

**FLORIDA HOUSING FINANCE CORPORATION**  
**Board Meeting**  
**March 15, 2013**  
**Action Items**



# HARDEST-HIT FUND

## *Action*

### I. HARDEST-HIT FUND

#### A. Request Approval to Allocate Funds, Submit Term Sheets, Open Rulemaking and Competitively Solicit Needed Services for the Hardest Hit Fund (“HHF”) Principal Reduction Strategy

##### 1. Background

At the December 7, 2012 Board meeting, staff submitted a principal reduction concept for the HHF Program called the Modification Enabling Pilot Program (MEP) as a discussion item ([Exhibit A](#)). The Board authorized staff to work on a draft term sheet for this strategy.

##### 2. Present Situation

- a) Staff has continued its work with National Community Capital (“NCC”) on this pilot principal reduction program and has developed a draft term sheet ([Exhibit B](#)). To implement this pilot and a possible later full-fledged principal reduction program, staff will need to open the rulemaking process, work with the U.S. Treasury on term sheets and begin the competitive solicitation process for procuring goods and services for a principal reduction strategy.
- b) The NCC financial model was reviewed by Florida Housing’s Financial Advisor and found to be reasonable and accurately prepared ([Exhibit C](#)). Consistent with the MEP discussion item, staff recommends allocating up to \$50 million in HHF funds towards the MEP Pilot Program.

##### 3. Recommendation

Authorize staff to allocate up to \$50 million in HHF funds, open the rulemaking process, begin competitive solicitations and work with the U.S. Treasury on term sheets for the principal reduction strategy as well as for our existing programs, if necessary, subject to further approvals and conditions from counsel, the U.S. Treasury and the appropriate Florida Housing staff.

## LEGAL

### *Action*

## II. LEGAL

### A. In Re: Landings at Cross Bayou, LLP, v. FHFC – DOAH Case No. 12-2899/FHFC Case No. 2009-011RC

#### 1. Background

- a) Landings at Cross Bayou (“Landings”) applied for funding, under Application No. 2011-176C, during the 2011 Universal Application Cycle.
- b) On July 2, 2012, Landings filed a “Petition for Administrative Hearing” (the “Petition”), with Florida Housing. A copy is attached as [Exhibit “A.”](#) In the Petition, Landings asserted that Florida Housing incorrectly scored a competing Application, No. 2011-106UC, filed on behalf of MLF Towers, and that the scoring error led to MLF Towers being funded and Landings being excluded from funding. Specifically, Landings argued that Florida erred by not disqualifying MLF Towers’ application based on an inconsistency created a marginal note on an attachment to a letter filed as part of a cure.
- c) Florida Housing referred the matter to the Division of Administrative Hearings (“DOAH”), and a formal hearing was held pursuant to sections 120.569 and 120.57(1), Florida statutes, before Administrative Law Judge Lawrence P. Stevenson on October 23, 2012. At hearing, Florida Housing argued that the uncontroverted facts definitively proved that an inconsistency could not exist because the allegedly inconsistent zoning category had been abolished in 2007.
- d) On January 22, 2013, Judge Stevenson filed a Recommended Order finding that Florida Housing erred in its scoring of the MLF Towers application, and recommending that Landings be awarded tax credits from the next available allocation. The Judge concluded that while Florida Housing’s reading of its rule was not erroneous, it was at odds with its earlier decisions. A copy of the Recommended Order is attached as [Exhibit A.](#)
- e) On February 6, 2013, Florida Housing filed “Respondent’s Exceptions to Recommended Order,” urging that the uncontroverted facts found at hearing could not support a conclusion that Florida Housing erred in its scoring of MLF Towers’ application. A copy of the Exceptions is attached as [Exhibit B.](#)
- f) Landings filed its “Response to Exceptions of Respondent,” on February 18, 2013, in support of the Recommended Order. A copy of the Response is attached as [Exhibit C.](#)

#### 2. Present Situation

The Board must act on the Recommended Order.

## **LEGAL**

### ***Action***

#### **3. Recommendation**

Staff recommends that the Board enter an order adopting the Findings of Fact of the Recommended Order; and adopting the Conclusions of Law of the Recommended Order, with the exception of Conclusion No. 48, substituting in its place, "Florida Housing's position in this case is not unreasonable, given the facts adduced in this proceeding;" and affirm Florida Housing's scoring of the MLF Towers Application No. 2011-106C; and dismissing Landings' Petition.

## NON-COMPETITIVE MULTIFAMILY PROGRAMS

### *Action*

### III. NON-COMPETITIVE MULTIFAMILY PROGRAMS

#### A. Multifamily Mortgage Revenue Bonds (MMRB) and Non-Competitive (4%) Housing Credits (HC) – Rulemaking

##### 1. Background/Present Situation

- a) To solicit comments concerning Rule Chapters 67-21 and 67-48, F.A.C., and proposed changes to the application process, rule development workshops were held on April 26, 2012, June 7, 2012, July 19, 2012, August 14, 2012, September 6, 2012, and October 1, 2012.
- b) As a result of these workshops, staff has continued to revise the application process and the rules governing the multifamily programs.
- c) As discussed at the December 7, 2012 Board meeting, Competitive Housing Credits will be awarded through various competitive request for proposals and request for applications. At the April 26, 2013, Board meeting, staff expects to submit for approval the 2014 Qualified Allocation Plan, proposed Rule Chapter 67-48, F.A.C., and the new rule governing the competitive request for application process (Rule Chapter 67-66, F.A.C.).
- d) To facilitate the application process for Florida Housing-issued MMRB and Non-Competitive 4% HC (to be used with MMRB or tax-exempt bonds issued by another source), staff has transferred the Non-Competitive HC credit underwriting and program provisions from Rule Chapter 67-48, F.A.C., to Rule Chapter 67-21, F.A.C. Therefore, going forward, all applications for MMRB and/or Non-Competitive 4% HC will be accomplished under the authority of Rule Chapter 67-21, F.A.C., and will not be affected by the rule development process for the competitive funding programs.
- e) Staff would like to proceed with rule development process for Rule Chapter 67-21, F.A.C., and requests the Board's approval of the proposed Rule and Non-Competitive Application. A supplement to the Board Package will be provided which contains these documents.
- f) If the Board approves the proposed rule and Application as presented, the Notice of Proposed Rulemaking (NOPRs) will be published in the March 19, 2013 edition of the Florida Administrative Register (FAR). The NOPR will announce the Rule Hearing which is scheduled for April 9, 2013, in Tallahassee. Following review of the public comments received at the Rule Hearing and the comments received from the Joint Administrative Procedures Committee (JAPC) following its review of the NOPR, staff will proceed as follows:
  - (1) If modification of the proposed rule is not required, staff will file Rule Chapter 67-21, F.A.C., for adoption.
  - (2) If modification of the proposed rule is required, staff will prepare a Notice of Change (NOC) to incorporate all proposed modifications to the proposed rule and, if required, will submit the NOC for Board approval.

## NON-COMPETITIVE MULTIFAMILY PROGRAMS

### *Action*

#### 2. **Recommendation**

Approve the proposed rule and Application and authorize staff to file the rule for adoption if a NOC is not required, and, if a NOC is required, authorize the Chair to determine whether a NOC makes material, substantive changes to the rule chapter. If he determines that it does not, staff recommends that the Board approve such NOC without the requirement of another Board meeting. In the alternative, if the Chair determines that any NOC does make material, substantive changes to the rule chapter, staff recommends that a telephonic board meeting be called to obtain Board approval for any required changes, with such changes to be ratified at the next regularly scheduled Board meeting.

## PROFESSIONAL SERVICES SELECTION (PSS)

### *Action*

#### IV. PROFESSIONAL SERVICES SELECTION (PSS)

##### A. Request for Qualification (RFQ) for Environmental Engineering/Consultant Services

###### 1. Background

- a) Florida Housing entered contracts for environmental engineering/consultant services with Arcadis, Florida Planning Group, Genesis Group and Professional Services Industries in July of 2008.
- b) The initial term provided in the Contracts for three (3) years. The Contracts could be renewed twice for an additional one (1) year period.
- c) The contracts were renewed for an additional one (1) year period in July 2011 and again in July of 2012.

###### 2. Present Situation

- a) The current Contracts expire in July of 2013.
- b) Florida Housing requires the services of environmental engineers/consultants to perform environmental assessment review of developments and applicable activities and to assist Florida Housing's Multifamily Mortgage Revenue Bond and HOME program staff in the identification and evaluation of the likely impacts of the developments on the environment.

###### 3. Recommendation

Florida Housing staff recommends the issuance of an RFQ for environmental engineering/consultant services and authorization for the Executive Director to establish a Review Committee to make a recommendation to the Board.

## PROFESSIONAL SERVICES SELECTION (PSS)

### *Action*

#### **B. Request for Proposals (RFP) for Hearing Officer Services**

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

- a) Florida Housing entered into contracts for hearing officer services with Chris H. Bentley, Senior Partner and Diane D. Tremor, Partner with Rose, Sundstrom & Bentley LLP in August of 2010. Rose, Sundstrom & Bentley LLP has subsequently merged into a new law firm of Sundstrom, Friedman & Fumero LLP and Mr. Bentley and Ms. Tremor are now Of Counsel to the firm.
- b) The initial term provided in the Contracts was for one (1) year. The Contract could be renewed twice for an additional one (1) year period.
- c) The Contract with Chris H. Bentley and Diane Tremor were renewed for an additional one (1) year period in August 2011 and August 2012.

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

- a) The Contract expires in August 2013.
- b) Florida Housing requires the services of a Hearing Officer to preside over administrative hearings, pursuant to Sections 120.569 and 120.57(2), Fla. Stat. and Fla. Admin. Code R. 28-106, at Florida Housing for litigation resulting from a Florida Housing agency action.

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

Authorize staff to begin the solicitation (RFP) process in order to obtain responses from qualified entities to deliver hearing officer services. Authorize the Executive Director to establish a Review Committee to review the RFP responses and make a recommendation to the Board.

## PROFESSIONAL SERVICES SELECTION (PSS)

### *Action*

#### C. Request for Qualification for Structuring Agent Services

##### 1. Background

- a) In August 2008 Florida Housing entered into contracts for Structuring Agent services with the following firms:
  - (1) Morgan Keegan and Company
  - (2) RBC Capital Markets
  - (3) Stern Brothers & Co.
  - (4) Raymond James & Co.
- b) In 2012, Morgan Keegan and Raymond James merged into one company.
- c) The initial term of the contracts was for a three year period. The initial contracts expired in August 2011. The contracts were renewable for two additional one-year periods.
- d) At its June 10, 2011 and June 8, 2012 meetings, Florida Housing's Board of Directors (Board) authorized staff to proceed with the contract renewal process for each provider for one (1) year.

##### 2. Present Situation

- a) The contracts for Structuring Agents expire on various dates in August 2013.
- b) Florida Housing has a need for qualified entities to serve as Structuring Agents. Services provided by the Structuring Agents include but are not limited to the following:
  - (1) Assist in the development of offering memoranda, Notice of Sale, bids for Investment Agreements, and marketing of bonds issued by Florida Housing;
  - (2) Prepare cash flow schedules;
  - (3) Perform analyses regarding the pricing of required services such as bond insurance as requested by Florida Housing;
  - (4) Advise Florida Housing regarding market conditions and project rates in preparation for bond transactions. Coordinate pre-pricing conference calls with Florida Housing staff, the Developer, and Florida Housing's Financial Advisor;
  - (5) Develop plans to secure appropriate ratings; and
  - (6) Prepare fiscal sufficiency report filed with the Florida State Board of Administration (SBA), and provide post pricing comparable yield analysis.

## PROFESSIONAL SERVICES SELECTION (PSS)

### *Action*

#### 3. **Recommendation**

Authorize Florida Housing staff to begin the solicitation process to select a pool of entities to provide Structuring Agent services and authorize the Executive Director to establish a Review Committee.

## PROFESSIONAL SERVICES SELECTION (PSS)

### *Action*

#### **D. Request for Proposals (RFP) 2013-04 for Printing Services for Official Statements**

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

- a) Effective May 2008, Florida Housing entered into contract with Imagemaster, Inc. to provide services for the printing, binding, shipping, and electronic transmission of preliminary and final official statements.
- b) The initial term of the contract was for a three year period. The contracts expired in May 2011. The contract was renewable for two additional one-year periods.
- c) The contract was renewed each time for an additional one (1) year period in May of 2011 and May 2012.

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

- a) The contract with Imagemaster, Inc. expires on May 29, 2013.
- b) Florida Housing requires the printing services to provide for the printing, binding, shipping and electronic transmission of preliminary and final official statements.

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

Florida Housing staff recommends the issuance of an RFP for printing, binding, shipping and electronic transmission services of preliminary and final official statement and authorization for the Executive Director to establish a Review Committee to make a recommendation to the Board.

## STATE APARTMENT INCENTIVE LOAN PROGRAM (SAIL)

### *Action*

#### V. STATE APARTMENT INCENTIVE LOAN PROGRAM (SAIL)

##### A. State Apartment Incentive Loan (SAIL) Funding Under RFP 2012-04 for Developments that Commit to Provide Set-Aside Units for Extremely Low Income (ELI) Households

###### 1. Background/Present Situation

- a) In early 2012, the Legislature passed a bill that the Governor signed into law authorizing SAIL funding to preserve existing Guarantee Program developments that meet certain criteria. The legislation also provided a funding priority for Guarantee Program developments approved by the Board to provide additional units for ELI persons in calendar year 2011 and a maximum amount of \$2.5 million in new SAIL ELI funding per development. Florida Housing had approximately \$20,000,000 of uncommitted SAIL monies for the SAIL program. The monies resulted primarily from SAIL interest and principal payments on SAIL loans.
- b) At its September 7, 2012, meeting, the Board approved the issuance of a Request for Proposals (RFP) to award funding to existing Florida Housing Guarantee Fund portfolio developments for additional ELI Households according to the requirements of 420.5087 (10) F.S.
- c) On September 27, 2012, Florida Housing staff issued RFP 2012-04 to award SAIL ELI funding to Applicants who commit to provide set-aside units for ELI Households. The deadline for receipt of Responses was 2:00 p.m., Eastern Time, Friday, October 12, 2012.
- d) At its November 2, 2012, meeting, the Board approved staff's recommendation to fund the first eight (8) Proposals per the ranking reflected on the Priority/Ranking Chart for RFP 2012-04 ([Exhibit A](#)) subject to verification of the statutory requirement that shareholders, members or partners of the Development owner entity have funded deficits in an amount not less than 20% of the Applicant's SAIL Loan no later than closing of any financing under this RFP, and authorize staff to proceed to issue the invitations to enter credit underwriting, with award amounts as provided in Section Four B.3. of the RFP, subject to funding availability.
- e) On November 5, 2012, staff issued preliminary commitments and invitations to credit underwriting to the first (8) Proposals reflected on the Priority/Ranking Chart for RFP 2012-04. The preliminary commitment and invitation to credit underwriting for Wyndham Place was declined, which resulted in a return allocation in the amount of \$2,500,000.

## STATE APARTMENT INCENTIVE LOAN PROGRAM (SAIL)

### *Action*

#### 2. **Recommendation**

Staff recommends that the Board approve re-allocation of the returned funds and any remaining available SAIL ELI funds to the next eligible Proposal(s) on the Priority/Ranking Chart for RFP 2012-04 in order to fund the total \$20,000,000 of uncommitted SAIL monies, subject to verification of the statutory requirement that shareholders, members or partners of the Development owner entity have funded deficits in an amount not less than 20% of the Applicant's SAIL Loan no later than closing of any financing under this RFP, and authorize staff to proceed to issue the invitations to enter credit underwriting, with award amounts as provided in Section Four B.3. of the RFP, subject to funding availability.

# SINGLE FAMILY MORTGAGE REVENUE BONDS

## *Action*

### VI. SINGLE FAMILY MORTGAGE REVENUE BONDS

#### A. Request Permission to Enter into a Memorandum of Understanding (MOU) with Florida's Local Housing Finance Agencies (HFAs) to Allow the Use of up to \$5 Million of the \$35 Million Florida Housing Recently Received from the Florida Legislature as Part of the Attorney General's Mortgage Settlement Agreement

##### 1. Background

Florida Housing's Single Family Mortgage Revenue Bond (MRB) Program was given \$35 million, through the Legislative Budget Commission (LBC) Amendment process, as part of the Attorney General's mortgage settlement agreement with the top five servicers of residential mortgage loans for their mishandling of home foreclosures. Pursuant to the budget amendment request ([Exhibit A](#)) the \$35 million is to be used for qualified homebuyers in conjunction with the first mortgage loans that Florida Housing provides through its First Time Homebuyer Program.

##### 2. Present Situation

- a) Florida Housing has been asked by the Florida Association of Local Housing Finance Authorities (Florida ALHFA) to allow their members to share in up to \$5 million of these funds to provide down payment and closing cost assistance in conjunction with their respective First Time Homebuyer Programs in the same manner provided by Florida Housing in its program.
- b) By allowing local HFAs to use a portion of these funds in the same way Florida Housing represented to the legislature in the LBC documents, more qualified homebuyers can be assisted to purchase homes more quickly.

##### 3. Recommendation

Approve the request to allow Florida Housing to enter into a Memorandum of Understanding (MOU) with local housing finance agencies allowing them to utilize up to \$5 million of the \$35 million recently received by Florida Housing as part of the Attorney General's mortgage settlement agreement for down payment assistance in conjunction with their respective First Time Homebuyer Programs in the same manner that it is being used by Florida Housing.

## SPECIAL PROGRAMS

### *Action*

## VII. SPECIAL PROGRAMS

### A. Request for Authorization to Apply for Funding Through the Making Home Affordable Program

#### 1. Background

- a) As a Participating Agency in the National Foreclosure Mitigation Counseling (NFMC) program, Florida Housing is eligible to receive an allocation through a new program administered by NeighborWorks which provides funding for the “Making Home Affordable (MHA) Outreach and Intake Project.”
- b) This is a one-time program with the goal of making more homeowners aware of the full range of options under MHA, and to assist those homeowners with the successful completion of the MHA application process who are eligible for work outs under HAMP tier 1, tier 2, and principal reduction.
- c) Under this project, Florida Housing expects to be eligible for approximately \$220,000 (for the 37 sub-grantees currently working with us through NFMC) for foreclosure counseling, including \$55,000 for outreach to provide information to the public, and \$15,000 for oversight and administration.
- d) The performance period for the MHA Outreach and Intake Project is expected to be April 15, 2013, to December 31, 2013. All funding must be expended by December 31, 2013.

#### 2. Present Situation

- a) In order to receive the allocation from NeighborWorks, Florida Housing must complete and submit an Intention to Participate application form by March 25, 2013. This application will detail Florida Housing’s plan for administering the funding as well as a proposed budget and a list of sub-grantees (counseling agencies already participating as sub-grantees using Florida Housing’s NFMC funding) that will provide services under MHA.
- b) Funding decisions by NeighborWorks are anticipated to be released on April 15, 2013, with funding agreements signed and program activity beginning around May 1, 2013.

#### 3. Recommendation

Allow staff to submit the Intention to Participate application to NeighborWorks in order to receive an allocation of funds through the Making Home Affordable project and begin activities including contracting with sub-grantees required to carry out program requirements by the established program deadlines.

## **SPECIAL PROGRAMS**

### *Action Supplement*

#### **I. SPECIAL PROGRAMS**

##### **B. Request for Authorization to Develop a Multifamily Energy Retrofit Program**

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

The State Energy Office (now housed in the Florida Department of Agriculture and Consumer Services) is the administrator of funds from the American Recovery and Reinvestment Act of 2009 (ARRA) targeted to energy programs, specifically the State Energy Program and the Energy Efficiency Conservation Block Grant (EECBG). The state office has \$2 million in de-obligated funds between these two programs that can be repurposed, and contacted Florida Housing with a proposal to use the funds for energy retrofits for affordable multifamily housing. The Energy Office proposes to give the funds to Florida Housing to administer for this purpose.

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

- a) Florida Housing's staff is currently evaluating both sets of program requirements to understand how the programs may direct or restrict use of funding. Our preliminary program concept is to use the funds to seed a revolving loan fund to provide energy retrofit loans to properties in Florida Housing's portfolio. The purpose of these loans would be to provide developments with low cost financing to carry out retrofits that would lower their operating costs. Savings on energy costs could be used to repay the loans. Other state housing finance agencies have implemented this type of program with success. Some examples are found below.
- (1) California's \$4 million revolving loan fund is a partnership with the San Francisco Mayor's office, the national Enterprise Foundation and the Low Income Investment Fund. Loans pay for energy and water efficiency improvements and are repaid through savings on utility expenses. Loans have a 10 year term, at 5% interest.
  - (2) New Jersey has a \$4 million revolving loan fund to pay for energy efficiency upgrades and renewable energy installations. Loans are up to \$500,000 per project. To qualify, a project must project a 15% energy savings. The program provides 2% interest loans, co-terminus with the existing mortgage with a balloon payment obligation at the end of the loan term, or repayment.
  - (3) Pennsylvania Housing Finance Agency has a revolving loan fund program similar to these for affordable multifamily properties. The loan amount is based on the need shown an energy audit, with a maximum of \$500,000 per project over a 10 year term.

## SPECIAL PROGRAMS

### *Action Supplement*

- b) From initial communication with the State Energy Office, it appears that the strongest limitation to developing such a program is the tight turnaround required for fund use. Florida Housing's staff is seeking authority to work with the State Energy Office and others as needed to evaluate this funding opportunity and, if it appears to be worthwhile, to develop program parameters to be presented to the Board at a future meeting.

### 3. **Recommendation**

Request authority to work with the State Energy Office to evaluate the possibility of using funding to create a revolving loan fund or other permitted use of the funds to carry out energy retrofits on older multifamily properties in Florida Housing's portfolio and develop program parameters for Board consideration at a future meeting.

**AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)**

*Action Supplement*

**I. AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)**

**A. Request Approval of Transfer of General Partnership Interest for Marcis Pointe Apartments (2009-207C/2010-040CX/2011-020CX)**

<b>Development Name: Marcis Pointe Apartments (“Development”)</b>	<b>Location: Duval County</b>
<b>Developer/Principal: NVC-III, LLC (“Developer”)/NVC – 103<sup>rd</sup> Street, Ltd. (“Borrower”)</b>	<b>Set-Aside: 20% @ 30% AMI, 80% @ 60% AMI EUA 50 years</b>
<b>Number of Units: 120</b>	<b>Allocated Amount: HC \$1,120,000; Exchange \$6,020,000</b>
<b>Demographics: Elderly</b>	<b>Servicer: Seltzer Management Group</b>

**1. Background**

- a) On December 10, 2010, Florida Housing Finance Corporation (“FHFC”) closed a Tax Credit Exchange Program (“TCEP”) loan in the amount of \$6,020,000 to NVC – 103<sup>rd</sup> Street, Ltd., a Florida limited partnership (“Borrower”), for the development of a 120-unit property in Duval County, Florida. The Development also received an allocation of Low-Income Housing Tax Credits (“HC”) of \$1,120,000.
- b) At the December 7, 2012 Board meeting, the Board approved a request from the Borrower to change the first mortgage lender and to increase the amount of permanent first mortgage loan.

**2. Present Situation**

- a) By correspondence dated March 8, 2013, FHFC received a request to approve the transfer of 66.68% general partner ownership interest in NVC/GP 103<sup>rd</sup> Street, LLC, a Florida limited liability company (“GP”) from James E. Dyal to John D. Rood. The current members of the GP are James E. Dyal and Marcis GP, LLC with ownership interest of 66.68% and 32.32%, respectively. The sole member of Marcis GP, LLC is Jonathan Wolf. This change is necessary to complete the refinancing of the first mortgage.
- b) Per the associated Rule and the Development’s Extended Use Agreement “...any material (33.3% or more of an interest in the Borrower, a general partner of the Borrower or member of the Borrower, as applicable) in the ownership structure of the Borrower shall require approval of the Florida Housing Board of Directors.”

**3. Recommendation**

Staff recommends that the Board approve the transfer of the general partnership interest subject to review by FHFC staff, counsel and credit underwriter and direct staff to proceed with loan document modification activities as needed.