

**FLORIDA HOUSING FINANCE CORPORATION**  
**Board Meeting**  
**June 18, 2010**  
**Action Items**



# LOW INCOME HOUSING TAX CREDITS

## *Action*

### I. LOW INCOME HOUSING TAX CREDITS

#### A. Preliminary Recommendation Letter for Crestwood Apartments (2009-223C/2011-017CX)

##### 1. Background/Present Situation

- a) The Applicant submitted an original application for nine-percent Low-Income Housing Tax Credits during the 2009 Universal Application Cycle. The Board approved final ranking of the 2009 Universal Application Cycle on February 26, 2010. The applicant was awarded nine-percent Low-Income Housing Tax Credits, and staff issued an invitation to enter credit underwriting on February 26, 2010.
- b) On February 26, 2010, Florida Housing staff issued RFP 2010-04 to award Tax Credit Exchange Program (Exchange) Funding for Applicants that submitted an original application that has an active award of nine-percent Low-Income Housing Tax Credits. On March 17, 2010 the Board approved the award list of the Request for Proposals (RFP) 2010-04 and directed staff to proceed with all necessary credit underwriting activities. Staff issued an invitation to enter credit underwriting for RFP 2010-04 on March 17, 2010.
- c) Staff has received a preliminary recommendation letter for Crestwood Apartments ([Exhibit A](#)) containing a negative recommendation because the Development would cause a negative impact on a Guarantee Fund transaction in the area. Staff has reviewed this report and finds that the Development does not meet all of the requirements of Rule Chapter 67-48, F.A.C. and RFP 2010-04 to be approved for further credit underwriting consideration.

##### 2. Recommendation

Rescind and return the nine-percent Low-Income Housing Tax Credit award and Exchange funding to Florida Housing Finance Corporation.

## PROFESSIONAL SERVICES SELECTION (PSS)

### *Action*

## II. PROFESSIONAL SERVICES SELECTION (PSS)

### A. Guaranteed Investment Contract (GIC) Broker Services

#### 1. Background

- a) In December of 2005 Florida Housing entered into contracts for GIC Broker Services with the following firms:
  - (1) PackerKiss Securities, Inc.; and
  - (2) BondLogistix, LLC
- b) The term of the contracts are for three (3) years from the effective date with an option to renew, on a yearly basis, for a period of up to two (2) years after the expiration of the initial term.
- c) At its October 31, 2008, meeting Florida Housing's Board authorized staff to proceed with the contract renewal process for each provider for one (1) year.
- d) At its September 18, 2009 meeting Florida Housing's Board authorized staff to proceed with the final one (1) year renewal.

#### 2. Present Situation

- a) In December 2010 the current contracts will expire.
- b) Pursuant to Part V, Chapter 420, Florida Statutes, Florida Housing issues revenue bonds to finance the development of affordable housing, to make funds available to people in Florida to help them buy a home, to capitalize the Florida Affordable Housing Guarantee Program, to refinance prior bond issues of Florida Housing, and for such other purposes as may be permitted by law. Florida Housing issues bonds that are exempt from federal income tax and bonds that are not exempt from federal income tax. Florida Housing issues bonds through competitive and negotiated sales, including private placements.
- c) Florida Housing staff has a continuing need to utilize the services of GIC Brokers to perform the following services:
  - (1) Perform an analysis of the bond issue's financial structure and the language in the financing and bond documents stipulating the permitted investments.
  - (2) Prepare a preliminary bid list of potential investment contract providers for approval from the financing team selected by Florida Housing.
  - (3) Distribute the approved request for bids with any other requested information to potential bidders.
  - (4) Receive bids on behalf of Florida Housing from all bidders, evaluate any conditions to the bids and ensure all bids conform to the bid specifications.

## PROFESSIONAL SERVICES SELECTION (PSS)

### *Action*

- (5) Receive and review the investment contract and work with the winning bidder's attorney and the financing team selected by Florida Housing to ensure the investment contract conforms to the specifications of the requested financing structure.

### 3. Recommendation

Staff believes that it is in the best interests of Florida Housing to continue to utilize the services of GIC Brokers, and recommends that the Board authorize staff to begin the RFP process for these services and establish a review committee to make recommendations to the Board.

## PROFESSIONAL SERVICES SELECTION (PSS)

### *Action*

#### **B. Request Permission to Issue a Request for Qualifications (RFQ) for Special Counsel Services**

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

- a) In December 2005, Florida Housing entered into contracts for Special Counsel Services with the following firms:
  - (1) Adorno & Zeder, P.A. effective December 15, 2005
  - (2) Nabors, Giblin & Nickerson, P.A. effective December 14, 2005
  - (3) Shuffield Lowman (files were transferred to Latham, Shuker, Edin & Beaudine LLP ) effective December 12, 2005
- b) The term of the contracts ended one year from the effective dates with an option to renew, on a yearly basis, for a period of up to two (2) years after the expiration of the initial term. Renewals were contingent upon Special Counsel satisfactorily performing its obligations under the contract.
- c) At its October 14, 2008, and October 23, 2009 meetings the Board authorized staff to proceed with the contract renewal process for each provider for one (1) year.

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

- a) The terms of the current Special Counsel contracts expire as follows:
  - (1) Adorno & Yoss expires December 15, 2010
  - (2) Shuffield, Lowman & Wilson, P.A. (files were transferred to Latham, Shuker, Eden & Beaudine, LLP expires December 12, 2010
  - (3) Nabors, Giblin & Nickerson, P.A. expires December 14, 2010
- b) Florida Housing has a need for qualified attorneys to serve as Special Counsel to provide services including, but not limited to, the following: act as disclosure counsel in all bond-related transactions; represent Florida Housing at real estate closings; notify Florida Housing of any and all changes or proposed changes in applicable state or federal laws; obtain documentation for county bond allocations, if required; and, upon Florida Housing's request, represent Florida Housing in hearings related to the Tax Equity and Fiscal Responsibility Act for bond transactions.

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

- a) Authorize staff to issue an RFQ in order to select more than one qualified attorney for Special Counsel Services, and one qualified attorney to act as Special Counsel for the Guarantee Fund.
- b) Authorize the Executive Director to establish a Review Committee review the proposals and to make a recommendation for qualified attorneys to the Board.

## PROFESSIONAL SERVICES SELECTION (PSS)

### *Action*

#### C. RFP 2010-02 Single Family Mortgage Revenue Bond Master Servicer and Compliance Administration

##### 1. Background

- a) At its February 26, 2010, meeting Florida housing's Board authorized staff to begin the RFP process, and establish a review committee, to select a company to perform Master Servicer and Compliance Administration services for the Single Family Mortgage Revenue Bond program. A copy of the RFP is attached as [Exhibit A](#).

##### 2. Present Situation

- a) An RFP process was initiated and RFP 2010-02 was issued on April 9, 2010. Responses to the RFP were due on or before 2:00 p.m., Friday, May 7, 2010.
- b) Two responses were received from Bank of America and US Bank.
- a) The Review Committee members designated by the Executive Director were Charles White, Single Family Programs Administrator, Chair, Sandy Gaver, Single Family Manager, Jennel Johnson, Single Family Analyst, Edny Sanchez, Bond Administration Manager, Michelle Connelly, Bond Administration Senior Analyst and Jonathon Wiggins, Assistant Loan Servicing Administrator.
- b) Each member of the Review Committee individually reviewed the proposal prior to convening for the Review Committee meetings. The Review Committee meetings were held on Wednesday, May 19, 2010 at 10 am and Monday, May 24, 2010 at 10 am. Results of the Review Committee's evaluation of the scored items is attached as [Exhibit B](#).

##### 3. Recommendation

The Committee requests that the Board accept the ranking as presented in order of the highest to lowest ranking which are: US Bank and Bank of America. The Committee further requests that the Board authorize Florida Housing to enter into contract negotiations with US Bank.

## SUBORDINATE MORTGAGE INITIATIVE

### *Action*

### III. SUBORDINATE MORTGAGE INITIATIVE

#### A. Request Approval of Subordinate Financing in an Amount not to Exceed \$685,000 through the Subordinate Mortgage Initiative

<b>Development Name: Logan's Pointe Apartments ("Development")</b>	<b>Location: Duval</b>
<b>Developer/Principal: The Cornerstone Group ("Developer" or "Principal")</b>	<b>Set-Aside: 50% @ 60% AMI (MMRB) 100% @ 60% AMI (HC)</b>
<b>Funding Sources: MMRB 1999 Series F1 &amp; F2</b>	<b>Amounts: \$9,797,364.47 Tax-Exempt Bonds \$2,755,000 Taxable Bonds</b>
<b>Number of Units: 248</b>	<b>Type: Rental</b>
<b>Subordinated Mortgage amount not to exceed:</b>	<b>\$685,000</b>
<b>TOTAL Subordinated Mortgage amount not to exceed:</b>	<b>\$685,000</b>

#### 1. Background

Florida Housing financed the construction of the above referenced Development in the year 1999 with \$9,797,364.47 in tax-exempt bonds and \$2,755,000 in taxable bonds. The bond issues were secured by mortgages guaranteed by the Florida Affordable Housing Guarantee Program (Guarantee Program) as well as being additionally guaranteed through the HUD Risk-Sharing Program.

#### 2. Present Situation

- a) The Developer has previously requested subordinate financing on seven of its twenty-nine development that are credit enhanced by the Guarantee Program, five of which were determined to be eligible for financing through the Subordinate Mortgage Initiative. They are now requesting financing for Logan's Point Apartments, which was one of the initial seven requests for financing but was determined to be ineligible for financing. It has since been determined that the development submitted for financing is currently in financial distress, based on audited financial statements for 2009 and, as a result, is now eligible for financing through the Subordinate Mortgage Initiative. The purpose of the Subordinate Mortgage Initiative is to provide temporary assistance in funding its mortgage debt service obligations for a period of up to twenty-four (24) months. Florida Housing will provide funding for one mortgage payment per each three month period. The Developer will be required to make the following two payments. This process will be repeated for up to twenty-four (24) months, with Florida Housing potentially making a total of eight mortgage payments and the Developer making a total of sixteen mortgage payments during this period.
- b) Seltzer Management Group has reviewed the information and data submitted by the Developer and by letter, dated June 4, 2010, attached as [Exhibit A](#), has confirmed the need for financial assistance for this Development.

## SUBORDINATE MORTGAGE INITIATIVE

### *Action*

#### 3. **Recommendation**

Staff recommends that the Board approve the requested subordinate financing in an amount not to exceed \$685,000 subject to the proper resolution of the CWHIP loan for The Preserve at Boynton Beach as well as any further approvals and verifications by Bond Counsel, Special Counsel and Florida Housing staff.



## HFA HARDEST-HIT FUND

### I. HFA HARDEST-HIT FUND

#### A. Request Approval of Proposed Allocation for the Mortgage Intervention Strategy

##### 1. Background

In February 2010, the federal government announced \$1.5 billion in funding to help families in the five states that have been hardest hit by the combination of housing price declines and unemployment. The initial states chosen were Florida, California, Nevada, Arizona and Michigan. In March five more states (Ohio, North Carolina, South Carolina, Oregon and Rhode Island) were announced, and an additional \$600 million was added to this program. Florida's share of these funds is \$418 million. Funding is going to state housing finance agencies (HFAs) for administration.

##### 2. Present Situation

- a) Florida Housing submitted its proposal for use of these funds to U.S. Treasury on April 16, 2010. Treasury is currently reviewing the HFAs' proposals. The primary strategy, the Mortgage Intervention Strategy, is designed to help unemployed or underemployed homeowners achieve the goal of sustainable homeownership by extending the time period for homeowners to become re-employed at a salary that is sufficient to either resume making full mortgage payments or qualify for a mortgage modification that will lower the payments and terms of the mortgage to an affordable level. Homeowners will access this funding by being evaluated for eligibility by housing counseling agencies that contract with Florida Housing through a solicitation process authorized by the Board at its April 30, 2010, meeting.
- b) Florida Housing's draft proposal designates \$317,336,200 in direct program funds for the Mortgage Intervention Strategy. The draft proposal also provides a proposed methodology to allocate these funds to the hardest hit areas of the state. The methodology is based on three measures used by Treasury to determine the hardest hit states: housing price decline from peak prices, unemployment and seriously delinquent loans (i.e., loans that are 90+ days due or in foreclosure). We used county level data for this purpose. [Exhibit A](#) provides a table that shows summary information for each county and more information on the three measures. [Exhibit B](#) provides a worksheet with background data used to arrive at the ratios used for the proposal allocation.
- c) [Exhibit A](#) also provides the proposed allocation for each county. The counties have been placed into three tiers and allocated funding, summarized below, with more detail provided in [Exhibit A](#).
  - Tier 1 – Counties with at least two percent of the weighted share of the state's seriously delinquent loans have been placed in Tier 1. Together these areas have 85.2 percent of the weighted share of seriously delinquent loans. The staff proposes to allocate 90 percent of the \$317.3 million, to these hardest hit Tier 1 areas.

## HFA HARDEST-HIT FUND

- Tier 2 – Each county in Tier 2 has less than two percent of the weighted share of Florida’s seriously delinquent loans, but has one or more of the following characteristics: 1) A higher unemployment rate than the state average; 2) A higher seriously delinquent rate than that of the state average; or 3) Is located in a HUD Metro Fair Market Rent Area (HMFA) where one of the other counties in that HMFA is found in Tier 1, or, where there is no HMFA, are located in an Metropolitan Statistical Area (MSA) where one of the counties in that MSA is found in Tier 1. In total, the proposed Tier 2 counties have 11.6 percent of Florida’s weighted share of seriously delinquent loans. The staff proposes to allocate eight percent of the funding to Tier 2 areas.
- Tier 3 – Includes the remaining counties, which together have a weighted share of 3.2 percent of the state’s seriously delinquent loans. The staff proposes to allocate two percent of the \$317.3 million to households in these counties through a pool that would be available on a first come, first served basis until funds are fully encumbered.

### 3. Recommendation

The staff recommends that the Board approve the proposed allocation for the Mortgage Intervention Strategy as specified in [Exhibit A](#).

# LEGAL

## Action

### I. LEGAL

#### A. In Re: RST Fruitland LP – FHFC Case No. 2009-055GA; DOAH Case No. 10-0896

<b>Development Name: (“Development”):</b>	<b>Plata Lago</b>
<b>Developer/Principal: (“Developer”):</b>	<b>RST Fruitland LP</b>
<b>Number of Units: 100</b>	<b>Location: Lake County</b>
<b>Type: Garden Apartments</b>	<b>Set Aside: 10% @ 33% AMI 90% @ 100% AMI</b>
<b>Demographics: Elderly</b>	<b>ARRA Exchange: \$11,341,830.50</b>

#### 1. Background

- a) On July 31, 2009, Florida Housing issued RFP 2009-04 (the “RFP,”) setting forth criteria and qualifications for developers to seek funding for affordable housing projects from money that has been allotted to Florida by the federal government through the American reinvestment and Recovery Act of 2009 (“ARRA”). Florida Housing’s RFP 2009-04, RST Fruitland LP, (“RST”) timely submitted a response to the RFP on August 14, 2009, which sought ARRA funding for the Plata Lago project. On August 20, 2009, Florida Housing issued a Notice of Awards for RFP #2009-04. Based on the Notice, RST was one of the responders awarded funds subject to successfully completing the underwriting criteria listed in the RFP.
- b) The RFP provided that a tentative funding award under the RFP would be rescinded if the submarket of the Proposed Development did not have an average occupancy rate of 92% or greater for the same Demographic population.” RST intervened in a protest of the terms of the RFP, *Elmwood Terrace Limited Partnership v. Florida Housing Finance Corporation*, DOAH, Case No. 09-4682 BID, FHFC Case No. 2009-0276GA (Final Order entered December 7, 2009). The challenge specifically involved a review of the 92% occupancy standard. As to the occupancy standard, the Administrative Law Judge concluded that Florida Housing is limited to using the 90% occupancy test established at Rule 67-48.0072(10), Fla. Admin. Code.
- c) Florida Housing’s credit underwriter determined that the submarket in which the Plata Lago development was located failed to meet the 90% occupancy standard, and on October 23, 2009, the Board adopted the credit underwriter’s recommendation and rescinded RST’s funding.
- d) On November 13, 2009, RST Fruitland Housing, LP timely filed its Petition for Administrative Hearing with Respondent, Florida Housing Finance Corporation (“Florida Housing”). On February 10, 2010, RST filed an Amended Petition (“Petition”) which challenged Florida Housing’s decision rescinding Tax Credit Exchange Program funding allocated to RST under RFP 2009-04 for development an affordable housing project to be known as “Plata Lago.” This action was based upon Florida Housing’s finding that the submarket in which the development was to be built did not meet requirement contained in R. 67-48.0072(10), Fla. Admin. Code, that the existing developments in the proposed development’s submarket have a minimum 90 per cent average occupancy rate.

## LEGAL

### *Action*

- e) Upon finding that the allegations in the Petition included disputed issues of material fact, Florida Housing forwarded the Petition to the Division of Administrative Hearings (DOAH) on January 22, 2009. A formal hearing was held in this case on April 27, 2010, in Tallahassee, Florida, before the Honorable Robert S. Cohen, Administrative Law Judge (the "ALJ"). RST and Florida Housing timely filed Proposed Recommended Orders.
- f) After consideration of the evidence, arguments, testimony presented at hearing and the Proposed Recommended Orders, on June 9, 2010, the ALJ issued a Recommended Order. A true and correct copy of the Recommended Order is attached hereto as "[Exhibit A](#)." The ALJ recommended that Florida Housing enter a Final Order rescinding funding to the Plata Lago development for failing to pass the occupancy standard set forth in Florida Administrative Code Chapter 67-48.
- g) No exceptions have been filed.

### 2. **Present Situation**

The Board must enter a Final Order in this matter.

### 3. **Recommendation**

Staff recommends the Board adopt the Findings of Fact, Conclusions of Law and Recommendation of the Recommended Order as its own and issue a Final Order consistent with same in this matter.

## LEGAL

### *Action*

#### **B. Olive Grove Apartments Limited Partnership vs. Florida Housing Finance Corporation – FHFC Case No. 2010-017UC**

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

- a) Petitioner, Olive Grove Apartments, Limited Partnership, applied for \$1,510,000 in annual tax credits and \$4,100,00 in ARRA funds in the 2009 Universal Application Cycle pursuant to Application No. 2009-191C to help finance the development of its project, a 85-unit apartment complex in Volusia County, Florida.
- b) Petitioner’s application, while otherwise eligible, was not among those in the funding range in the final rankings adopted by Florida Housing.
- c) Rule 67-48.005(5), Florida Administrative Code (“F.A.C.”), provides an entry point and a procedure pursuant to which an applicant in the Universal Application Cycle may file an administrative petition contesting the final rank or score of a competing applicant, subject to certain conditions. The rule is designed to provide a means of redress to an otherwise eligible universal cycle applicant whose application was not ranked in the funding range in the final ranking adopted by Florida Housing due to an error made by Florida Housing in its scoring of a competing application. The rule requires that the petitioner allege facts in its petition sufficient to demonstrate that “but for” a specifically identified error(s) made by Florida Housing in scoring or ranking the challenged application, the petitioner’s application would have been in the funding range at the time Florida Housing issued its final rankings.
- d) Petitioner timely filed its petition and an amended petition (collectively, the “Petition”) challenging Florida Housing’s scoring of one or more competing applications, alleging that Florida Housing made certain errors in its scoring of those applications, and that but for those errors Petitioner’s application would have been in the funding range in the final rankings.

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

Florida Housing staff and the Petitioner present herewith for consideration by the Board a Consent Agreement, conditioned upon Board approval, which, if adopted by the Board will resolve the matters raised by Petitioner in its petition. A copy of the Consent Agreement is attached hereto as Exhibit B.

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

Staff recommends the Board approve the Consent Agreement and enter a Final Order in this matter adopting the terms of the Consent Agreement, including the stipulated disposition, which will result in the following relief to Petitioner: (1) Florida Housing shall allocate Petitioner’s requested HC allocation from the next available allocation as provided in Rule 67-48.005(7), F.A.C.; and (2) In addition, to the extent eligible under the terms of RFP 2010-04 (the “RFP”), including the requirement that a final order be entered in this matter on or before June 18, 2010, Petitioner may apply for Exchange funds that remain available to 2009 Universal Cycle Applicants under the RFP, subject to the applicable terms and conditions of the RFP.

## LEGAL

### Action Supplement

#### I. LEGAL

Westmont Park Partners, LP; The Verandas of Punta Gorda, LLP; Janie Poe Associates 3, LLC - FHFC Case No. 2010-019UC; Application Nos. 2009-187C; 2009-154C; 2009-089C

<b>Development Name: (“Development”):</b>	<b>Westmont Park</b>
<b>Developer/Principal: (“Developer”):</b>	<b>Eastwind Development LLC</b>
<b>Number of Units: 132</b>	<b>Location: Orange County</b>
<b>Type: Garden Apartments</b>	<b>Set Aside: 10% @ 33% AMI 90% @ 60% AMI</b>
<b>Demographics: Family</b>	<b>HC: \$1,823,905</b>

<b>Development Name: (“Development”):</b>	<b>The Verandas of Punta Gorda</b>
<b>Developer/Principal: (“Developer”):</b>	<b>Norstar Development USA, LP Punta Gorda Developers, LLC</b>
<b>Number of Units: 60</b>	<b>Location: Charlotte County</b>
<b>Type: Garden</b>	<b>Set Aside: 10% @ 40% AMI 90% @ 60% AMI</b>
<b>Demographics: Elderly</b>	<b>HC: \$1,144,046</b>

<b>Development Name: (“Development”):</b>	<b>Janie’s Garden Phase 3</b>
<b>Developer/Principal: (“Developer”):</b>	<b>Michaels Development Co. 1, LP</b>
<b>Number of Units: 73</b>	<b>Location: Sarasota County</b>
<b>Type: Townhouses</b>	<b>Set Aside: 10% @ 33% AMI 81% @ 60% AMI</b>
<b>Demographics: Family</b>	<b>HC: \$1,144,046</b>

#### 1. Background

- a) Westmont Park Partners, LP (“Westmont”), The Verandas of Punta Gorda, LLP (“Verandas”) and Janie Poe Associates 3, LLC (“Janie’s Garden”), collectively, the “Petitioners,” timely submitted Applications in the 2009 Universal Cycle, seeking allocations of low income housing tax credits to help fund proposed developments to be located in Orange County, Florida for Westmont; Charlotte County, Florida for Verandas; and in Sarasota County, Florida for Janie’s Garden.
- b) On February 26, 2010, Florida Housing’s Board of Directors adopted the “Final Post-Appeals Scores and Rankings.” Petitioners’ applications, while otherwise eligible, were not among those in the funding range in the final rankings adopted by Florida Housing.

## LEGAL

### *Action Supplement*

- c) On or about May 10, 2010, Petitioners filed their “Second Amended Petition for Administrative Proceeding” (the “Petition”) challenging Florida Housing’s scoring of twelve competing applications, submitted by Atlantic Housing Partners, LLLP (“Atlantic”), Southern Affordable Development, LLC (“Southern”), and WHS Development Services, LLC (“WHS”), alleging that Florida Housing made certain errors in scoring those applications, that those applications were Related Applications under Florida Housing’s Instructions and Rules, and that but for those errors Petitioners’ applications would have been in the funding range in the final rankings.<sup>1</sup>
- d) On May 13, 2010, Florida Housing filed a Motion to Dismiss Petitioner, The Verandas of Punta Gorda, LLLP, for Lack of Standing (“The Motion”).
- e) The informal hearing in this case was held on May 21, 2010. At the informal hearing the Hearing Officer heard oral argument on the Motion and determined the issues raised in support of the Motion required a resolution of disputed issues of material fact which would have to be addressed in a formal hearing pursuant to Section 120.57(1), Fla. Stat., and issued an Order closing the file, which severed Verandas from the informal hearing.
- f) On June 11, 2010, the Hearing Officer filed her Recommended Order, which upheld Florida Housing’s determination that the applications submitted on behalf of Atlantic, Southern and WHS were not Related Applications. A copy of the Recommended Order is attached as [Exhibit A](#).

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

The Board must enter a Final Order in this matter.

#### 3. **Recommendation**

Staff recommends the Board adopt the Findings of Fact, Conclusions of Law and Recommendation of the Recommended Order as its own, and issue a Final Order consistent with same in this matter.

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<sup>1</sup> A fourth Petitioner, NVC-Spring Hill, Ltd., filed a voluntary dismissal prior to the informal hearing.