

FHFC II, INC.

Action

I. FHFC II, INC.

A. Ratification of the Execution of the Purchase and Sale Agreement for Turtle Creek Apartments

1. Background

- a) Turtle Creek, Ltd. d/b/a Turtle Creek Apartments (“Turtle Creek”) is a 268 unit multifamily development located in northern Collier County, approximately .5 mile east of US 41, 1 mile south of the Lee County border. The property was financed with FHFC bonds, 1996 Series C1 and C2, and an allocation of 4% housing credits. The Guarantee Program and HUD (through a Risk-Sharing agreement) guaranteed the first mortgage.
- b) On November 14, 2008, the Guarantee Program filed an Application for Initial Claim Payment with HUD on Turtle Creek, and on December 19, 2008 filed for foreclosure, as well as appointment of a receiver, in the 20th Circuit Court in Collier County, case number 08-9754-CA.
- c) On December 23, 2008, the hearing for appointment of receiver was held in Collier County. The judge ruled in favor of the borrower, thus allowing the borrower-related management company to remain in control of the development while foreclosure proceeded.
- d) On April 29, 2009, the day before the hearing for Summary Judgment (of foreclosure), the borrower filed a Chapter 11 Petition for bankruptcy, thus forestalling any further foreclosure action until the bankruptcy had run its course.
- e) On May 6, 2009, FHFC’s counsel filed a motion to prohibit debtor’s use of cash collateral, which was subsequently granted on May 21st, thus requiring the borrower to file monthly financial statements with the court and direct any net cash flow (after operations) to a dedicated account maintained by FHFC II, Inc.
- f) On November 5, 2010, the bankruptcy case was dismissed and FHFC II was granted a relief from stay (of bankruptcy). On November 10th, FHFC II’s counsel filed again for appointment of a receiver, which was granted on January 4, 2010, thus removing the borrower-related management company from control of the development’s operations.
- g) Final summary judgment of foreclosure was granted on March 9, 2010. A foreclosure sale date was set for April 26, 2010. FHFC was the winning bidder at the foreclosure sale and a certificate of title was issued to FHFC II, Inc. on May 10, 2010.

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h) Following established protocol, Turtle Creek was listed for sale via competitive bid process with CB Richard Ellis, Inc. (CBRE). A total of 32 bids were received. On August 9, 2010, after CBRE vetted the offerors, CBRE submitted the best and final offers from the following offerors:

- (1) Aspen Square
- (2) Axiom Properties
- (3) BH Equities/CCG
- (4) Christian Tyler Properties
- (5) Fifteen Group
- (6) Oculus Development
- (7) Pacifica Companies
- (8) The Residential Group

i) Staff met August 11, 2010 to select top bidders and formulate a Board recommendation for approval of the sale. The following two entities were selected, and should negotiations fail with the primary, a secondary offeror:

PRIMARY

Based upon The Residential Group's (TRG) \$13 million offer including a total of \$250,000 upfront in an earnest money deposit, 30 day deadline for due diligence and projected closing 20 days thereafter, with no extensions, purported cash on hand to close the transaction without financing, CBRE's and Florida Housing's financial advisor's favorable recommendation.

**** Conditioned upon TRG providing proof of funds to close totaling \$13 million within 48 hours of notice of award. ****

SECONDARY

Based upon Fifteen Group's \$12 million offer including \$150,000 upfront in earnest money, 21 days due diligence and projected closing 15 days thereafter, with no extensions, and proof of cash on hand (\$12M) to close the transaction without financing, as well as CBRE's and Florida Housing's financial advisor's favorable recommendation.

j) Pursuant to Board Resolution 2010-002 dated January 22, 2010, 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.

k) Staff requests approval to negotiate a purchase and sale agreement for the sale of Turtle Creek to The Residential Group (TRG), and should negotiations in that regard fail, initiate negotiations with Fifteen Group as a secondary offeror.

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- 1) On August 16, 2010, the Board Chair authorized staff to proceed with the purchase and sale agreement for the sale of Turtle Creek as requested.

2. Present Situation

- a) As of August 18, 2010, despite staff and CBRE's efforts to further the proposed sale, The Residential Group (TRG) could not provide proof of funds to close, as conditioned. Accordingly, the offer from TRG has been set-aside and efforts have commenced to negotiate a purchase and sale agreement for the sale of Turtle Creek to Fifteen Group.
- b) The net claim incurred on Turtle Creek is approximately \$11.8 million. Adding accrued HUD debenture interest projected through closing and final settlement (approximately \$840,620) as well as legal costs, collateral projection expenses, broker fees and disposition-related costs (together totaling approximately \$350,000), the aggregate monetary exposure will be approximately \$13 million.

3. Recommendation

Ratify the purchase and sale agreement for the sale of Turtle Creek to The Residential Group, as primary, and Fifteen Group as a secondary, and direct staff to proceed with the closing on the sale.