FLORIDA HOUSING FINANCE CORPORATION
Board Meeting
December 4, 2009
Action Items

I. FISCAL

A. 2010 Operating Budget

1. <u>Background</u>

a) The Florida Housing operating budget is created with a conservative approach to both revenue and expenses. Current economic conditions compel Florida Housing to carefully and continuously monitor revenue and expenditures.

b) More specifically, the operating budget for 2010 was created using the following:

(1) a projection of fee revenue based on the current loan portfolio and estimated additions in 2010;

(2) a projection of revenue from the administration of federal programs;

(3) a projection of investment earnings based on input from our investment managers;

(4) a zero-based budget model for operating expenses, exclusive of salaries and benefits; the 2010 projected work plan for operational units determines the initial expense budget request from each work unit;

(5) benefits information based on quotes for insurance and other benefits;

(6) salaries based on the currently existing number of positions with no pay increases included and a 4% estimated vacancy rate.

(7) a projection of the loss of agency fees of $410,715 from the Guarantee Fund. At this time, alternative liquidity for stabilizing the Fund will require redemption of the capitalizing bonds.

c) Upon implementation of the 2010 operating budget, Florida Housing will closely monitor revenues and expenses. Non-discretionary line item budgets, such as program administration, monitoring and workshops, will be fully allocated to work areas; however, we will vigorously monitor all expenditures to assure revenues will support expenditures. Certain discretionary line items, such as staff development travel and certain outreach travel, will be controlled at the executive level.

FISCAL

Action

2. Present Situation

a) To continue the development and implementation of a more robust data collection, reporting, and management system, it is necessary in 2010 and 2011 to continue to provide significant monetary support for the data management system. In 2010, the Shimberg Center contract of $150,000 and contracting for a project manager for $100,000 are included in the budget. It is expected that both of these costs will occur in 2010 and 2011. Due to the removal of the Guarantee Fund fees from the operating budget and after deliberative reductions to discretionary expenditure line items, coverage of these system investment expenditures may be jeopardized without the support of the designation of 2009 operating net assets.

b) The recommended Operating Budget for 2010 has been compiled, reviewed, and revised and is provided under separate cover.

c) An Account Guide describing the budget categories is included with the operating budget.

3. Recommendation

a) Staff recommends that the Board designate $500,000 of operating net assets from 2009 for the purpose of supporting the continuation of the data management system for 2010 and 2011.

b) Staff recommends approval of the 2010 operating budget.

II. LEGAL

A. Consideration of Delegation of Authority to FHFC Staff to Sell Any Property Conveyed or Acquired by Florida Housing or its Subsidiaries

1. <u>Background</u>

a) The Florida Affordable Housing Guarantee Program has guaranteed 112 mortgage loans during its 15 years of existence. Such guarantees have taken several forms, including stand-alone guarantees of mortgage loans securing multifamily bonds issued by FHFC and local housing finance authorities, and "Risk-Sharing" transactions under the HUD risk-sharing program, whereby the Guarantee Fund (after construction) guarantees FHFC's portion of the 50% loss arrangement with HUD on multifamily mortgage loans secured by HUD insurance. With respect to risk-sharing transactions which have been endorsed by HUD, the applicable mortgage loan documents generally work as follows:

(1) Borrower fails to make monthly promissory note payment when due;

(2) Claim is made on the Operating Deficit Guarantee (if still in effect);

(3) Within 75 days from initial default, submit a claim to HUD for payment in full of the mortgage loan.

b) In the event a claim is made, HUD will pay the loan in full, which amount, together with amounts on deposit in the debt service reserve fund established under the documents, will be sufficient to redeem the outstanding bonds in full. At that point, the Guarantee Fund is required to segregate within the Fund an amount equal to the full amount of the HUD claim plus interest for five years at the HUD debenture rate, and FHFC is directed to foreclose on the property. Once the foreclosure sale occurs, the loss on the property is determined, and the Guarantee Fund is obligated to pay 50% of such loss (including 50% of interest at the HUD debenture rate from the date of claim payment to the date of settlement) to HUD.

c) With respect to non-risk sharing (stand-alone) transactions, the mechanism generally works as follows:

(1) Borrower fails to make monthly promissory note payment when due;

(2) Claim is made on the Operating Deficit Guarantee (if still in effect) and the Guarantee Fund;

(3) The Guarantee Fund is required to pay the mortgage loan in full within 60 days after a claim is made.

d) On December 12, 2003, the Board granted a specific delegation to the Executive Director, Chief Financial Officer, Guarantee Program Administrator, and Director of Asset Management to (i) make an Optional Guarantor Payment from any available moneys (Guarantee Fund or FHFC) with respect to any guaranteed loan if in the judgment of such individuals with the advice of the Guarantee Fund's counsel and financial advisor such would be in the best interest of the Fund, (ii) file a claim with HUD in accordance with applicable documents if in the judgment of the foregoing such would be in the best interest of the Fund, make the corresponding required segregation of assets within the Fund and foreclose on the property, (iii) make a full claim payment in non-risk-sharing transactions if in the judgment of the foregoing such would be in the best interest of the Fund, and (iv) select a property manager from the approved FHFC list for insertion into a troubled guaranteed development. However, the 2003 delegation of authority did not include a provision for selecting an offer and proceeding with the sale of a property.

2. <u>Present Situation</u>

a) 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.

b) Florida Housing, through an independent contractor selected from a pool of management companies approved by the Board and procured through a Request for Qualifications process, will manage, conserve, protect (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 operate 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. Florida Housing commences the process of disposition of foreclosed properties immediately after Florida Housing is the winning bidder at a foreclosure sale of such property. 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 is prepared outlining the strategy for the disposition at the earliest practicable, commercially reasonable time, on commercially reasonable terms taking into account market conditions and the legal and regulatory requirements.

c) Recognizing that each disposition will be unique and the markets continue to rapidly change, it is highly probable that Florida Housing would need to authorize a sale or conveyance of a property held by Florida Housing between Board meetings. Staff is requesting specific delegation to the Executive Director, and in the Executive Director's absence, to the Chief Financial Officer and General Counsel acting together, with the advice of Florida Housing's financial advisor, to select and approve an offeror for the sale of any property conveyed or acquired by Florida Housing or its subsidiaries as a result of any action to protect or enforce any rights conferred upon Florida Housing by virtue of any loan or guarantee obligation. Staff would bring the issue before the Board for ratification at the earliest regularly scheduled Board meeting following such decision.

3. <u>Recommendation</u>

Authorize the delegation to staff as outlined above.

LEGAL

Action Supplement

I. LEGAL

A. Elmwood Terrace Apartments, Ltd. v Florida Housing Finance Corporation, DOAH Case No. 09-4682BID; FHFC Case No. 2009-027GA

1. Background

a) This case arose on August 17, 2009, when Elmwood filed a petition challenging the specifications of RFP 2009-04, issued on July 31, 2009, by Florida Housing. RFP 2009-04 was offered to distribute funds made available through the Tax Credit Exchange and Tax Credit Assistance Programs in the American Reinvestment and Recovery Act of 2009 ("ARRA"). On August 18, 2009, pursuant to section 120.57(3), Florida Statutes, Florida Housing's executive director issued a "Statement of Necessity to Continue RFP Process After Bid Protest is Filed," which resulted in continuation of the process of evaluating, scoring, and recommending awards as provided for in the RFP. On August 26, 2009, Florida Housing forwarded Elmwood's petition to DOAH. On September 9, 2009, Intervenor RST filed a petition for leave to intervene on the side of Elmwood. On September 10, 2009, Intervenor Brownsville filed a petition for leave to intervene on the side of Florida Housing. Both petitions were granted. On the first day of the hearing, Elmwood filed a motion to amend its petition. That motion was granted.

b) A formal administrative hearing in this case was held on September 23-25, 2009, in Tallahassee before Susan B. Harrell, Administrative Law Judge, Division of Administrative Hearings ("DOAH"). All parties filed Proposed Recommended Orders on October 22, 2009. The Recommended Order ("RO") was filed in this case on November 12, 2009. (A copy is attached as Exhibit A.) Petitioner filed its Exceptions to the Recommended Order on November 23, 2009 (A copy is attached as Exhibit B; Hearing Transcript Excerpts and Hearing exhibits are attached as Exhibit C), and Florida Housing filed its Response to Exceptions on December 2, 2009 (A copy is attached as Exhibit D).

2. Present Situation

a) The Statement of Necessity has not been challenged, so the RFP credit underwriting and funding process has continued, and is continuing. The RO does not invalidate the RFP; does not require that Florida Housing start the funding process over. The RO finds that the RFP is contrary to Florida Housing's existing rules for allocation of tax credits in three respects: Imposition of a 92% physical occupancy standard for projects funded under the RFP contradicts the 90% requirement in the Universal Cycle Instructions; Using Location A to exclude projects from consideration; and the terms of the selection review process. The RO finds the terms of the RFP are appropriate where they do not include a specific definition of "submarket," and where the terms prohibit changing the demographic commitment. Put in its most basic terms, the effect of the RO on the RFP process is to allow into credit underwriting those applicants who preserved their rights by protesting the RFP's terms or the awards, to the extent that they were excluded from consideration by the selection review process, the 92% occupancy requirement, or Location A.

b) Petitioner has taken exception to paragraph 2 of the Recommendations contained in the Recommended Order, which finds that Florida Housing properly included in the terms of RFP 2009-04 a prohibition against changing the demographic commitment of a property seeking ARRA funding through the RFP.

c) For the reasons recited in the Response to Petitioner's Exceptions to Recommended Order, Florida Housing argues that the Recommended Order correctly finds that the RFP prohibition against changing a project's demographic commitment is an appropriate term in the RFP.

3. Recommendation

Staff recommends that the Board reject Petitioner's Exceptions to Recommended Order; and that the Board issue a Final Order adopting the Recommended Order.

B. Panama Commons, LP, v. Florida Housing Finance Corporation, FHFC Case No. 2009-030GA

1. <u>Background</u>

a) On July 31, 2009, Florida Housing issued Request for Proposals 2009-04 ("the RFP"). The RFP was Florida Housing's selected process for allocating federal stimulus funds received pursuant to the American Recovery and Reinvestment Act of 2009 ("ARRA"). Responses to the RFP were due by August 14, 2009.

b) The RFP set forth criteria and qualifications for developers seeking ARRA funding. Section 6.A.5. of the RFP required respondents to provide an affidavit including, inter alia, the purchase price for Low Income Tax Credits previously awarded in Florida Housing's Universal Application Cycle, and information regarding recent offers to purchase Tax Credits received by the Applicant.

c) On August 14, 2009, Panama Commons, LP ("Panama"), timely submitted a Response to the RFP with the required application fee, seeking ARRA funding for Panama Commons, a low-income multifamily residential project that was competitively awarded 9% Low Income Housing Tax Credits in the 2008 Universal Cycle.

d) On August 21, 2009, Florida Housing rejected Panama's Response on the basis that Florida Housing determined Panama did not include certain required information in its Response to Section Six A.5. of the RFP. Panama's Response was determined complete in all other respects.

e) On August 21, 2009, Panama timely submitted its Notice of Protest, notifying Florida Housing of its intent to challenge Florida Housing's decision. (A copy is attached as <u>Exhibit E</u>) On August 31, 2009, Panama filed its Petition and the required bond.

f) On November 12, 2009, a Recommended Order was entered in DOAH Case No. 2009-4682BID which resolved a separate challenge to the terms and specifications of the RFP and found that the selection criteria set forth in Section Seven of the RFP is contrary to Florida Housing's governing rules and statutes.

2. <u>Present Situation</u>

After considering the issues and legal arguments raised in the Petition, as well as the findings of fact and conclusions of law reached in DOAH Case No. 2009-4682BID, Florida Housing has determined that Florida Housing could not exclude Panama's Response to the RFP from further consideration based on the selection criteria contained in Section Seven of the RFP. Florida Housing agrees that Panama's Response meets all requirements of the RFP for entry into credit underwriting. Florida Housing and Panama have executed a Stipulation and Settlement Agreement ("Agreement"), recognizing the above and providing, *inter alia*, that Panama should be admitted into credit underwriting as provided in the RFP, with each party to bear its own fees and costs. (A copy of the Agreement is attached as <u>Exhibit F</u>).

LEGAL

Action Supplement

3. **Recommendation**

Staff recommends that the Board accept the Stipulation and Settlement Agreement, and issue a Final Order adopting its terms.The Portland Apartments, Ltd., v. Florida Housing Finance Corporation, FHFC Case No. 2009-031GA

C. The Portland Apartments, Ltd., v. Florida Housing Finance Corporation, FHFC Case No. 2009-031GA

1. <u>Background</u>

a) On July 31, 2009, Florida Housing issued Request for Proposals 2009-04 ("the RFP"). The RFP was Florida Housing's selected process for allocating federal stimulus funds received pursuant to the American Recovery and Reinvestment Act of 2009 ("ARRA"). Responses to the RFP were due by August 14, 2009.

b) The RFP set forth criteria and qualifications for developers seeking ARRA funding. Section 6.A.5. of the RFP required respondents to provide an affidavit including, inter alia, the purchase price for Low Income Tax Credits previously awarded in Florida Housing's Universal Application Cycle.

c) On August 14, 2009, The Portland Apartments, Ltd. ("The Portland"), timely submitted a Response to the RFP with the required application fee, seeking ARRA funding for The Portland Apartments, a low-income multifamily residential project that was competitively awarded 9% Low Income Housing Tax Credits in the 2008 Universal Cycle.

d) On August 21, 2009, Florida Housing rejected The Portland's Response on the basis that Florida Housing determined The Portland did not include certain required information in its Response to Section Six A.5. of the RFP. The Portland's Response was determined complete in all other respects.

e) On August 21, 2009, The Portland timely submitted its Notice of Protest, notifying Florida Housing of its intent to challenge Florida Housing's decision. A copy is attached as Exhibit G) On August 31, 2009, The Portland filed its Petition and the required bond.

f) On November 12, 2009, a Recommended Order was entered in DOAH Case No. 2009-4682BID which resolved a separate challenge to the terms and specifications of the RFP and found that the selection criteria set forth in Section Seven of the RFP is contrary to Florida Housing's governing rules and statutes.

2. <u>Present Situation</u>

After considering the issues and legal arguments raised in the Petition, as well as the findings of fact and conclusions of law reached in DOAH Case No. 2009-4682BID, Florida Housing has determined that Florida Housing could not exclude The Portland's Response to the RFP from further consideration based on the selection criteria contained in Section Seven of the RFP. Florida Housing agrees that The Portland's Response meets all requirements of the RFP for entry into credit underwriting. Florida Housing and The Portland have executed a Stipulation and Settlement Agreement ("Agreement"), recognizing the above and providing, *inter alia*, that The Portland should be admitted into credit underwriting as provided in the RFP, with each party to bear its own fees and costs. (A copy of the Agreement is attached as Exhibit H).

3. Recommendation

Staff recommends that the Board accept the Stipulation and Settlement Agreement, and issue a Final Order adopting its terms.

III. MULTIFAMILY BONDS

A. Request Approval to Issue Multifamily Revenue Bonds Under the New Issue Bond Purchase Program and Assign RBC Capital Markets Corporation ("RBC") as Bond Underwriter

1. Background

The U.S. Treasury recently allocated to Florida Housing Finance Corporation ("FHFC") a total of $248,521,134 available for the issuance of multifamily housing bonds under the New Issue Bond Purchase ("NIBP") program. The purpose of the program is to provide low interest rate tax-exempt fixed rate financing to developers acquiring or constructing multifamily developments qualifying for private activity bonds.

2. Present Situation

a) Under this new program, FHFC, through RBC, will sell its Multifamily Mortgage Revenue Bonds, Series 2009 ("MMRB") to Fannie Mae and Freddie Mac (the "GSEs") who will in turn securitize the bonds and sell them to the U.S. Treasury as outlined in the NIBP program based on authority granted under the Housing and Economic Recovery Act of 2008 (HERA). A placement agreement is expected to be executed evidencing a commitment on the part of the GSEs and the Treasury to acquire the bonds on or before December 30, 2009. The settlement date is expected to occur on or before January 20, 2009.

b) Proceeds of MMRB must be used by FHFC to acquire and finance the holding of the following types of multifamily loans: (i) loans insured by FHA, including loans under the FHA risk-sharing program, (ii) loans guaranteed by GNMA, (iii) loans guaranteed by either Fannie Mae or Freddie Mac.

c) The bonds will be issued as taxable bonds under a new master indenture. Following issuance, bond proceeds will be held in escrow in eligible investments ("Escrow Period") until the bonds are converted to tax-exempt bonds with long term interest rates ("Conversion"). Following Conversion, bond proceeds may be used to acquire or construct one or more qualifying multifamily developments. Upon Conversion, bonds will be exchanged for obligations that are secured by loans insured by FHA, loans guaranteed by GNMA or loans guaranteed by either Fannie Mae or Freddie Mac, as applicable.

d) Conversion will occur when a developer is ready to close on a qualifying multifamily loan. Developments must be located within the State of Florida and the financing must qualify as tax-exempt multifamily private activity bonds. As stated above, loans securing the bonds must be insured by FHA or guaranteed by GNMA, Fannie Mae or Freddie Mac and must qualify for a Aaa or AAA rating (based on the rating agency selected by FHFC). The Bonds may be converted in whole or in part on up to three different Conversion dates in 2010. If no Conversion occurs or if only a portion of Bonds are converted, remaining proceeds will be used to redeem bonds on the first applicable redemption date on or after January 1, 2011, without penalty. The related Authorizing and Sale Resolutions are attached as Exhibit A.

MULTIFAMILY BONDS

Action

3. **Recommendation**

Authorize staff to issue MMRB under the New Issue Bond Purchase program, adopt the Resolutions, and assign RBC as bond underwriter subject to further approvals and verifications by Bond Counsel, Special Counsel, and the appropriate Florida Housing Staff.

IV. MISCELLANEOUS

A. Ratification of Board Action at September 4, 2009 Telephonic Board Meeting

1. <u>Low Income Housing Tax Credits</u>

a) Approval of Market Study Review Letters for Awardees Under Request for Proposals (RFP) 2009-03.

(1) Bonnett Shores

(2) Parkview Gardens

b) Approval of Market Study Review Letters for Awardees Under Request for Proposals (RFP) 2009-04.

(1) Paul Colton Villas

(2) Village Carver II

c) Approval of the request for an extension to further extend the board approval deadline of the market study review letters so the letters can be presented at the December 4, 2009 board meeting.

(1) Parkway Place

(2) Emerson Oaks

(3) Hammock Harbor

(4) Fountain Terrace

PROFESSIONAL SERVICES SELECTION (PSS)

Action Supplement

I. PROFESSIONAL SERVICES SELECTION (PSS)

A. Request for Qualifications (RFQ) for Printing/Copying Services

1. <u>Background</u>

a) At its September 18, 2009 meeting, Florida Housing's Board authorized staff to begin the RFQ process and establish a review committee to select a pool of vendors from which Florida Housing staff may choose to purchase printing/copying services. A copy of the RFQ is attached as Exhibit A.

b) An RFQ process was initiated and RFQ 2009-04 was issued on October 9, 2009. Responses to the RFQ were due on or before 2:00 p.m., Thursday, November 5, 2009.

c) One (1) response was received from Rapid Press, Inc.

d) The Review Committee members designated by the Executive Director were Cecka Rose Green, Communications Director, Chair; Jenifer Stern, Senior Graphic Designer; Jan Rayboun, Loan Closing Coordinator; and Natalyne Zanders, Single Family Program Senior Analyst.

2. <u>Present Situation</u>

The Review Committee held the first meeting on Thursday, November 12, 2009. The second meeting was held on Monday, November 23, 2009.

3. <u>Recommendation</u>

a) The Committee recommends that Florida Housing enter into contract negotiations with Rapid Press, Inc., for printing services. A copy of the score is attached as Exhibit B.

b) The Committee also asks permission to go out with a new RFQ for photocopying, duplication and binding services only from a "quick" copy business.

VI. SINGLE FAMILY BONDS

A. Single Family Homeownership Program

1. Background

a) Florida Housing submitted a request for approval to issue up to $900,000,000 of bonds at the October 23, 2009 board meeting, (the "2009 Phase Two Bonds"). This request was to take advantage of the New Issuance Bond Program (NIBP) offered by the U.S. Treasury, the U.S. Department of Housing and Urban Development and the Federal Housing Finance Agency. The NIBP program will provide financing assistance for bonds issued by state and local housing agencies so that such agencies can borrow money in larger amounts and at lower rates than otherwise would be possible.

b) Florida Housing sold $100,000,000 of bonds identified as 2009 Series 2 Bonds on September 16, 2009 (prior to the announcement of the NIBP program). The 2009 Series 2 bond issue is now and was as of November 12, 2009 100% reserved. Florida Housing is currently allowing lenders to reserve mortgage funds for first time homebuyers via its interim warehousing mechanism.

c) In the past, Florida Housing has issued bonds under its 1995 open Homeowner Mortgage Revenue Bond Indenture (the "Master Indenture"). The Master Indenture, secured by whole mortgage loans and mortgage backed securities (MBS), is currently rated "A+" by Standard & Poor's Rating Services, "Aa1" by Moody's Investors Service and "AA+" by Fitch Ratings. It is anticipated that the 2009 Phase Two Bonds and any additional new money bonds issued under the current Master Indenture or any new Indenture will, for the foreseeable future, be secured solely by MBS.

2. Present Situation

a) On October 27, 2009 Florida Housing submitted an application in the amount of $810,000,000 for the NIBP program ($540,000,000 for the single family bond program and $270,000,000 for the multi family bond program).

b) On November 13, 2009 Florida Housing was granted an allocation amount of $672,974,097 for the NIBP, of which $424,452,964 was allocated for the single family bond program. The remaining $248,521,133 is currently allocated to the multi family bond program but may be moved to the single family program.

c) On November 17, 2009 Florida Housing received approval from the State Board of Administration to issue up to $900,000,000 of bonds under the current Master Indenture or a new MBS-only indenture.

d) The NIBP is a one time program in which all bonds must be issued prior to the end of 2009. Certain program parameters are still being established by the U.S. Treasury and participating agencies at this time.

e) The bond pricing under the terms of a new AAA rated indenture is 15 basis points better than under a AA rated indenture such as the current Master Indenture.

f) Staff believes that the pricing benefit of a new MBS-only indenture and the need to protect the assets under the current Master Indenture makes issuing the NIBP bonds and any accompanying market rate bonds (“Market Bonds”) under a new indenture advisable at this time. Staff will determine the most advantageous documents for the issuance of each series of the 2009 Phase Two Bonds once all of the NIBP parameters have been finalized by the federal government.

g) Exhibit A: Board Resolution

h) Exhibit B: Method of Sale Letter

i) Exhibit C: Draft of Special Program Master Trust Indenture

j) Exhibit D: Draft of Convertible Bond Supplement to Special Program Trust Indenture

3. Recommendation

Staff recommends the Board supplement the approval granted on October 23, 2009 to include the ability to issue all or a portion of the NIBP bonds as well as Market Bonds under a new MBS-only master indenture.

VII. STRATEGIC PLAN

A. Adoption of Florida Housing's Strategic Plan

1. Background

a) Florida Housing's Board of Directors originally adopted a strategic plan in 2002. In the Fall of 2008, the Board and Executive Director agreed to start the process to update the plan.

b) As part of a process to develop an updated plan, the Board approved a process to solicit public comments to assist the staff in developing a preliminary draft for Board and public review. Working with public comments and an internal staff discussion of issues, the staff prepared a draft plan for the Board. Starting last June, the Board held three workshops to discuss various parts of the draft plan and take public comment. Based on the Board's comments, the staff updated the plan.

2. Present Situation

The final draft is based on the Board's discussions with the staff and the public over the past seven months. This 3-5 year plan responds to the current economic market and also provides strategies that are critical for Florida Housing to address even after the economy recovers. Once adopted, this plan will serve as a platform for evaluation of Florida Housing's progress on these important issues.

3. Recommendation

The staff recommends that the Board adopt the draft strategic plan. The plan will be provided under separate cover.

DEMONSTRATION LOANS

Action

I. DEMONSTRATION LOANS

A. Request to Modify Demographic and Income Set-Aside Requirements and Resident Eligibility Verification for Casa Cesar Chavez (RFP 2001/06-001FW)

DEVELOPMENT NAME (“Development”):	**Casa Cesar Chavez**
DEVELOPER/PRINCIPAL (“Developer”):	**Everglades Community Association, Inc., a non-profit organization**
NUMBER OF UNITS:	**28 (144 beds in a dorm style setting)**
LOCATION (County):	**Miami-Dade County**
TYPE:	**Rental**
SET ASIDE:	**Farmworker (100% at 60% AMI)**
LOAN AMOUNT:	**$1,250,000**

1. <u>Background</u>

a) Everglades Community Housing, Inc. (ECA) was awarded a $1,250,000 demonstration loan under RFP 2001/06 for a Farmworker Development located in Miami-Dade County.

b) The Development has been providing 28 units (144 beds in a dormitory style setting) to unaccompanied migrant and seasonal farmworkers. The set-aside is for 100% of the units reserved for individuals at or below 60% of the area median income.

c) The development was placed in service in May 2008 and has operated in compliance with requirements of the RFP and is in compliance with all Florida Housing requirements.

2. <u>Present Situation</u>

a) Demand for the units has been less than expected with peak occupancy reaching only 55%. As detailed in the letters from the Developer (Exhibits A, Exhibit B), the low occupancy numbers are due to several factors: local economic downturn in nursery operations, FHFC demographic eligibility requirements, and the impact of pre-occupancy income eligibility requirements on potential tenants.

b) The Developer also acknowledges that poor marketing decisions prior to the development being ready for lease up contributed to the low occupancy rates. In the past, marketing was never necessary due to the high need for this type of farmworker housing. However, the current economic situation combined with the historic reliance on word of mouth, has not helped the occupancy situation. ECA has since begun an aggressive marketing strategy to help to remedy the low occupancy rates.

c) The Developer is requesting that Florida Housing allow the following changes to the set-aside requirements for the development:

(1) Reduce the number of beds set aside for farmworkers to 72 beds (50% of project capacity) for a one-year period not to exceed May 31, 2011. Farmworkers would still have prioritized admittance to the remaining 72 beds. In consideration of the requested change in the demographic set-aside, ECA proposes reducing the income set-aside to 50% of AMI for 72 beds (50% of project capacity) and reducing the income set-aside for 15 beds (10% of project capacity) to 33% of AMI (Extremely Low Income for Miami-Dade County). The remaining 57 beds (40% of project capacity) would remain at the current 60% AMI level.

Because the unit design is set up for single, unaccompanied individuals (6 beds to a unit), the units not set aside for farmworkers would still be leased to these persons, many of whom are traditionally employed in farm work, but as a result of depressed labor markets, are working in day labor or other occupations.

(2) Change the verification of income eligibility for potential residents to allow a 10 day period from move-in to provide such documentation. Currently, income verification is required to be done prior to move-in. Under the new procedure, if the documentation is not provided in the 10 day period, the tenant shall be given a 15-day notice in accordance with Florida Statutes and the lease shall be terminated. This is a procedure that Florida Housing has allowed in the funding of later Farmworker developments under the Farmworker Housing Recovery Program.

3. <u>Recommendation</u>

Approve the Developer's request to modify the set-aside requirements and the income verification procedure for potential residents for a one-year period not to exceed December 31, 2010, and allow staff to amend loan documents accordingly.

Action

I. LOW INCOME HOUSING TAX CREDITS

A. Market Study Review Letter for Fountain Terrace (2009-033CT)

1. Background/Present Situation

a) On July 31, 2009, Florida Housing staff issued RFP 2009-03 for Nine Percent Low-Income Housing Tax Credits With or Without Tax Credit Assistance Program (TCAP) Funding. On August 20, 2009 the Board approved the award list of the Request for Proposals (RFP) 2009-03 and directed staff to proceed with all necessary credit underwriting activities.

b) On August 21, 2009 staff issued an invitation to enter credit underwriting. Staff has received a market study letter for Fountain Terrace (Exhibit A) containing a negative recommendation due to the submarket not meeting the RFP requirement of having an average occupancy rate of 92 percent or greater. In addition, the submarket also does not meet the 90 percent or greater average occupancy rate test as provided in Rule Chapter 67-48, F.A.C. The applicant requested to post-pone the presentation of the Market Study Review Letter dated September 16, 2009 through the extension period available via the RFP and FHFC also approved an additional extension through December 4, 2009. 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 2009-03.

2. Recommendation

a) FHFC received a request from the Applicant in a November 18, 2009 correspondence to change the Proposed Development's Farmworker/Commercial Fishing Worker Demographic Commitment in order to be a Family Demographic Commitment. In order to be consistent with the emergency rules developed for the de-obligated funding as well as the stimulus funding, FHFC has denied the request.

b) Staff recommends the Board rescind and return the Housing Credit award and TCAP funding to Florida Housing Finance Corporation.

Action

B. Market Study Review Letter for Emerson Oaks (2009-027CT)

1. Background/Present Situation

a) On July 31, 2009, Florida Housing staff issued RFP 2009-03 for Nine Percent Low-Income Housing Tax Credits With or Without Tax Credit Assistance Program (TCAP) Funding. On August 20, 2009 the Board approved the award list of the Request for Proposals (RFP) 2009-03 and directed staff to proceed with all necessary credit underwriting activities

b) On August 21, 2009 staff issued an invitation to enter credit underwriting. Staff has received a market study letter for Emerson Oaks (Exhibit B) containing a negative recommendation. The applicant requested to post-pone the presentation of the Market Study Review Letter dated October 9, 2009 through the extension period available via the RFP and FHFC also approved an additional extension through December 4, 2009. Staff has reviewed this report and finds that the submarket's average occupancy rate satisfies the minimum requirement of RFP 2009-03 to proceed to full credit underwriting.

2. Recommendation

Approve the market study review letter and direct staff to proceed with the process of issuing the Preliminary Allocation Certificate and Carryover Allocation Agreement.

Action

C. Request Approval of Market Study Review Letter for Parkway Place (2009-022CT)

1. Background/Present Situation

a) On July 31, 2009, Florida Housing staff issued RFP 2009-03 for Nine Percent Low-Income Housing Tax Credits With or Without Tax Credit Assistance Program (TCAP) Funding. On August 20, 2009 the Board approved the award list of the Request for Proposals (RFP) 2009-03 and directed staff to proceed with all necessary credit underwriting activities.

b) On August 21, 2009 staff issued an invitation to enter credit underwriting. Staff has received a market study letter for Parkway Place (Exhibit C) containing a negative recommendation due to the submarket not meeting the RFP requirement of having an average occupancy rate of 92 percent or greater. The applicant requested to post-pone the presentation of the Market Study Review Letter dated September 3, 2009 through the extension period available via the RFP and FHFC also approved an additional extension through December 4, 2009. The credit underwriter has since submitted an update letter on November 4, 2009 (Part of Exhibit C) which reflects that the submarket's average occupancy rate has increased in excess of 92 percent or greater, thereby satisfying the minimum requirement of RFP 2009-03 to proceed to full credit underwriting.

2. Recommendation

Approve the market study review letter and direct staff to proceed with the process of issuing the Preliminary Allocation Certificate and Carryover Allocation Agreement.

Action

D. Request Approval of Market Study Review Letter for Hammock Harbor (2009-029CT)

1. Background/Present Situation

a) On July 31, 2009, Florida Housing staff issued RFP 2009-03 for Nine Percent Low-Income Housing Tax Credits With or Without Tax Credit Assistance Program (TCAP) Funding. On August 20, 2009 the Board approved the award list of the Request for Proposals (RFP) 2009-03 and directed staff to proceed with all necessary credit underwriting activities.

b) On August 21, 2009 staff issued an invitation to enter credit underwriting for the Developments listed below. Staff received a market study review letter for Hammock Harbor with a negative recommendation. The applicant requested to post-pone the presentation of the Market Study Review Letter dated October 2, 2009 (Exhibit D) through the extension period available via the RFP and FHFC also approved an additional extension through December 4, 2009. The credit underwriter has since prepared a report dated November 18, 2009 (Part of Exhibit D) that updated the average occupancy rate of the submarket which maintains the negative recommendation by the credit underwriter in accordance with RFP 2009-03.

c) Staff has reviewed these letters and finds that although the Development still does not meet the requirement of having an average occupancy rate of 92 percent or greater of RFP 2009-03, the submarket does meet the 90 percent or greater average occupancy rate test as provided in Rule Chapter 67-48, F.A.C.

2. Recommendation

Approve the market study review letter and direct staff to proceed with the process of issuing the Preliminary Allocation Certificate and Carryover Allocation Agreement.

AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

Action Supplement

I. AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

A. Request Approval of Credit Underwriting Report for Mirabella Apartments (2009-03-030CT)

Development Name: Mirabella Apartments ("Development")	**Location: Miami-Dade County**
Developer/Principal: CSG Development Services, LLC and Richmond Heights Community Development Corporation ("Developer")	**Set-Aside: 10% @ 33% AMI & 90% @ 60%**
Number of Units: 204	**Tax Credit Assistance Program: $7,500,000**
Type: Garden Style	**Housing Credit Allocation: $2,561,000**
Demographics: Family	**MMRB: N/A**

1. <u>Background/Present Situation</u>

a) On August 20, 2009 the Board approved the award list of the Request for Proposals (RFP) 2009-03 and directed staff to proceed with all necessary credit underwriting activities.

b) On August 21, 2009, staff issued a preliminary commitment letter and an invitation to enter credit underwriting for Tax Credit Assistance Program funds and a Housing Credit Allocation.

c) On November 30, 2009, staff received a credit underwriting report with a positive recommendation for a 2009 Tax Credit Assistance Program loan in the amount of $7,500,000 and an annual Housing Credit Allocation of $2,561,000 (Exhibit A). Staff has reviewed this report and finds that the development meets all of the requirements of Rule Chapter 67-48, F.A.C. and RFP 2009-03.

2. <u>Recommendation</u>

Approve the final credit underwriting report and direct staff to proceed with issuance of a firm loan commitment and loan closing activities.

COMMUNITY WORKFORCE HOUSING INNOVATION PILOT (CWHIP) PROGRAM

Action Supplement

I. COMMUNITY WORKFORCE HOUSING INNOVATION PILOT (CWHIP) PROGRAM

A. Request for Approval of the Credit Underwriting Report for All Saints Square / CWHIP07-042W

Applicant Name ("Applicant"):	**All Saints Square L.L.C.**
Development Name ("Development"):	**All Saints Square**
Developer/Principal ("Developer"):	**Dan Winchester**
Number of Units: 42 Homeownership	**Location: Tallahassee, Leon County, Florida**
Type: CWHIP Loan	**Allocated Amount: $1,735,000** ****Original request was for $5,000,000 with a Supplemental Loan of $210,000***

1. <u>Background</u>

a) On May 2, 2008, the Board approved the final rankings for the 2007 Community Workforce Housing Innovation Pilot (CWHIP). Florida Housing issued the Applicant an invitation into credit underwriting on November 13, 2008.

b) On April 24, 2009, the Developer was advised that their preliminary commitment of CWHIP funds was being de-obligated, pursuant to the implementation of 67ER09-4, FAC.

c) Due to the withdrawal of another project, $1,735,000 in CWHIP funds was awarded to the Developer on September 15, 2009, as the project was the next highest ranking unfunded eligible 2007 CWHIP Development to accept the funds, pursuant to Emergency Rule 67ER09-4, F.A.C.

2. <u>Present Situation</u>

a) As per Emergency Rule 67ER09, within 90 Calendar Days from the award of funding, the Applicant must have received Board approval of a final credit underwriting report.

b) On November 30, 2009, a letter was provided by First Housing, the assigned Credit Underwriter, explaining that they were unable to complete credit underwriting as the necessary due diligence was not received in order to properly provide a loan recommendation. The letter is attached as **<u>Exhibit A</u>.**

3. <u>Recommendation</u>

a) Staff recommends that the Board approve the deobligation of $1,735,000 in CWHIP funds.

b) Pursuant to Emergency Rule 67ER09-4, F.A.C., the $1,735,000 in CWHIP funds will be offered to the next highest ranking unfunded eligible 2007 CWHIP Development (Miramar Town Center/CWHIP07-006W) and then proceeding down the list of other unfunded eligible projects, if required.