

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:	25 (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:	February 5, 2025
		Phone : Fax:	(671) 475-0390 x. 204 (671) 472-7951

Re: OPA-PA-25-001 Notice of Receipt of Appeal

For Review
 Please Comment
 Please Reply
 Please Recycle

Comments:

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver.

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

February 5, 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-25-001

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 February 4, 2025, regarding the Guam Housing and Urban Renewal Authority’s (GHURA) denial of its protest decision 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-25-001.

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 **Wednesday, February 12, 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 **Wednesday, February 19, 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 22 pages of the Notice of Appeal – OPA-PA-25-001

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JOYCE C.H. TANG
CIVILLE & TANG PLLC
330 Hernan Cortez Ave. Ste. 200
Hagatna, Guam 96910
Tel: (671) 472-8868/69
Fax: (671) 477-2511

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

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS
DATE: 2/14/25
TIME: 3:45 PM BY: Thomas Quichocho
FILE NO. OPA-PA-2501

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

In the Appeal of

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

Appellants

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 January 23, 2025, denying
4 Summer Vista’s January 6, 2025 protest of GHURA’s Award of Low-Income Housing Tax Credit
5 (“LIHTC”) tax credits pursuant the 2024 LIHTC Qualified Allocation Plan (“QAP”).

6 **I. APPELLANTS’ INFORMATION**

7 **Name:** Summer Vista II DE, LLC
8 Summer Vista III DE, LLC¹

9 **Mailing Address:** 388 South Marine Corps Drive, Suite 400
10 Tamuning, Guam 96913

11 **Business Address:** 388 South Marine Corps Drive, Suite 400
12 Tamuning, Guam 96913

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

14 **Legal Counsel For This Appeal:** Joyce C.H. Tang, Esq.
15 Civile & Tang, PLLC,
16 330 Hernan Cortez Ave. Ste. 200,
17 Hagåtña, Guam 96910
18 Email: jtang@civilletang.com

18 **II. APPEAL INFORMATION**

19 **Procuring/Soliciting Agency:** Guam Housing and Urban Renewal Authority

20 **Identification / Number:** 2024 Low Income Housing Tax Credit QAP

21 **Decision Being Appealed:** The decision being appealed, included in the Supporting
22 Documents attached hereto, was made on January 23,
23 2025, by Elizabeth F. Napoli, Executive Director of
24 GHURA and head of the relevant purchasing agency
25 (“Decision”). See **Exhibit A** (1/23/25 GHURA
26 Decision)

27 Appeal is made from a Decision on Protest of Method,
28 Solicitation or Award

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 **Date of Contract:** None as date of filing (Appellants requested this
2 information on January 24, 2025, however, GHURA
3 *failed* to respond to Appellant’s January 24, 2025
Sunshine Act Request required by 5 GCA §10103(d)²

4 **Names of Competing Bidders:** (1) Flores Rosa Garden L.L.C. (“Flores Rosa LLC”) the
5 bidder to which GHURA purported to award the 2024
6 LIHTC allocation of \$1,793,120
7
8 (2) Rosewood Park L.L.C. (“Rosewood LLC”), the
9 bidder which was purported to be ranked #2 in a tie with
10 Summer Vista II
11
12 (3) Dos Amantes Development, LLC (“Dos Amantes
13 LLC”)

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

15 **A. GROUNDS FOR APPEAL**

16 Summer Vista brings this appeal of GHURA’s Decision to deny Summer Vista’s January 6,
17 2025 protest (“Protest”)³ regarding GHURA’s award of low income housing tax credits pursuant to
18 its 2024 Low Income Housing Tax Credit QAP (“LIHTC QAP”)⁴ to Flores Rosa LLC as the first
19 ranked proposer, and the ranking of Rosewood LLC as a second ranked proposer in a tie ranking with
20 Summer Vista II.

21 **1. Timeliness of Protest and Appeal**

22 Summer Vista initiated its Protest on January 6, 2025 by sending a letter to GHURA
23 informing GHURA of the following: (1) Flores Rosa LLC’s application and proposal was non-
24 responsive and did not meet the GHURA QAP threshold requirements (including site control &
25 zoning, phase I environmental assessment, and proof of non-profit status requirements); (2) Flores
26 Rosa LLC and its managers, and non-profit member (The Children’s Ark), do not hold a business

27 ² On January 24, 2025, Appellants requested information pursuant to the Sunshine Reform Act of 1999 copies
28 of “[a]ny and all contracts and agreements by and between Flores Rosa Gardens L.L.C. and GHURA relating
to the award of the 2024 Low Income Housing Tax Credit Allocation for the Flores Rosa Project, including
but not limited to any “Carryover Allocation Agreements Pursuant to Section 42(h)(1)E of the Internal
Revenue Code.” See **Exhibit D** (1/24/25 SAR). A response was due from GHURA on February 1, 2025.
GHURA failed to respond to Appellants’ request.

³ See **Exhibit B** (Summer Vista’s Protest).

⁴ See **Exhibit B** (Protest, Ex. 8 - 2024 GHURA QAP).

1 license and are not authorized to transact business on Guam, (3) the evaluation process was critically
2 flawed, and (4) the evaluation scoresheet did not comply with the QAP criteria; and, (5) Rosewood
3 Park LLC, along with its managers and non-profit member (The Children’s Ark), do not hold a
4 business license and are not authorized to conduct business on Guam.

5 On January 23, 2025, GHURA’s Executive Director notified Appellants that the Protest had
6 been denied on timeliness grounds based on the GHURA Appeal Process Procedure and Guam
7 Procurement Law, 5 GCA §5425(a).

8 GHURA’s letter denying Summer Vista’s Protest contains clear legal error in two critical
9 respects. First, it states that GHURA informed Appellants in the Decision that “[t]he Procedure for
10 Appeal to the Board of Commissioners maintained at GHURA’s office provides in Section I, Right to
11 Appeal, Paragraph 3, Time Limit for Filing Appeal, [that] ‘An appeal shall be submitted within ten
12 (10) calendar days after the Executive Director’s award for the successful applicant/applicants.’”

13 **Exhibit A** (1/23/25 GHURA Decision). GHURA’s reliance on the “Procedure for Appeal to the
14 Board of Commissioners” as its guiding rules is clear error. GHURA admitted in response to
15 Appellants’ 1/7/2025 Sunshine Act Request Question #4, that “*there are no documents* relating to the
16 adoption, approval and promulgation of any GHURA’s Appeals and Process Procedure.” See
17 **Exhibit J** (1/23/25 SAR Response). Appellants specifically requested if the Procedure for Appeal to
18 the Commissioners was ever adopted by GHURA. On January 7, 2025, Appellants requested the
19 same records from the Guam Legislature, and on January 17, 2025, Joann Camacho, the Executive
20 Director of the Guam Legislature confirmed that “after thorough search of our records, there are no
21 documents [responsive] to your request.” t.” See **Exhibit L** (1/7/25 SAR to Legislature); see also
22 **Exhibit K** (1/17/25 SAR Response).

23 It is therefore undisputed that the so-called Procedure for Appeal to the Board of
24 Commissioners rules have never been approved and adopted by GHURA’s Board, and that they were
25 not promulgated pursuant to the Administrative Adjudication Law (“AAL”) at 5 GCA §9100 *et seq.*
26 Because the Procedure for Appeal to the Board of Commissioners rules cited by GHURA have not
27 been approved, adopted or promulgated they are a nullity with no force or bearing on Summer Vista’s
28

1 appeal. Notably, and not surprisingly given the above, the GHURA appeal rules are not posted on
2 GHURA's website.

3 GHURA's second stated ground for denying the Protest is based on Guam Procurement Law:

4 Assuming, *arguendo*, that the Guam Procurement Law does govern the LIHTC
5 program, Summer Vista II and Summer Vista II still missed the deadline to submit
6 their procurement protest. The Guam Procurement Law in 5 GCA § 5425(a), Right
7 to Protest, states, "Any actual or prospective bidder, offeror, Of. contractor who
8 may be aggrieved in connection with the method of source, selection, solicitation
9 or award of a contract, may protest to ... the head of a purchasing agency. The
10 protest shall be submitted in writing within fourteen (14) days after such aggrieved
11 person knows or should know of the facts giving rise thereto." As such, Summer
12 Vista II and Summer Vista III missed the protest filing deadline in writing of on or
13 before January 1, 2025 even if the Guam Procurement Law governed the LIHTC
14 program.

11 **Exhibit A** (1/23/25 GHURA Decision).

12 Ray Topasna, the previous GHURA executive director in 2012 and 2019-2022, requested an
13 opinion from the Office of the Attorney General ("OAG") on the issue of applicability of Guam
14 Procurement Law to federal programs such as LIHTC.⁵ The OAG issued a legal memorandum on
15 December 17, 2012 confirming that LIHTC program together with other federal programs
16 administered by GHURA *are not exempt* from the Guam Procurement Law. *Id.*

17 Summer Vista's Protest was timely. The critical and relevant information relied upon for its
18 Protest—*e.g.*, Flores Rosa's LIHTC application and proposal, was obtained through a December 10,
19 2024 Sunshine Act Request to GHURA ("12/10/24 SAR"). The 12/10/24 SAR was sent the same
20 day the GHURA Board of Commissioners ("GHURA Board") voted to approve the LIHTC
21 allocation to Flores Rosa LLC, and eight (8) days before GHURA formally notified Summer Vista of
22 its decision to award the 2024 LIHTC to Flores Rosa LLC). Furthermore, on December 12, 2024,
23 Summer Vista sent litigation hold letters to GHURA, GHURA Board, Flores Rosa LLC, Rosewood
24 LLC, and Pacific Federal Management, Inc. requesting that the parties not destroy any information in
25

26 ⁵ The OAG 12/17/12 Memo specifically references the LIHTC program as one of the federal programs that is
27 *not exempt* from the Guam Procurement Law, and that ***Unless a specific federal statute or regulation***
28 ***provides otherwise, GHURA is not exempt from the Government of Guam Procurement Law.*** (Emphasis
added.)” See **Exhibit B** (Protest, Ex.24 - OAG 12-0850, 12/17/2012 Opinion) (“OAG 12/17/12 Memo”); *also*
see OAG Website at: <https://drive.google.com/file/d/1W5cHwP-ILVNoFcTAgBC8fXibX57JcCra/view> (last
visited 2/2/2025).

1 their possession in anticipation of possible litigation. Despite the 12/10/24 SAR and litigation hold
2 letters, which put GHURA on notice that Summer Vista had concerns regarding the scoring and the
3 potential award of the LIHTC credits to Flores Rosa LLC, GHURA delayed its response to the
4 12/10/24 SAR until December 26, 2024. It took GHURA a total of sixteen (16) days (until 3:21 p.m.
5 on December 26, 2024) to respond to Summer Vista’s 12/10/25 SAR with documents GHURA
6 should have had readily available. Until that response, Summer Vista could not have known of the
7 deficiencies in Flores Rosa LLC and Rosewood LLC’s applications, their failure to meet the QAP’s
8 threshold requirements, and the fundamental flaws in GHURA’s evaluation process.

9 Under the Guam Procurement Law, Summer Vista had fourteen (14) days from the time it
10 became aware of the facts giving rise to the matters in the Protest to file a protest. Summer Vista
11 timely filed its Protest on January 6, 2025 -- eleven (11) days after December 26, when it became
12 aware of the facts giving rise to the matters raised in the Protest, well within the fourteen (14) day
13 statutory filing deadline.

14 On January 23, 2025, Appellants’ counsel wrote a letter to Ms. Napoli, the executive director
15 of GHURA asking her to “[p]lease identify by close of business, Friday, January 24, 2025, which
16 rules and regulations GHURA is following with respect to this LIHTC Appeal/Protest.” See
17 **Exhibit C** (1/23/25 Ltr. to GHURA). GHURA did not respond on January 24. On January 28, 2025
18 Summer Vista sent a second request to her by e-mail asking for a response to the January 23, 2025
19 letter. See **Exhibit M** (1/28/25 Email to GHURA). At the time of the filing of this Appeal, GHURA
20 still has not responded.

21 On February 3, 2025, Summer Vista notified GHURA of its second Protest which asserts new
22 and independent bases for challenging GHURA’s assertion that the GHURA Appeal Rules and
23 Procedure apply to this LIHTC procurement. See **Exhibit N** (2/3/25 Summer Vista’s Protest #2).

24 Summer Vista brings its timely appeal of the Decision pursuant to 5 GCA §5425(e) within the
25 15-day statutory period for appeal. This Notice of Appeal and the supporting evidence and
26 documents referenced herein, collectively constitute Summer Vista’s appeal of GHURA’s January
27 23, 2025 denial of Summer Vista’s Protest.
28

1 **2. Issues Subject to Appeal**

2 Summer Vista’s Protest and this Appeal are based on the following independent bases:

3 1. GHURA completely abdicated its duties to conduct an initial review Flores
4 Rosa LLC and Rosewood Park LLC’s LIHTC applications to determine compliance with
5 mandatory threshold requirements of the QAP, and that it was a responsive and responsible
6 bidder:

7 a. Flores Rosa LLC and Rosewood LLC failed to comply with Guam law
8 11 GCA §70130(a) requiring businesses to have business licenses.

9 b. Flores Rosa LLC was required but failed to provide evidence of site
10 control.

11 c. Flores Rosa LLC’s Phase I Environmental Assessment Report does not
12 comply with QAP threshold requirement that the report address lead-based paint and
13 asbestos. Here, the report excluded matters relating to lead-based paint and asbestos,
14 and the report was not signed and certified by the environmental engineer who
15 conducted the assessment.

16 d. Flores Rosa LLC’s proposed non-profit organization “The Children’s
17 Ark” does not meet the LIHTC program requirements relating to “qualified non-profit
18 organizations.”

19 2. GHURA’s evaluation of the five (5) LIHTC applications was critically flawed
20 and compromised because the evaluators failed to follow the objective criteria for scoring
21 which resulted in unfair, flawed and incorrect scoring. Points were improperly and
22 wrongfully allocated to Flores Rosa LLC and Rosewood LLC when they clearly and
23 obviously did not meet the objective qualifications or requirements in the QAP. Evaluators
24 also considered out-of-scope matters deviating from the objective criteria in the QAP when
25 scoring.

26 3. GHURA failed to follow the QAP score sheets broken down based on the 14
27 Criteria and its respective subparts established in the QAP. GHURA modified the scoresheet
28 by combining all of the criteria subparts for each of the 14 Criteria. This modification made it

1 impossible to verify scoring compliance and accuracy because, unless the evaluator broke
2 down the scoring for each Criteria subpart, it was not impossible to determine how many
3 points an evaluator gave for separate criteria subparts.

4 4. GHURA's LIHTC 2024 Completion Review Memo prepared by GHURA
5 management for the GHURA Board confirms that neither Flores Rosa LLC or Rosewood
6 LLC has prior LIHTC developer experience (Criteria 5). REMAX realty which has no
7 LIHTC management experience, was designated the team member who would be managing
8 the LIHTC project for Flores Rosa LLC (and presumably for Rosewood LLC as well). Yet,
9 four of the five GHURA's evaluators awarded the *full twelve (12) points* for Criteria 5 to
10 Flores Rosa LLC and Rosewood LLC even though GHURA's own memo established that
11 neither applicant had the requisite LIHTC developer experience (6 points) or LIHTC project
12 management experience (6 points).

13 5. GHURA made misrepresentations to the GHURA Board to cover up a deeply
14 flawed administration and evaluation of the LIHTC procurement. During the December 10,
15 2024 GHURA Board meeting, GHURA's LIHTC Chief Planner, Katherine Taitano, was
16 asked by the Chairman of the Board whether LIHTC development experience is a relevant
17 criterion in order to support GHURA management's recommendation to award the 2024 tax
18 credits to Flores Rosa LLC and the ranking of Rosewood LLC as #2. In her response, she
19 misrepresented that LIHTC development experience *is not* a criterion in the QAP. Ms.
20 Taitano's misrepresentation to the Board of a fact material to the evaluation is evidence of the
21 cover up of a deeply flawed evaluation and mismanagement of the LIHTC QAP procurement.

22 6. GHURA acted in bad faith. Its wrongful conduct continued after denying
23 Summer Vista's Protest. GHURA refused to comply with Guam law when it tried to cover
24 up the flawed evaluation process and then attempted to derail Summer Vista's Protest by
25 ignoring Summer Vista's request for copies of LIHTC contracts under Sunshine Act and for
26 confirmation regarding GHURA's appeal process. The deeply flawed evaluation, the lack of
27 transparency and complete disregard for Summer Vista's requests for information under the
28 Sunshine Act, the refusal to provide information regarding LIHTC contracts, and the

1 extensions/delays in responding to Summer Vista’s SAR, are part of the cover up and
2 mismanagement of the LIHTC QAP procurement.

3 7. The award of the 2024 tax credit to Flores Rosa LLC, and ranking of Flores
4 Rosa LLC as #1 and Rosewood LLC as #2, was based on a flawed and unfair solicitation
5 process designed to push through the award of the 2024 tax credit to Flores Rosa LLC and the
6 remaining tax credit available to Rosewood LLC.

7 8. Any contract *e.g.*, allocation of credits agreement, entered into between
8 GHURA and Flores Rosa LLC purporting to allocate the LIHTC credits to Flores Rosa LLC
9 is void under Guam law because such contract was entered into in contravention of the
10 mandatory automatic stay provided for by statute, 5 GCA §5425(g).

11 **B. SUPPORTING FACTS**

12 The following facts support Summer Vista’s Protest and this Appeal:

13 **Procedural Background**

14 1. On December 10, 2024, the GHURA Board of Commissioners (“GHURA Board”)
15 held a meeting during which they, by majority vote, approved the ranking and award of the 2024
16 LIHTC in the amount of \$1,793,120 to Flores Rosa LLC. Immediately following the meeting, Core
17 Tech Development LLC (“Core Tech”), the developer for Summer Vista II and Summer Vista III,
18 through counsel, submitted a Sunshine Act Request (“SAR”) to GHURA and the GHURA Board.
19 This SAR sought information related to Flores Rosa LLC and Rosewood LLC’s application and
20 proposals, and other information including but not limited to, GHURA reports, the Evaluation
21 Committee’s evaluation forms and score sheets. *See Exhibit B* (Protest, Ex. 1 - 12/10/24 SAR).

22 2. On December 12, 2024, Core Tech, through counsel, sent litigation hold letters to
23 GHURA’s Executive Director and the GHURA Board, notifying them of its intent to file a protest.
24 The protest concerned (1) the award of the 2024 LIHTC to Flores Rosa LLC, and (2) the ranking of
25 the Rosewood LLC project as the second-ranked project. These letters also informed GHURA of its
26 obligation to preserve and retain all relevant information. *See Exhibit B* (Protest, Ex. 2a - 12/12/24
27 Litigation Hold Ltr. to GHURA BOC and Ex. 2b - 12/12/24 Litigation Hold Ltr. to GHURA
28 Executive Director).

1 3. On December 16, 2024, GHURA requested a 10-day extension to respond to Core
2 Tech's 12/10/24 SAR. *See Exhibit B* (Protest, Ex. 3 - 12/16/24 Ltr. from GHURA).

3 4. On December 18, 2024, GHURA notified Summer Vista of its decision to award the
4 2024 LIHTC to FRGL. *See Exhibit B* (Protest, Ex. 4 - 12/18/24 Ltr. from GHURA).

5 5. On December 26, 2024, GHURA provided its response to Core Tech's December 10,
6 2024, Sunshine Act Request. However, GHURA refused to produce several categories of requested
7 documents, including materials related to Rosewood LLC's application, proposal, and
8 communications. *See Exhibit E* (12.26.25 GHURA SAR Response without Exhibits).

9 6. On January 6, 2025, Summer Vista sent its protest letter to GHURA protesting the
10 award of the tax credits to Flores Rosa LLC and the ranking of Rosewood LLC as the #2 bidder. *See*
11 **Exhibit B** (Protest).

12 7. On January 7, 2025, Summer Vista, through counsel, submitted a Sunshine Act
13 Request to GHURA, seeking among other things, all rules, regulations, manuals, policies, and
14 procedures related to the 2024 LIHTC QAP and GHURA's appeals and process procedures, and
15 GHURA's promulgation of those appeal rules and regulations and compliance with the AAL. *See*
16 **Exhibit F** (1/7/24 SAR).

17 8. On January 13, 2025, GHURA requested a 10-day extension to respond to the request,
18 extending its response date to January 23, 2025. *See Exhibit G* (1/13/25 GHURA Notice of
19 Extension). In its extension letter, GHURA did not identify any "usual circumstances" required for
20 requesting the ten (10) day extension under 5 GCA §10103(e).

21 9. On the morning of January 14, 2025, GHURA canceled the board meeting due to a
22 lack of quorum. The meeting had been scheduled to take place that day, with the 2024 LIHTC
23 QAP/Application Cycle listed as an item under "Old Business" on the agenda. *See Exhibit H*
24 (1/14/25 GHURA Email); *see also Exhibit I* (1/14/25 GHURA BOC Agenda).

25 10. On January 23, 2025, GHURA issued its Decision denying Summer Vista's
26 Appeal/Protest. *See Exhibit A* (12/23/25 GHURA Decision). GHURA's denial was two-fold. First,
27 GHURA denied the Appeal/Protest on timeliness ground based on the 2024 LIHTC QAP, stating
28 that, "[a]ll appeals shall be resolved in accordance with GHURA's Appeals Process Procedure." *Id.*

1 GHURA incorrectly determined that the deadline for Summer Vista's Appeal/Protest was December
2 28, 2024. *Id.* Second, GHURA also denied the Appeal/Protest based on the Guam Procurement
3 Law, and erroneously concluded that the Appeal/Protest was untimely under Guam's Procurement
4 Law, stating that the deadline for the Appeal/Protest was January 1, 2025. *Id.*

5 11. GHURA's determination that the Protest was not timely was legally and factually
6 incorrect.

7 12. On January 23, 2025, fourteen (14) days after Summer Vista issued the 1/7/25 SAR
8 and having failed to identify the "unusual circumstances" required under 5 GCA §10103(e) for the
9 10-day extension, GHURA produced a single 4-page document titled "Procedure for Appeal to the
10 Board of Commissioners." *See Exhibit J* (1/23/25 Response to 1/7/25 SAR).

11 13. On January 23, 2025, after denying the Protest, Summer Vista asked GHURA to
12 identify the appeal rules that GHURA is following with respect to this Protest by close of business
13 January 24, 2025. *See Exhibit C* (1/23/25 Ltr. To GHURA). GHURA did not reply. Summer Vista
14 followed up again on January 28, 2025. *See Exhibit M* (1/28/25 Email to GHURA). GHURA
15 ignored both requests.

16 14. In a Sunshine Act Request to GHURA dated January 24, 2025, Summer Vista
17 requested from GHURA copies of any contracts e.g., tax credit allocation agreements, signed
18 between GHURA and Flores Rosa LLC relating to the LIHTC project. *See Exhibit D* (1/24/25 SAR).
19 GHURA ignored this request and as of the date of the filing of this Appeal it has not provided a
20 response.

21 15. On February 3, 2025, Summer Vista sent a notice of protest to GHURA asserting new
22 and independent bases for challenging GHURA's assertion that the GHURA Appeal Rules and Procedure
23 apply to this LIHTC procurement. *See Exhibit N* (2/3/25 Summer Vista's Protest #2). This is
24 Summer Vista's second protest to GHURA relating to the 2024 LIHTC QAP and award to Flores
25 Rosa LLC.

26 //

27 //

28

Facts Relevant to Flores Rosa LLC

16. The QAP requires all 2024 LIHTC applications and proposals be reviewed by GHURA management to determine compliance with Section II Federal and GHURA Threshold Requirements of the QAP, and the bidders were responsible bidders, *e.g.*, contained requisite supporting documents to demonstrate compliance with business license laws, LIHTC development and management experience, met the “qualified non-profit organization” requirement in the QAP, established site control, and included a complete Phase I Environmental Site Assessment.

17. Flores Rosa LLC was formed for the purpose of owning and managing real property. The company is structured as a multi-member limited liability company with ownership divided among three entities. *See Exhibit B* (Protest, Ex. 7 - FRGL Articles). Salas Development L.L.C., a Guam-based company, holds the majority interest with 89% ownership. *Id.* Tasi Homes Manager Co., Inc., a CNMI-based company, owns 10% while The Children’s Ark Inc., a Guam based non-profit organization holds the remaining 1%. *Id.* Neither Flores Rosa LLC nor any of its members possess a Guam business license. *See Exhibit B* (Protest, Ex. 25 - 1/6/25 Request to DRT). To meet the “qualified non-profit organization” requirement in the QAP, Flores Rosa LLC submitted a September 27, 2022 letter from the IRS granting The Children’s Ark its tax-exempt status. *See Exhibit B* (Protest, Ex. 26 - 9/27/22 IRS Determination Letter). However, The Children’s Ark Inc. amended its articles of incorporation on October 15, 2024 to comply with LIHTC non-profit set-aside requirements under IRC §42, by changing the organization’s tax-exempt purpose to include “fostering of low-income housing”.⁶ *See Exhibit B* (Protest, Ex. 14 - 10/15/24 Ark Amended AOI). The Children’s Ark’s September 27, 2022 IRS Determination Letter may not be relied upon for the LIHTC procurement, and therefore does not meet the QAP non-profit organization requirement.

18. Even so, all five evaluators allotted Flores Rosa LLC the 1-point allotted for meeting the requirement of Criteria 9 -- “qualified non-profit organization” *See Exhibit B* (Protest, Ex. 20 - FRGL Evaluations).

⁶ IRS Treasury Regulations state “that a ruling of or determination letter recognizing exemption may not be relied upon if there is a material change inconsistent with the exemption in the character, the purpose, or the method of operation of the organization.” Treas. Reg. 601.201(n)(3)(ii). *See also* Treas. Reg. § 1.501(a)-1(a)(2) and IRS Rev. Proc. 2035-5, Section 11.

1 Committee. From October 28, 2024 through November 18, 2024, GHURA’s five-member
 2 Evaluation Committee reviewed and assessed the five applications. *See Exhibit B* (Protest, Ex. 15 -
 3 Cycle Review Memo). The Evaluation Committee was tasked to ensure compliance with program
 4 requirements and evaluating project feasibility based on the objective criteria. *See Exhibit B* (Protest,
 5 Ex. 5 - 12/10/24 Memo to BOC). However, evaluators improperly applied subjective interpretations,
 6 deducting points in some areas and awarding points in others based on factors not outlined in the
 7 QAP. This approach was not applied uniformly among evaluators, resulting in inconsistencies in the
 8 scoring process.

9 24. For example, Criteria 3: Project Characteristics of the QAP evaluates design,
 10 functionality, and sustainability based on six objective subcategories in the QAP, each allocated 2
 11 points. Summer Vista II and III met all subcategories and should have received full points. However,
 12 one evaluator improperly deducted two points from each project based on factors not included in the
 13 QAP, such as typhoon shutters, while awarding full points to other projects for similar out-of-scope
 14 factors. *See Exhibit B* (Protest, Ex. 18 - SVII Evaluations and Ex. 19 - SVIII Evaluations)

15 25. The December 10, 2024 Low Income Housing Tax Credit Program 2024 Competition
 16 Cycle Review memorandum prepared by GHURA (“12/10/24 GHURA LIHTC Memorandum”) for
 17 the December 10, 2024 Board meeting states that GHURA’s management determined that neither
 18 Flores Rosa LLC or Rosewood Park projects had LIHTC program developer experience. An excerpt
 19 of the GHURA memorandum is presented below:

	Project 1	Project 2	Project 3	Project 4	Project 5
Name	Dos Amantes Senior Residence	Summer Vista II	Summer Vista III	Rosewood Parks	Flores Rosa
Developer has prior experience with LIHTC program	Yes	Yes	Yes	No	No

24
 25 *See Exhibit B* (Protest, Ex. 5 at 5). Despite this, four out of five evaluators awarded the project the
 26 full 12 developer experience points, while the fifth evaluator, acknowledging the lack of experience,
 27 arbitrarily awarded partial points, citing confidence that Flores Rosa LLC could “fulfill the mission.”
 28 *See Exhibit B* (Protest, Ex. 20).

1 26. Flores Rosa LLC misrepresented in its proposal that it had a “history of bidding and
2 completing LIHTC projects” relying on Bob Salas’ prior unsuccessful and failed Tower 70 L.P.
3 LIHTC project as a LIHTC project that he successfully developed and completed.⁷

4 27. During the December 10, 2024 GHURA Board of Commissioners Meeting, the
5 commissioners raised concerns about how the Flores Rosa LLC and Rosewood LLC project
6 developers who had no prior experience could outperform a Summer Vista II and III’s established
7 LIHTC developer. Ms. Katherine Taitano, GHURA’s Chief Planner, misled the commissioners by
8 asserting that general housing development experience – not LIHTC development experience was the
9 focus in QAP scoring criteria:

10 COMMISSIONER DELIA: So, I do have a question based on reviewing these documents.
11 The QAP is basically very specific. ***How can the developers who have no experience or***
12 ***past experience get a higher score than the developers who have that many years of***
experience?

13 MS. TAITANO: Good afternoon, Commissioners. ***The developers in question, all of them***
14 ***have experience in development of projects, large projects, and housing projects. But yes,***
15 ***you're correct, as far as Guam is concerned, this particular developer [PFM] has not before***
16 ***competed. The question is -- there are questions asked with respect to their experience in***
17 ***housing development. To answer as to why one with prior experience has not outshone the***
18 ***one that is -- you know, with new, is the devil is in the details with respect to their rankings***
and they're the individuals who did that. I apologize, I wish I had a better answer but
clearly there were elements in the scoring that warranted according to our panel the
ranking and the scoring that they were given.

19 CHAIRMAN RIVERA: So, if I understand what you're saying, you're saying that based
20 on the criteria, ***it's more about experience in development or being a developer in the scale***
of the project more so than their -- them having had previous experience with LIHTC? ...

21 MS. TAITANO: ***There are no specific additional credits provided or awarded for having***
22 ***prior LIHTC experience.***

23 CHAIRMAN RIVERA: So, is there -- I guess then the question could be, is there a reason
24 why that that information is applicable?

25 ⁷ Flores Rosa LLC represented that its majority member, Salas Development Corporation, possessed a “history
26 of bidding and completing LIHTC projects.” See **Exhibit B** (Protest, Ex. 22 - FRGL Application at 16).
27 However, Salas Development Corporation was only formed on October 15, 2024 and it does not have a
28 business license, and history or experience with LIHTC projects. See **Exhibit B** (Protest, Ex. 25). It also touts
the experience of Bob Salas who was the President of Tower 70, Inc., the company awarded the LIHTC credits
in 2011 for Tumon Heights Tower LIHTC project (“Tower 70 L.P.”). However, Bob Salas’ only experience in
LIHTC development was Tower 70 L.P., which he was unable to complete due to his inability to secure a
syndicator. He ultimately sold the project to Core Tech Development, which successfully completed it in
December 2014. See **Exhibit B** (Protest, Ex. 16 - Tower 70, Inc. Stock Purchase Agreement).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MS. TAITANO: Why -- excuse me, forgive me, Director.

....

MR. ESTEVES: *So, it's just general information [the LIHTC 2024 Completion Review Memo], kind of an overview of the projects and the developers, not germane to the ranking provided by the panelists who were voting purely on the application and the criteria in the QAP.*

MR. ESTEVES: So, it's additional consideration the board may take up as part of their Determination.

CHAIRMAN RIVERA: Okay. Noted. Thank you.

MR. ESTEVES: So, germane for you but it wasn't germane for the panel.

CHAIRMAN RIVERA: For the panel on their ranking?

MR. ESTEVES: Correct.

See **Exhibit B** (Protest, Ex. 6 at 10-13).

28. Counsel for Summer Vista requested to address the GHURA Board, and before any specific issue was identified, the chief planner voluntarily admitted that her earlier statement regarding the irrelevance of LIHTC developer experience was incorrect, acknowledging that it is, in fact, a relevant criterion under the QAP:

MS. TAITANO: . . . Also, if this is -- I don't know if this is the right time, but I misspoke and Ms. Tang did mention it, and I would like to comment on that if you'd let me. But with respect to what you want to do, if you want to deliberate with additional information, the scoresheets and the notes are available to you.

MS. TAITANO: Attorney Tang characterized it as an inaccuracy when I misspoke, and I am sorry for that. Commissioner Rice?

....

MS. TAITANO: No, Commissioner Delia. Sorry. *You asked about how a group can -- how a developer can come in who has prior LIHTC experience, or not prior LIHTC experience and still do better than one with LIHTC, part of the scoring under management does address in pages 8 to 20 I think in the QAP; and in the management one, it does give additional points if you do have LIHTC experience. Now, that said, then the other criteria must have been where the developers -- or the panelists found differences enough to find that the folks without development experience were still going to rank high on the -- as number 2.*

1 MR. ESTEVES: LIHTC development experience. Right?

2 MS. TAITANO: LIHTC development experience, yes. In the scoring. And I do apologize.

3 MR. ESTEVES: So, to clarify for the record, there is consideration for LIHTC
4 development experience. Right?

5 MS. TAITANO: LIHTC development experience, yes. In the scoring. And I do apologize.

6 *See Exhibit B* (Protest, Ex. 6 at 25-28).

7 29. Commissioner Karl Corpus raised additional concerns that the QAP evaluation sheet
8 did not follow the requirements outlined in the QAP. The commissioner requested a full breakdown
9 of the scoring process to verify whether QAP criteria were correctly applied. Deputy Director
10 Fernando Esteves stated that the information supporting the scoring was contained in the applications
11 and that these applications were considered proprietary, which is why they were not included in the
12 board packets:

13 MR. CORPUS: The project – *well, the points that each one of the bidders are putting down*
14 *here, there's no – it shows on the last – the last point in the commissioners' packet, the*
15 *amount of points for each area. For instance, community engagement, strategy, community*
16 *work, one point, et cetera. But it doesn't show us what project or you know, what's the*
17 *points were given for each part of that. Starting with Project Number 1 here, a total of 12.1,*
I don't have any information on how they came up with that number, 12.1. Only the
explanation of each points.

18

19 MR. CORPUS: If we can chair this for two weeks, I mean get right down to another week to
20 review.

21

22 MR. ESTEVES: There's some things we can't put out, like we're not going to put out the
23 application, right? And trust me, there are companies out there that they will try to FOIA.
24 Because they're trying to see what the other competition's doing. So there's somethings just
like a procurement, we can't necessarily just put out there.

25 MR. CORPUS: Okay.

26 MR. ESTEVES: But we can just definitely arrange for the board to review the documents if
27 you want to look at the applications and look at it with the scoring sheets.

28 MR. CORPUS: That's where --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MR. ESTEVES: Yeah.

MR. CORPUS: -- We are getting to right here, right? We can --

CHAIRMAN RIVERA: Well, that was my question, right? Is there any additional information that you're needing, right?

MR. CORPUS: The scoring on the information.

CHAIRMAN RIVERA: Okay.

MR. CORPUS: On this – you know. I may be wrong but *I'm unsure on the total scores on different things but they don't -- we're not seeing what scores may be available for people with no experience with LIHTC equipment – projects to be over money with.*

CHAIRMAN RIVERA: Okay.

See **Exhibit B** (Protest, Ex. 6 at 34-36).

Facts Relevant to Rosewood LLC

30. Rosewood LLC was formed for the purpose of owning and managing real property. The company is structured as a multi-member limited liability company with ownership divided among three entities. See **Exhibit B** (Protest, Ex. 17 - RPL Articles). Salas Development L.L.C., a Guam-based company, holds the majority interest with 89% ownership. Id. Tasi Homes Manager Co., Inc., a CNMI-based company, owns 10% while The Children's Ark Inc., a Guam based non-profit organization holds the remaining 1%. Id. Neither Rosewood LLC nor any of its members possess a Guam business license. See **Exhibit B** (Protest, Ex. 25 - 1/6/25 Request to DRT).

31. All five evaluators awarded Rosewood LLC full points as a "qualified non-profit organization." See **Exhibit B** (Protest, Ex. 21 - RPL Evaluations). However, if Rosewood LLC relied on the same September 27, 2022, IRS determination letter submitted by Flores Rosa LLC to establish The Children's Ark's tax-exempt status, then the full point allotment was erroneous, as The Children's Ark materially changed its tax-exempt purpose in October 2024, rendering the 2022 IRS determination letter unreliable for meeting QAP requirements.

32. In the GHURA 12/10/24 LIHTC Memorandum, GHURA determined that the Rosewood LLC project lacked LIHTC developer experience. See **Exhibit B** (Protest, Ex. 5 at 5).

1 Despite this, four out of five evaluators awarded the project the full 12 developer experience points,
2 while the fifth evaluator, acknowledging the lack of experience, arbitrarily awarded 4 points. *See*
3 **Exhibit B** (Protest, Ex. 21 - RPL Evaluations).

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

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

- 7 **A.** That, upon filing of this Appeal, Order that the 2024 LIHTC solicitation be and is
8 suspended pursuant to 5 GCA 5425(g).
- 9 **B.** Find that the Guam Procurement Law applies to this Appeal.
- 10 **C.** Find that Summer Vista's Protest was timely.
- 11 **D.** Find that the Procedure for Appeal to the Board of Commissioners rules have never
12 been approved and adopted by GHURA's Board, and that they were not promulgated
13 pursuant to the Administrative Adjudication Law at 5 GCA §9100 *et seq.*, and
14 therefore, have no force or bearing on Summer Vista's appeal.
- 15 **E.** Find that GHURA failed to follow the QAP when it materially altered the evaluator
16 scoring sheet.
- 17 **F.** Find that the GHURA Evaluation Committee improperly applied subjective
18 interpretations, deducting points in some areas and awarding points in others based on
19 factors not outlined in the QAP. This approach was not applied uniformly among
20 evaluators, resulting in inconsistencies in the scoring process.
- 21 **G.** Find that the evaluation was flawed and that Flores Rosa LLC did not meet threshold
22 QAP requirements, and was therefore a non-responsive proposer.
- 23 **H.** Find that the evaluation was flawed and that Rosewood LLC did not meet the
24 threshold QAP requirements, and was therefore a non-responsive proposer.
- 25 **I.** Find and Order that Flores Rosa LLC and Rosewood LLC are disqualified from
26 participating in the 2024 LIHTC solicitation.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 6. **Exhibit F** 1/7/24 Sunshine Act Request to GHURA
- 7. **Exhibit G** 1/13/25 GHURA’s Notice of Extension
- 8. **Exhibit H** 1/14/25 E-mail from GHURA Executive Director to J. Tang
- 9. **Exhibit I** 1/14/25 GHURA Board of Commissioners Agenda
- 10. **Exhibit J** 1/23/25 GHURA Response to 1/7/25 Sunshine Act Request
- 11. **Exhibit K** 1/17/25 Legislature Response to 1/7/25 Sunshine Act Request
- 12. **Exhibit L** 1/7/25 Sunshine Act Request to Legislature
- 13. **Exhibit M** 1/28/25 Email from J. Tang to GHURA Executive Director
- 14. **Exhibit N** 2/3/25 Summer Vista’s Protest #2

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

VI. DECLARATION REGARDING COURT ACTION

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

CIVILLE & TANG, PLLC

Dated: February 4, 2025

By: 
JOYCE C.H. TANG
Attorneys for Appellant
Summer Vista DE II, LLC and Summer Vista DE III, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION
2 GAR 12104(b)(6)

I, Conchita Bathan, the duly authorized representative of Appellants, Summer Vista II DE, LLC and Summer Vista III DE, LLC, the Appellants in the above-entitled action and that I have read the foregoing Notice of Procurement Appeal and Procurement Appeal, and they are true of my own knowledge except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 4, 2025.

By: 
CONCHITA BATHAN
*Appellants Summer Vista II DE, LLC and
Summer Vista III DE, LLC*



Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-25-001 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>
To: Elizabeth Napoli <efnapoli@ghura.org>
Cc: Joyce Tang <jtang@civilletang.com>

Wed, Feb 5, 2025 at 3:04 PM

Hafa Adai,

Please see the attached Notice of Receipt of Appeal for OPA-PA-25-001. 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/>



This email and any attachments are for the sole use of the intended recipients and contain information that may be confidential or legally privileged. If you received this email in error, please notify the sender by reply email and delete the message. Any disclosure, copying, distribution, or use of this communication by someone other than the intended recipient is prohibited.

 **25-001 Notice of Receipt of Appeal.pdf**
7260K