

## **FHFC II, INC.**

### *Action*

#### **I. FHFC II, INC.**

##### **A. Ratification of the Execution of the Purchase and Sale Agreement for Riley Chase Apartments**

###### **1. Background**

- a) Vestcor Fund XVII, Ltd. d/b/a Riley Chase Apartments (“Riley Chase”) is a 312 unit multifamily development located in North Port, Florida, near the south end of Sarasota County. The property was financed with FHFC bonds; 1999 Series L1 & L2, and an allocation of 4% housing credits. The Guarantee Program and HUD (through a Risk-Sharing agreement) guaranteed the first mortgage.
- b) On December 12, 2008, the Guarantee Program filed an Application for Initial Claim Payment with HUD on Riley Chase Apartments and on June 18, 2009, filed for foreclosure in the 12th Circuit Court in Sarasota County, case number 2009-CA-010251-NC.
- c) On July 20, 2009, Riley Chase filed their consent to summary judgment and final summary judgment was granted on August 28, 2009. A foreclosure sale date was set for September 28, 2009. FHFC was the winning bidder at the foreclosure sale and a certificate of title was issued to FHFC II, Inc. on September 29, 2009.
- d) As part of staff’s ongoing efforts to be fully prepared for managing troubled assets, unremedied borrower defaults, and the eventual management and disposition of multifamily housing developments, we have established protocols and procedures balancing Florida Housing’s mission while protecting the financial interests of the Florida Affordable Housing Guarantee program.
- e) Florida Housing, through an independent contractor selected via a Request for Proposals process and approved by the Board, manages, conserves, protects (including making capital expenditures as needed to repair or restore the property or to cover operating budget shortfalls and stabilize the property's operations) and operates foreclosed properties in accordance with customary practices of prudent lenders in servicing and administering similar multifamily mortgage loans for their own account, consistent with applicable laws and regulations. In the case of mortgage loans additionally guaranteed through the HUD Risk-Sharing Program, the requirements of HUD regulations are also followed. In accordance with HUD guidelines and Florida Housing’s established protocols, staff commenced the process of the disposition of Riley Chase immediately after Florida Housing was the winning bidder at the foreclosure sale. With the assistance of a real estate broker within the pool of brokers approved by the Board and selected through the issuance of a Request for Proposals, a marketing and disposition plan was prepared outlining the strategy for the disposition at the earliest practicable, commercially reasonable time, on commercially reasonable terms taking into account market conditions, the condition of the asset, the total claim, and the Guarantee program’s share of that liability, any rating agency consequences, the appraised value, recent economic effects on that value, and the legal and regulatory requirements.

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- f) Following established protocol, Riley Chase Apartments was listed for sale via competitive bid process with Marcus & Millichap. A total of 35 bids were received. On December 17, 2009, after Marcus & Millichap vetted the offerors, Marcus & Millichap submitted the best and final offers from the following offerors:
  - (1) Banc of America;
  - (2) Capital Resources Corp.;
  - (3) Condor Corp.;
  - (4) Hills Communities;
  - (5) Meridian Asset Management;
  - (6) MSG;
  - (7) Parkway Capital; and
  - (8) Phoenix Realty Group.
- g) Staff met December 21, 2009 to select top bidders and formulate a recommendation to for approval of the sale.
- h) As described in the Action item modified by the Board on December 4, 2009, the Board delegated authority to the Chair or Vice Chair, with the advice of Florida Housing's financial advisor, to select and approve an offeror for the sale of any property held by FHFC II. Based upon Banc of America's \$8.2 million offer including a total of \$650,000 in earnest money deposits, 30 day deadline for due diligence and projected January 29 deadline to close, cash on hand to close the transaction without financing, Marcus & Millichap's and Florida Housing's financial advisor's favorable recommendation, staff recommended and requested approval from the Chair to negotiate a purchase and sale agreement for the sale of Riley Chase Apartments to Banc of America.
- i) On December 22, 2009, the Board Chair authorized to staff to proceed with the purchase and sale agreement for the sale of Riley Chase Apartments to Banc of America.

## 2. **Recommendation**

- a) Ratify the purchase and sale agreement for the sale of Riley Chase Apartments to Banc of America and direct staff to proceed with the closing on the sale of Riley Chase.

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#### **B. Delegation of Authority to Staff to Sell any Property Conveyed or Acquired by FHFC II**

##### **1. Background**

On July 30, 2008, FHFC II, Inc. ("FHFC II") was incorporated as a wholly-owned subsidiary of Florida Housing Finance Corporation for the purpose of taking title to and/or managing and/or disposing of property acquired by Florida Housing from time to time through any of Florida Housing's various programs. The FHFC II By-Laws adopted Florida Housing's Rule Chapters 67-48, 67-49, 67-52, 67-53, Fla. Admin. Code, and all rules of Florida Housing regarding fees, as amended, as By-Laws. The By-Laws further provided that other instruments or documentation in connection with managing the business and regulating the affairs of the Corporation will also be adopted as By-laws and will govern the subsidiaries.

##### **2. Present Situation**

- a) FHFC II has previously taken management control and/or ownership of properties. FHFC II's By-Laws do not include a provision authorizing staff to select an offer and proceed with the sale of a property where the necessity to act arises between meetings of the Board of Directors.
- b) Draft Resolution No. 2010-001 ([Exhibit A](#)) proposes that the FHFC II Board authorize the Executive Director of Florida Housing, to contract on behalf of FHFC II from among the vendors and or service providers presently engaged by Florida Housing under the contracts for Special Counsel Services Contracts, Environmental Engineering/Consulting Services, Management Company Services, Real Estate Brokerage Services. FHFC II would contract for property management services from among a pool of companies approved by the Board to process, manage, conserve, protect and operate its properties in accordance with sound business practices and applicable laws and regulations, including applicable HUD regulations. With the assistance of a real estate broker within the pool of brokers approved by the Board, a marketing and disposition plan will be prepared outlining the strategy for disposing the property at the earliest practicable and reasonable time, on commercially reasonable terms, taking into account market conditions and the legal and regulatory requirements.
- c) Due to the unique nature of each transaction in rapidly changing markets, it may become necessary that FHFC II authorize or contract for a sale or conveyance of a property held by FHFC II between scheduled Board meetings. Staff is requesting specific delegation to the Executive Director, and in the Executive Director's absence, to the Chief Financial Officer, with the advice of Florida Housing's financial advisor, and with the approval of the Chair, or if the Chair is unavailable, the vice-Chair, to select and approve an offeror for the sale of any property held by FHFC II.

##### **3. Recommendation**

That the Board adopt Resolution 2010-001, authorizing the delegation to staff as outlined above.