement. GHURA withheld producing a copy of the 2025 LIHTC
24 Allocation Agreement (the purported award contract) from Summer Vista until February 7, 2025

25 _____
26 ² “State Housing Credit Ceiling” is the amount of LIHTC allocation applicable to any state for any
27 calendar year. It is calculated as an amount equal to the sum of—(i) the unused state housing credit
28 ceiling (if any) of such state for the preceding calendar year, (ii) the greater of—(I) \$1.75 multiplied
by the state population, or (II) \$2,000,000, (iii) the amount of state housing credit ceiling returned in
the calendar year, plus (iv) the amount (if any) allocated under subparagraph (D) to such state by the
Secretary. See 26 U.S.C. § 42(h)(3)(C).

1 when it was produced in response to Summer Vista’s Sunshine Act Request. Protest #3 was timely
2 filed on February 17, 2025 under the Guam Procurement Code, which permits protests to be filed
3 within fourteen (14) days of when the basis for the protest is known or should have been known. 5
4 GCA §5425(a).

5 In the context of the LIHTC program, the “award” of credits does not occur at the point of
6 project scoring, reservation, or board recommendation. Federal law defines the actual allocation—the
7 legally operative award—as the moment the carryover allocation agreement is signed. Treasury
8 regulations are clear on this point:

9 A housing credit agency makes an allocation of housing credit dollar amounts to
10 a building *when the allocation document is completed, signed, and dated by an*
11 *authorized official of the housing credit agency.* (emphasis added).

12 See 26 C.F.R. § 1.42-6(c)(1). The Internal Revenue Service has reiterated this rule in Private Letter
13 Ruling 200351024 (Dec. 19, 2003), explaining that, while reservations may occur earlier, the
14 issuance of a LIHTC carryover allocation document is the prevalent method by which a state agency
15 makes an allocation of LIHTC credit.

16 *The fact that a credit amount has been reserved does not mean that the actual*
17 *allocation of the credit has been made; that occurs at a subsequent time during the*
18 *same calendar year.* There are two methods for allocating § 42 credits. One method
19 of allocating is by the issuance of a Form 8609, Low-Income Housing Credit
20 Allocation Certification. The Form 8609 also serves as an information reporting
21 document. *The other method of allocating is by the issuance of a carryover*
22 *allocation document.* The general rule under § 42 of the Code is that an allocation of
23 credit is effective only if it is made by the close of the year that the building is placed
24 in service. Under § 42(m)(2), the state agency is responsible for ensuring that the
25 amount of credit allocated (or received, in the case of credit predicated upon tax-
exempt bond financing) does not exceed the amount necessary to ensure project
feasibility. As a result, final cost certifications for the project are required before the
state agency will issue a Form 8609. *Because final cost certifications are usually not*
obtained before the close of the year a building is placed-in-service and the
information on Part I of the Form 8609 must reflect the proper amount of credit
allocated (or received), the Form 8609 is rarely used as the document to allocate §
42 credit. Rather, the issuance of a carryover allocating document is the prevalent
method by which a state agency makes an allocation of § 42 credit. (Emphasis
added).

26 See **Exhibit D** (IRS PLR 200351024) at 2

27 Accordingly, GHURA’s execution of the 2025 Carryover Allocation Agreement on February
28 3, 2025, had to occur before an “award” of tax credits can be made. Because Protest #3 was filed

1 within ten (10) days of the first public disclosure of that award, both filings are timely under
2 GHURA’s internal ten-day appeal rule and the procurement rule requiring protest within fourteen
3 days of actual or constructive knowledge of the grounds for protest. *See* 2 GAR § 9101(d).

4
5 **1. The February 3, 2025 Purported Award is Invalid Because It Was Executed**
6 **Without a 2025 Qualified Allocation Plan.**

7 The 2025 LIHTC Allocation Agreement is invalid as a matter of law because it was executed
8 in calendar year 2025, at a time when GHURA had not yet adopted or published a qualified
9 allocation plan for that year. The Internal Revenue Code (“IRC”) which governs the LIHTC program
10 strictly conditions the legality of any credit allocation on the existence of a valid QAP governing the
11 allocation year. Section 42 of the Internal Revenue Code makes this clear:

12 A housing credit agency *may not allocate any housing credit dollar amount*
13 *unless such amount was allocated pursuant to a qualified allocation plan...*
14 which is in effect as of the end of the calendar year in which the allocation is
made. (emphasis added).

15 *See* 26 U.S.C. § 42(m)(1)(A). Furthermore, the applicable Treasury regulation, 26 C.F.R. § 1.42-
16 17(a), requires that the QAP be publicly reviewed, subject to comment, and approved by the chief
17 executive of the jurisdiction before allocations can be made under it. As of February 3, 2025,
18 GHURA had no such approved QAP in place for 2025.

19 Accordingly, the 2025 LIHTC Allocation Agreement attempts to allocating prior-year credits
20 in 2025 (a new calendar year) without an approved and compliant QAP. This is precisely the situation
21 that the statute and regulations prohibit. The February 3, 2025 award is *ultra vires* and void.

22
23 **2. The February 3, 2025 Purported Award is Untimely Under the 2024 QAP and**
24 **Federal LIHTC Regulations**

25 The 2024 QAP expressly states that the tax credits being awarded are only effective for
26 LIHTC reservations and awards in calendar years 2023/2024.

1
2
3 **II. Allocation of Credits**

4 This QAP sets forth (1) the criteria to evaluate and allocate tax credits to projects which best meet the
5 housing needs of Guam, and (2) the procedure to monitor for compliance with the provisions of the LIHTC
6 Program.

7 **This allocation plan shall be effective for LIHTC reservations and awards in calendar years
8 2023/2024. The QAP is subject to amendment by the GHURA Board of Commissioners.**

9 The QAP will utilize a point system to rank projects based upon the evaluation criteria established. The
10 ranking of projects, along with all other relevant data, will determine the priorities to be followed by GHURA

11 *See Exhibit E (2024 QAP), at 4. Federal law mirrors this requirement:*

12 “If a carryover allocation fails to satisfy a requirement... such as failing to be
13 signed or dated by an authorized official of an allocating agency by the close of a
14 calendar year, the allocation is not valid and is treated as if it had not been made
15 for that calendar year.”

16 *See 26 C.F.R. § 1.42-6(a). Despite these requirements, GHURA executed the 2025 LIHTC Allocation
17 Agreement on February 3, 2025.*



21 *See Exhibit C (2025 LIHTC Allocation Agreement) at 4.*

22 Even if GHURA intended the 2025 LIHTC Allocation Agreement to constitute an allocation
23 under the 2024 QAP, the purported award is invalid because the agreement was executed after the
24 conclusion of the 2024 calendar year. As noted above, the 2024 QAP and federal LIHTC regulations
25 require that carryover allocation agreements ***must be executed no later than December 31 of the***
26 ***allocation year – in this case, December 31, 2024.*** GHURA’s attempt to award the 2024 LIHTC to
27 Flores Rosa was untimely and void under both the 2024 QAP and 26 C.F.R. §1.42-6(a).
28

1 **3. The Purported Award Was Executed in Violation of the 5425(g) Automatic Stay.**

2 Finally, GHURA’s award of tax credits to Flores Rosa violated the automatic stay provisions
3 of Guam’s Procurement Code. Summer Vista submitted Protest #1 on January 6, 2025, triggering the
4 statutory stay. 5 GCA § 5425(g) prescribes that:

5 “In the event of a timely protest... Guam shall not proceed further with the
6 solicitation or with award prior to final resolution of such protest, and any such
7 further action is void.”

8 *Id.*

9 Despite this, GHURA proceeded with signing the 2025 LIHTC Allocation Agreement on
10 February 3, 2025—almost a full month after the stay was triggered and while a formal appeal was
11 pending before the Office of Public Accountability (OPA-PA-25-0001). Even worse, GHURA failed
12 to disclose the agreement until February 7, 2025, despite a Sunshine Act Requests from Summer
13 Vista on January 24, 2025. The stay provision is not discretionary. It is designed to preserve the
14 integrity of the procurement process and ensure that protestors are not prejudiced.

15 **C. SUPPORTING FACTS**

16 The following facts support Summer Vista’s Protests and this Appeal:

- 17 1. On July 24, 2024, the GHURA Board of Commissioners (“Board”) issued its 2024 QAP
18 pursuant to 26 U.S.C. § 42 and related Treasury regulations. The 2024 QAP governed the
19 award of LIHTC for calendar year 2024 and required that all allocations be made no later than
20 December 31, 2024.

21 **II. Allocation of Credits**

22 This QAP sets forth (1) the criteria to evaluate and allocate tax credits to projects which best meet the
23 housing needs of Guam, and (2) the procedure to monitor for compliance with the provisions of the LIHTC
24 Program.

25 This allocation plan shall be effective for LIHTC reservations and awards in calendar years
26 2023/2024. The QAP is subject to amendment by the GHURA Board of Commissioners.

27 See **Exhibit E** (2024 QAP) at 4.

1
2 **A. QAP Timetable**

3 The QAP timeline is as follows:

- 4 • June 24, 2024 to July 05, 2024 – Public Comment Period
- 5 • July 23, 2024 – Presentation to GHURA BOC for approval
- 6 • July 25, 2024 to October 25, 2024 – QAP/Application Open to the Public
- 7 • October 25, 2024 – Application Closes/Final Submissions
- 8 • October 28, 2024 to November 8, 2024 – Evaluation Panel Review/Final Scoring
- 9 • November 12, 2024 – Final Recommendation to the GHURA BOC/Award Decision
- 10 • December 31, 2024 – Final day Carryover Allocation Submission

11 *See Id.* at 5.

- 12 2. On December 10, 2024, GHURA’s Board approved a reservation of LIHTC credits to Flores Rosa based on recommendations from GHURA Management. This approval was a reservation of tax credits and ***not a final award***.
- 13 3. An award is conditioned on among other things, the signing of a compliant 2024 LIHTC Carryover Allocation Agreement. On December 18, 2024, GHURA issued a letter to Flores Rosa, confirmed these requirements and warned Flores Rosa that failure to meet the December 31, 2025 deadline will jeopardize the eventual award.

14
15
16
17
18 Greetings, Mr. Salas:

19
20
21
22 Congratulations. We are pleased to notify you that Flores Rosa, L.L.C., has been awarded the amount of \$1,793,120.00 of the Low Income Housing Tax Credit (LIHTC) allocation in the 2024 application cycle, for the Flores Rosa Project. This award was approved by the Guam Housing and Urban Renewal Authority’s Board of Commissioners in a regularly scheduled meeting on December 10, 2024.

23
24 As an award recipient of we will be working with you to execute the proper documentation by December 31, 2024, for the allocation of credits. The IRS guidance requires that allocations be awarded before the calendar year ends.

25
26 Should you have any questions, please feel free to contact me at 671-472-1442, or email me at efnapoli@ghura.org. Thank you for your participation in the 2024 LIHTC Program.

27
28 *See Exhibit F* (1/18/24 Flores Rosa Letter).

- 1 4. GHURA did not sign a 2024 LIHTC Allocation Agreement before December 31, 2024 and
2 there was not “award” on or before December 31, 2024 as required under 26 C.F.R. § 1.42-
3 6(a) IRC.
- 4 5. GHURA and Flores Rosa failed to comply with the 2024 QAP and 26 C.F.R. § 1.42-6(a)
5 requirements for an “award” of the 2024 LIHTC to Flores Rosa. Thus, the allocation to
6 Flores Rosa is null and void.
- 7 6. On January 6, 2025, Summer Vista filed Protest #1, challenging the integrity of GHURA’s
8 2024 LIHTC allocation process. Protest #1 triggered the 5 GCA § 5425(g) stay prohibiting
9 GHURA from proceeding with any further action or award related to the 2024 LIHTC
10 solicitation.
- 11 7. On January 24, 2025, Summer Vista sent a Sunshine Act Request to GHURA requesting “any
12 and all contracts and agreements by and between Flores Rosa ... and GHURA relating to the
13 award of the 2024 Low Income Housing Tax Credit allocation for the Flores Rosa Project,
14 including but not limited to any ‘Carryover Allocation Agreements Pursuant to Section
15 42(h)E of the Internal Revenue Code.” See **Exhibit G** (1/24/25 SA Request).
- 16 8. On February 7, 2025, fourteen days after the 1/24/25 SA Request, GHURA responded to the
17 request with *only* two (2) documents: (1) the 2025 LIHTC Allocation Agreement (signed on
18 2/3/25); and (2) the Declaration of Extended Housing Rental Commitment (signed on 2/3/25).
19 See **Exhibit H** (2/7/25 GHURA SAR Response).
- 20 9. Unbeknown to Summer Vista at that time, on February 3, 2025, GHURA executed the 2025
21 LIHTC Allocation Agreement with Flores Rosa. See **Exhibit C**. This agreement purported
22 to award the \$1.7 million of the 2024 LIHTC credits under the 2024 QAP to Fores Rosa.
23
24
25
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28

GUAM HOUSING AND URBAN RENEWAL AUTHORITY
Low Income Housing Tax Credit
2025 Carryover Allocation Agreement
Pursuant to Section 42(h)(1)(E) of the Internal Revenue Code

This Carryover Allocation Agreement is made and entered into by and between the Guam Housing and Urban Renewal Authority ("GHURA") and the Owner identified in Section I below as of the date indicated in Section VI below (the "Agreement"). This agreement provides for the allocation of 2024 Low Income Housing Tax Credits pursuant to Section 42(h)(1)(E) of the Code (as defined below) in the amount specified in Section VI below (the "Tax Credits") or the "housing credit dollar amount". The allocation of Tax Credits made in this agreement is subject to (i) all terms and conditions stated herein, including, without limitation, (ii) all terms and conditions of GHURA's Low Income Housing Tax Credit Qualified Allocation Plan (the "Qualified Allocation Plan"), the application and related materials submitted in connection with this allocation of Tax Credits (collectively, the "Applications"), and (iii) all requirements of Section 42 of the Internal Revenue Code of 1986, as amended, including, without limitation, all subsequent tax legislation duly enacted by the Congress of the United States, United States Treasury, Regulations proposed or in effect with respect to the code and revenue procedures, revenue rulings or other published determinations of the Treasury Department or Internal Revenue Service of the United States (collectively, the "Code").

See **Exhibit C** (2025 LIHTC Allocation Agreement).

10. GHURA attempted to “award” the 2024 LIHTC by entering into the 2025 LIHTC Allocation Agreement in violation of Guam Procurement Law, the 2024 QAP and 26 C.F.R. § 1.42-6(a).
11. On February 4, 2025, Summer Vista filed its Appeal of GHURA’s Decision on Protest #1. This Appeal was docketed as OPA-PA-25-0001 before the Office of Public Accountability.
12. On February 17, 2025, Summer Vista submitted Protest #3 based on the information obtained from the 2/7/25 GHURA SAR Response. See **Exhibit H**. Summer Vista became aware of the 2025 LIHTC Allocation Agreement, that is, the purported “award” of the 2024 LIHTC to Flores Rosa on February 7, 2025.
13. On February 27, 2025, GHURA filed IRS Form 8610 with the IRC. See **Exhibit J** (2/27/25 Form 8610). Form 8610 “*Annual Low-Income Housing Credit Agencies Report*” is required to be filed by state and local housing credit agencies to report the allocation and compliance monitoring of the Low-Income Housing Tax Credit (LIHTC) under Section 42 of the Internal Revenue Code. It includes information about credit allocations made during the year, returned credits, and carryover allocations, helping the IRS ensure that credits are distributed and

monitored in accordance with federal law. See Internal Revenue Service, *Form 8610: Annual Low-Income Housing Credit Agencies Report*,” Department of the Treasury, <https://www.irs.gov/forms-pubs/about-form-8610>.

14. GHURA’s 2025 IRS Form 8610 filing confirms that:

a. GHURA returned \$1,391,880 million in unused 2023 LIHTC credits to IRS;

2, 3, and 5		6	1
Part II Reconciliation of Credit Ceilings and Allocations (see instructions)			
7a	Reserved for future use		7a
b	Enter the larger of \$2.90 multiplied by the state's population or \$3,360,000		7b 3,360,000
c	Enter the amount of credit ceiling returned in 2024 from allocations prior to 2024. See instructions		7c 0
d	Enter the amount (if any) allocated to the state from the 2024 National Pool		7d 0
e	Add lines 7a through 7d		7e 3,360,000
f	Enter the unused state housing credit ceiling (if any) from the 2023 Form 8610, line 11		7f 3,185,000
g	Total state housing credit ceiling for 2024. Add lines 7e and 7f		7g 6,545,000
h	Enter the total amount included on line 7g that was allocated during 2024 to qualified nonprofit organizations under section 42(h)(5). See instructions \$	0	
8a	Enter the total dollar amount of credits from Forms 8609, identified on line 1 above, used to allocate credit in 2024 where the year of allocation and the placed-in-service year are the same	8a 0	
b	Enter the total dollar amount of credits from Schedules A (Form 8610), line 5.	8b 1,793,120	
c	Total credits allocated during 2024. Add lines 8a and 8b. (Total can't exceed line 7g.)		8c 1,793,120
9	Enter the smaller of line 7f or line 8c		9 1,793,120
10	Subtract line 9 from line 8c		10 0
11	State's unused housing credit ceiling carryover to 2025. Subtract line 10 from line 7e. If zero or less, enter -0-		11 3,360,000
12	Unused 2023 carryover assigned to the 2025 National Pool. Subtract line 9 from line 7f		12 1,391,880
Part III Compliance With Low-Income Housing Requirements			

See *Id.* at 2.

b. GHURA is attempting to award \$1.7 million in LIHTC credits to Flores Rosa via the void and non-compliant 2025 LIHTC Allocation Agreement, drawing from the 2023 state credit allocation portion of the LIHTC pool governed by the 2024 QAP.

2, 3, and 5		6	1
Part II Reconciliation of Credit Ceilings and Allocations (see instructions)			
7a	Reserved for future use		7a
b	Enter the larger of \$2.90 multiplied by the state's population or \$3,360,000		7b 3,360,000
c	Enter the amount of credit ceiling returned in 2024 from allocations prior to 2024. See instructions		7c 0
d	Enter the amount (if any) allocated to the state from the 2024 National Pool		7d 0
e	Add lines 7a through 7d		7e 3,360,000
f	Enter the unused state housing credit ceiling (if any) from the 2023 Form 8610, line 11		7f 3,185,000
g	Total state housing credit ceiling for 2024. Add lines 7e and 7f		7g 6,545,000
h	Enter the total amount included on line 7g that was allocated during 2024 to qualified nonprofit organizations under section 42(h)(5). See instructions \$	0	
8a	Enter the total dollar amount of credits from Forms 8609, identified on line 1 above, used to allocate credit in 2024 where the year of allocation and the placed-in-service year are the same	8a 0	
b	Enter the total dollar amount of credits from Schedules A (Form 8610), line 5.	8b 1,793,120	
c	Total credits allocated during 2024. Add lines 8a and 8b. (Total can't exceed line 7g.)		8c 1,793,120
9	Enter the smaller of line 7f or line 8c		9 1,793,120
10	Subtract line 9 from line 8c		10 0
11	State's unused housing credit ceiling carryover to 2025. Subtract line 10 from line 7e. If zero or less, enter -0-		11 3,360,000
12	Unused 2023 carryover assigned to the 2025 National Pool. Subtract line 9 from line 7f		12 1,391,880
Part III Compliance With Low-Income Housing Requirements			

See *Id.*

c. The entire 2024 state credit allocation of \$3.36 million is being rolled forward into Guam's 2025 credit ceiling, to be governed by a future 2025 QAP.

Part II Reconciliation of Credit Ceilings and Allocations (see instructions)			
7a	Reserved for future use	7a	
b	Enter the larger of \$2.90 multiplied by the state's population or \$3,360,000	7b	3,360,000
c	Enter the amount of credit ceiling returned in 2024 from allocations prior to 2024. See instructions	7c	0
d	Enter the amount (if any) allocated to the state from the 2024 National Pool	7d	0
e	Add lines 7a through 7d	7e	3,360,000
f	Enter the unused state housing credit ceiling (if any) from the 2023 Form 8610, line 11	7f	3,185,000
g	Total state housing credit ceiling for 2024. Add lines 7e and 7f	7g	6,545,000
h	Enter the total amount included on line 7g that was allocated during 2024 to qualified nonprofit organizations under section 42(h)(5). See instructions \$		0
8a	Enter the total dollar amount of credits from Forms 8609, identified on line 1 above, used to allocate credit in 2024 where the year of allocation and the placed-in-service year are the same	8a	0
b	Enter the total dollar amount of credits from Schedules A (Form 8610), line 5.	8b	1,793,120
c	Total credits allocated during 2024. Add lines 8a and 8b. (Total can't exceed line 7g.)	8c	1,793,120
9	Enter the smaller of line 7f or line 8c	9	1,793,120
10	Subtract line 9 from line 8c	10	0
11	State's unused housing credit ceiling carryover to 2025. Subtract line 10 from line 7e. If zero or less, enter -0-	11	3,360,000
12	Unused 2023 carryover assigned to the 2025 National Pool. Subtract line 9 from line 7f	12	1,391,880

See Id.

15. In its submission to the IRS 8610, GHURA attached two documents: (1) 2025 LIHTC Allocation Agreement (see Exhibit C), as well as another document that GHURA has never produced before entitled "2024 Low-Income Housing Tax Credit Allocation Agreement" ("2024 LIHTC Allocation Agreement") (see Exhibit J). The 2024 LIHTC Allocation Agreement was not notarized and was purported to have been executed by GHURA on December 27, 2024.

This Tax Credit Allocation Agreement shall be governed by the laws of Guam and, where applicable, the laws of the United States of America.

Executed this 29th day of December, 2024

By: Elizabeth F. Napoli
 Elizabeth F. Napoli, Executive Director
 Guam Housing and Urban Renewal Authority

Accepted this 30th day of December, 2024.

By: Robert Salas II
 Robert Salas II, President
 Flores Rosa, LLC

See Id.

1 16. On information and belief, the purported 2024 LIHTC allocation Agreement did not exist
2 prior to February 3, 2025, when GHURA signed before a notary the 2025 LIHTC Allocation
3 Agreement because:

- 4 a. GHURA did not provide the 2024 LIHTC Allocation Agreement in its February 7,
5 2025 response to Summer Vista's 1/24/2025 SAR. See **Exhibit H** (2/7/25 Response).
6
7 b. GHURA did not provide or refer to the 2024 LIHTC Allocation Agreement in its
8 Agency Report filed in OPA-PA-25-001. See Agency Report, *Summer Vista II DE,*
9 *LLC & Summer Vista III DE, LLC v. Guam Hous. & Urban Renewal Auth.*, No. OPA-
10 PA-25-001 (Guam Office of Pub. Accountability Feb. 24, 2025)
11
12 c. GHURA admits in its March 28, 2025 Response to Summer Vista's SAR that there
13 are no LIHTC Carryover Allocation Agreements between GHURA and Flores Ros
14 signed in the calendar year 2024. in its March 28, 2025 Response to Summer Vista's
15 3/14/25 Sunshine Act Request.

16 2. Any GHURA Low Income Housing Tax Credit Carryover Allocation Agreement
17 entered into by GHURA and Flores Rosa, LLC, dated and/or signed in the calendar year
18 2024.

19 GHURA's RESPONSE: GHURA does not have any documents responsive to this
20 request.

21 See **Exhibit J**, at 1 (3/28/25 Response).

22 Based on the foregoing evidence and others, Summer Vista believes the 2024 LIHTC Allocation
23 Agreement was signed and executed *after* December 31, 2024.

24 //

25 //

1 **IV. STATEMENT OF THE RULINGS REQUESTED**

2 Summer Vista respectfully requests the Office of Public Accountability make the findings and
3 order the requested relief as follows:

- 4 **A.** Rescind the award and declare the 2025 Carryover Allocation Agreement void;
- 5 **B.** Cease all further action related to the 2024 QAP;
- 6 **C.** Refrain from allocating LIHTC tax credits until a valid QAP is adopted and published for
7 calendar year 2025; and
- 8 **D.** For such other relief that the OPA deems appropriate.

9 **V. SUPPORTING EXHIBITS, EVIDENCE, AND/OR DOCUMENTS**

10 Attached hereto are the following supporting documents and evidence to substantiate the
11 foregoing claims and grounds for appeal:

- 12 1. **Exhibit A**, 3/14/25 GHURA Decision
- 13 2. **Exhibit B**, 2/17/27 Summer Vista Protest 3
- 14 3. **Exhibit C**, 2025 LIHTC Allocation Agreement
- 15 4. **Exhibit D**, IRS Private Letter Ruling 200351024
- 16 5. **Exhibit E**, 2024 QAP
- 17 6. **Exhibit F**, 12/18/24 Flores Rosa Letter
- 18 7. **Exhibit G**, 1/24/25 SAR
- 19 8. **Exhibit H**, 2/7/25 GHURA SAR Response
- 20 9. **Exhibit I**, 3/14/25 SAR
- 21 10. **Exhibit J**, 3/28/25 GHURA SAR Response

22 Although Summer Vista has identified the attached documents and information in support of
23 this Appeal, Summer Vista does not waive its right to rely upon additional documents, information
24 and testimony. To avoid any doubt, Summer Vista’s investigation continues, and it expressly
25 reserves the right to cite other evidence and to present additional testimony during this Appeal or
26 other proceeding related to the Protest.
27
28

1 **VI. DECLARATION RE COURT ACTION**

2 The undersigned party does hereby confirm that to the best of her knowledge that no case or
3 action concerning the subject of this Appeal has been commenced in court. Counsel for Summer Vista
4 agrees to notify the Office of Public Accountability within 24 hours if court action commences
5 regarding this Appeal or the underlying procurement action.

6 **CIVILLE & TANG, PLLC**

7 */s/ Joyce C.H. Tang*

8 Dated: March 31, 2025

By: _____

JOYCE C.H. TANG

Attorneys for Appellant

*Summer Vista DE II, LLC and Summer Vista DE
10 III, LLC*



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-25-005 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>

Tue, Apr 1, 2025 at 10:16 AM

To: Elizabeth Napoli <efnapoli@ghura.org>

Cc: Elisio Florig <emflorig@ghura.org>, Joyce Tang <jtang@civilletang.com>, Haig Huynh <hhuynh@civilletang.com>, Marc Rasmussen <mrasmussen@civilletang.com>

Hafa Adai,

Please see the attached Notice of Receipt of Appeal for OPA-PA-25-005. This email will serve as an official notice in lieu of a transmittal via Fax.

Please confirm receipt of this email and the attached document. Thank you.

--

Best Regards,



Jerrick J.J.G. Hernandez, MA, CGFM, CFE, CICA, CGAP
Accountability Auditor

Office of Public Accountability

+1 671 475 0390 (ext. 204)

jhernandez@guamopa.com<https://www.opaguam.org/>

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