# FLORIDA HOUSING FINANCE CORPORATION

## Board Meeting

**February 26, 2010**

**Action Items**

# I. LEGAL

## A. In Re: MCPI, Ltd. – FHFC Case No. 2009-061UC; Application No. 2009-257C

| | |
|---|---|
| **Development Name: ("Development"):** | **Model City Plaza** |
| **Developer/Principal: ("Developer"):** | **MCP I, Ltd.** |
| **Number of Units: 100** | **Location: Miami-Dade County** |
| **Type: Garden Apartments** | **Set Aside: 10% @ 33% AMI<br>90% @ 60% AMI** |
| **Demographics: Family** | **HC: $2,541,000** |

### 1. Background

a) MCP I, Ltd. ("Model City") timely submitted an Application in the 2009 Universal Cycle, seeking an allocation of $2,541,000 in low income housing tax credits to help fund a proposed 100 unit development to be located in Miami-Dade County, Florida.

b) On December 2, 2009, Florida Housing notified all applicants of its score, provided all applicants with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes, and an Election of Rights form. Florida Housing awarded ½ of an Ability to Proceed Tie Breaker point to Model City, as Model City was required to cure a site plan approval form.

c) On or about December 17, 2009, Model City timely filed a Petition for Informal Administrative Hearing, alleging that Florida Housing erred in the scoring of its application, asserting that Model City was entitled to full Ability to Proceed Tie Breaker Measurement Points.

d) The informal hearing in this case was held on January 14, 2009. On February 2, 2009, the Hearing Officer filed his Recommended Order, which found that Florida Housing's scoring was correct and that Model City was entitled to ½ of an Ability to Proceed Tie-Breaker Measurement point regarding its cure of its site plan approval form. The Recommended Order is attached as Exhibit A.

e) On February 8, 2010, Model City filed a written argument "Petitioners Exceptions to Recommended Order" in opposition to the Recommended Order, pursuant to Rule 67-48.005(3), Fla. Admin. Code. This written argument in attached hereto as Exhibit B. On February 12, 2010, Florida Housing filed its written argument in response (Response to Exceptions). A copy of this Response is attached hereto as Exhibit C.

### 2. Present Situation

The Board must rule on the written arguments filed by both parties and enter a Final Order in this matter.

**3. Recommendation**

Staff recommends the Board reject the written argument submitted by Model City in opposition to the Recommended Order, and 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. In Re: Jasmine Housing, Ltd. - FHFC Case No. 2009-063UC; Application No. 2009-198C**

| | |
|---|---|
| **Development Name: ("Development"):** | **The Jasmine** |
| **Developer/Principal: ("Developer"):** | **Jasmine Housing, Ltd.** |
| **Number of Units: 75** | **Location: Miami-Dade County** |
| **Type: Garden Apartments** | **Set Aside: 10% @ 33% AMI<br>90% @ 60% AMI** |
| **Demographics: Family** | **HC: $1,403,884** |

**1. Background**

a) Jasmine Housing, Ltd. ("Jasmine") timely submitted an Application in the 2009 Universal Cycle, seeking an allocation of $1,403,844 in low income housing tax credits to help fund a proposed 78 unit development to be located in Miami-Dade County, Florida.

b) On December 2, 2009, Florida Housing notified all applicants of its score, provided all applicants with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes, and an Election of Rights form. Florida Housing found that Jasmine had failed to meet threshold requirements regarding the availability of water services to the proposed development site.

c) On or about December 17, 2009, Jasmine timely filed a Petition for Informal Administrative Hearing, alleging that Florida Housing erred in the scoring of its application.

d) The informal hearing in this case was held on January 14, 2009. On February 2, 2009, the Hearing Officer filed his Recommended Order, which found that Jasmine had failed to provide verification that potable water was available to the development site. The Recommended Order is attached as Exhibit D.

**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.

**C. In Re: Town Park Crossing, L.P. - FHFC Case No. 2009-064 UC; Application No. 2009-255C**

| | |
|---|---|
| **Development Name: ("Development"):** | **Town Park Crossing** |
| **Developer/Principal: ("Developer"):** | **Eastwind Development, LLC**<br>**NuRock Development Group, Inc.** |
| **Number of Units: 100** | **Location: Broward County** |
| **Type: Garden Apartments** | **Set Aside: 10% @ 28% AMI**<br>**90% @ 60% AMI** |
| **Demographics: Family** | **HC: $1,735,993** |

**1. Background**

a) During the 2009 Universal Cycle, Town Park Crossing, L.P. ("Petitioner"), applied for an allocation of Housing Credits to construct Town Park Crossing (the "Development") in Broward County, Florida. Florida Housing scored Petitioner's application and determined that it failed threshold requirements and did not achieve maximum points.

b) On December 3, 2009, Florida Housing notified all applicants of its score, provided all applicants with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes, and an Election of Rights form.

c) On or about December 24, 2009, Petitioner filed a "Petition for Review" challenging Florida Housing's scoring decision of its application.

d) An informal hearing was held before Florida Housing's contract Hearing Officer on January 12 - 15, 2010. In lieu of the scheduled hearing, the parties entered into a Consent Agreement, attached as Exhibit E.

**2. Present Situation**

a) The sole issue raised was the determination by Florida Housing during the Universal Cycle scoring process that Petitioner's development site "is divided by one or more easements and thus meets the definition of Scattered Sites" in rule 67-48.002(106). Upon further review, Florida Housing determined that the utility easement did not divide the Petitioner's Development site within the meaning of the "scattered sites" definition.

b) On January 15, 2010, Florida Housing and Petitioner entered into a Consent Agreement which stipulated Petitioner met all threshold requirements and is entitled to 70 total points, 6 ability to proceed tie-breaker points and 7.5 proximity tie-breaker points.

**3. Recommendation**

Staff recommends the Board adopt as its own, the Stipulated Findings of Fact and the Stipulated Conclusions of Law set forth in the Consent Agreement, and enter its Final Order consistent with the Stipulated Disposition set forth in the Consent Agreement.

**D. In Re: CP Development Group 2, LLC - FHFC Case No. 2009-065 UC; Application No. 2009-114C**

| | |
|---|---|
| **Development Name: ("Development"):** | **The Tempo** |
| **Developer/Principal: ("Developer"):** | |
| **Number of Units: 146** | **Location: Tampa, Florida** |
| **Type:** | |
| **Demographics:** | **HC: $1,103,825** |

**1. Background/Present Situation**

a) During the 2009 Universal Cycle, CP Development Group 2, LLC ("Petitioner"), applied for an allocation of Housing Credits to construct The Tempo (the "Development") in Tampa, Florida. Florida Housing scored Petitioner's application and determined that it failed threshold requirements pertaining to its housing credit equity commitment.

b) On December 3, 2009, Florida Housing notified all applicants of its score, provided all applicants with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes, and an Election of Rights form.

c) Petitioner timely filed its Petition contesting Florida Housing's scoring of its application.

d) Prior to the informal hearing, Florida Housing agreed to rescind one of the threshold failures pertaining to the housing credit equity commitment letter.

e) An informal hearing was held before Florida Housing's contract Hearing Officer on January 13, 2010.

f) The sole issue for determination at the informal hearing was whether Petitioner met threshold requirements relating to its housing credit equity commitment as required under Rule 67-48.004(14), Fla. Admin. Code, and Part V.D.2. of the 2009 Universal Cycle Application Instructions.

g) Underlying Facts:

(1) In its original application, Petitioner applied for an allocation of housing credits in the annual amount of $1,103,825.

(2) In its preliminary scoring of the Petitioner's application, Florida Housing identified certain deficiencies with respect to the housing credit equity commitment issued by Bank of America.

(3) On cure, Petitioner submitted a revised equity commitment letter from Bank of America. However, the revised letter was based on an increased annual housing credit allocation amount of $1,470,887. In addition to the revised equity commitment, the Petitioner also submitted a revised page from its application in an attempt to increase its original funding request to the amount of $1,470,887.

(4) At final scoring, Florida Housing rejected the revised equity letter noting that "The Applicant attempted to cure [the original deficiency] by providing an equity commitment; however, the commitment reflects a larger HC request than applied for, which is not allowable under paragraph 67-48.004(m), F.A.C. Therefore, the commitment could not be counted as a source of financing."

h) Following the informal hearing, Petitioner and Florida Housing submitted proposed recommended orders.

i) On February 4, 2010, the Hearing Officer issued his Recommended Order, a copy of which is attached hereto as Exhibit F, in which he recommended that Florida Housing enter a Final Order that the Petitioner has met the threshold requirements relating to its housing credit equity commitment letter.

j) Argument in Opposition to Recommended Order:

(1) It is the position of Florida Housing staff that the conclusions of law, or parts thereof, in paragraphs 7, 8, 9 and 10, on pages 8 and 9 of the Recommended Order are contrary to Florida Housing's governing rules.

(2) Florida Housing staff timely filed its Argument in Opposition to Recommended Order as provided in Rule 67-48.005(6), F.A.C. A copy is attached hereto as Exhibit G.

**2. Recommendation**

Staff recommends that that the Board: (i) adopt the findings of fact in the Recommended Order; (ii) reject the conclusions of law at paragraphs 7, 8, 9 and 10, on pages 8 and 9, of the Recommended Order; (iii) adopt conclusions of law consistent with its own rules and case precedent as provided in the Argument in Opposition to Recommended Order; (iv) reject the recommendation in the Recommended Order; (v) find that Petitioner failed to meet threshold requirements relating to its housing credit equity commitment letter; and (vi) enter a Final Order accordingly.

# LEGAL

## *Action*

**E. In Re: RST Lodges at Pinellas Park, L.P. - FHFC Case No. 2009-068 UC; Application No. 2009-097C**

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|---|---|
| **Development Name: ("Development"):** | **The Lodges at Pinellas Park** |
| **Developer/Principal: ("Developer"):** | **Roundstone Development, LLC** |
| **Number of Units: 120** | **Location: Pinellas County** |
| **Type: Garden Apartments** | **Set Aside: 10% @ 35% AMI<br>90% @ 60% AMI** |
| **Demographics: Family** | **HC: $1,660,000** |

**1. Background**

a) During the 2009 Universal Cycle, RST Lodges at Pinellas Park, L.P. ("Petitioner"), applied for an allocation of Housing Credits to construct The Lodges at Pinellas Park (the "Development") in Pinellas County, Florida. Florida Housing scored Petitioner's application and determined that it failed threshold requirements and did not achieve maximum points.

b) On December 3, 2009, Florida Housing notified all applicants of its score, provided all applicants with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes, and an Election of Rights form.

c) On or about December 28, 2009, Petitioner filed a "Petition for Review" challenging Florida Housing's scoring decision of its application.

d) An informal hearing was held before Florida Housing's contract Hearing Officer on January 12 - 15, 2010. In lieu of the scheduled hearing, the parties entered into a Consent Agreement, attached as Exhibit H.

**2. Present Situation**

a) The sole issue raised was the determination by Florida Housing during the Universal Cycle scoring process that Petitioner's development site "is divided by one or more easements and thus meets the definition of Scattered Sites" in rule 67-48.002(106). Upon further review, Florida Housing determined that the utility easement did not divide the Petitioner's Development site within the meaning of the "scattered sites" definition.

b) On January 15, 2010, Florida Housing and Petitioner entered into a Consent Agreement which stipulated Petitioner met all threshold requirements and is entitled to 70 total points, 6 ability to proceed tie-breaker points and 7.5 proximity tie-breaker points.

**3. Recommendation**

Staff recommends the Board adopt as its own, the Stipulated Findings of Fact and the Stipulated Conclusions of Law set forth in the Consent Agreement, and enter its Final Order consistent with the Stipulated Disposition set forth in the Consent Agreement.

# LEGAL

## *Action*

**F. In Re: APD Housing Partners 20, LP - FHFC Case No. 2009-067 UC; Application No. 2009-214C**

| | |
|---|---|
| **Development Name: ("Development"):** | **TM Alexander** |
| **Developer/Principal: ("Developer"):** | |
| **Number of Units: 151** | **Location: Miami-Dade County** |
| **Type:** | |
| **Demographics:** | **HC: $1,405,417** |

**1. Background/Present Situation**

a) During the 2009 Universal Cycle, APD Housing Partners 20, LP ("Petitioner"), applied for an allocation of Housing Credits to construct TM Alexander (the "Development") in Miami-Dade County, Florida. Florida Housing scored Petitioner's application and determined that it failed threshold requirements pertaining to site control and financing.

b) On December 3, 2009, Florida Housing notified all applicants of its score, provided all applicants with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes, and an Election of Rights form.

c) Petitioner timely filed its Petition contesting Florida Housing's scoring of its application.

d) Prior to the informal hearing, Florida Housing agreed to rescind the threshold failure pertaining to financing.

e) An informal hearing was held before Florida Housing's contract Hearing Officer on January 13, 2010.

f) The sole issue for determination at the informal hearing was whether Petitioner demonstrated site control for its proposed development as required by Part III.C.2. of the 2009 Universal Application Instructions.

g) Underlying Facts:

(1) In its original application, the Petitioner attempted to demonstrate site control by providing a Contract for Purchase and Sale of Real Property (the "Contract") between Mederos-T.M. Alexander Acquisitions, LLC, as "Seller," and The American Opportunity Foundation, Inc., and Allied Pacific Development, LLC, as "Buyer." The Petitioner, APD 20, was not a party to the Contract.

(2) At preliminary scoring, Florida Housing determined that Petitioner's Application failed to satisfy the threshold requirements for site control because the "August 17, 2009 Purchase and Sale Agreement does not reflect the Applicant as the buyer and no assignment was provided."

(3) During the cure period, APD 20 provided a First Amendment to and Assignment and Assumption of Contract for Purchase and Sale of Real Property (the "Assignment and Assumption Agreement"). The Assignment and Assumption Agreement on its first page purports to be a tri-party agreement entered into by the Seller and the original Buyer under the Contract, and by APD 20, as the new buyer. Under its terms, the original Buyer purports to assign its rights, title and interest under the Contract to the new buyer; the new buyer purports to assume and perform the obligations of the original Buyer under the Contract; the Seller purports to consent to the assignment and assumption of the Contract; and, the parties purportedly agree to amend the Contract.

(4) While the Assignment and Assumption Agreement was executed by the original Buyer under the Contract, neither the Seller under the Contract, Mederos-T.M. Alexander Acquisitions, LLC, nor the Petitioner, APD Housing Partners 20, LP, executed the agreement. Instead, the Assignment and Assumption Agreement was executed by an entity named Mederos-Civic Acquisitions, LLC, as the seller, and an entity named APD Housing Partners 19, LP, as the new buyer.

(5) Florida Housing rejected the cure at final scoring because the assignment was not signed on behalf of the Petitioner, APD 20, and because it was not signed on behalf of the Seller, Mederos-T.M. Alexander Acquisitions, LLC.

h) Following the informal hearing, Petitioner and Florida Housing submitted proposed recommended orders.

i) On February 4, 2010, the Hearing Officer issued his Recommended Order, a copy of which is attached hereto as Exhibit I, in which he recommended that Florida Housing enter a Final Order finding that the Petitioner achieved threshold for site control, and reversing Florida Housing's rejection of Petitioner's application.

j) Argument in Opposition to Recommended Order:

(1) It is the position of Florida Housing staff that the conclusions of law, or parts thereof, in paragraphs 7, 8, 9 and 10, on page 10 of the Recommended Order are without basis under Florida Housing's rules, and are contrary to case precedent and basic contract law.

(2) Florida Housing staff timely filed its Argument in Opposition to Recommended Order as provided in Rule 67-48.005(6), F.A.C. A copy is attached hereto as Exhibit J.

**2. Recommendation**

Staff recommends that that the Board: (i) adopt the findings of fact in the Recommended Order; (ii) reject the conclusions of law at paragraphs 7, 8, 9 and 10, on page 10, of the Recommended Order; (iii) adopt conclusions of law consistent with its own rules and case precedent as provided in the Argument in Opposition to Recommended Order; (iv) reject the recommendation in the Recommended Order; (v) find that Petitioner failed to meet threshold requirements relating to site control; and (vi) enter a Final Order accordingly.

# LEGAL

## *Action*

**G. In Re: APD Housing Partners 19, LP - FHFC Case No. 2009-069 UC; Application No. 2009-215C**

| | |
|---|---|
| **Development Name: ("Development"):** | **Civic Tower** |
| **Developer/Principal: ("Developer"):** | |
| **Number of Units: 196** | **Location: Miami-Dade County** |
| **Type:** | |
| **Demographics:** | **HC: $1,993,756** |

**1. Background/Present Situation**

a) During the 2009 Universal Cycle, APD Housing Partners 19, LP ("Petitioner"), applied for an allocation of Housing Credits to construct Civic Tower (the "Development") in Miami-Dade County, Florida. Florida Housing scored Petitioner's application and determined that it failed threshold requirements pertaining to financing.

b) On December 3, 2009, Florida Housing notified all applicants of its score, provided all applicants with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes, and an Election of Rights form.

c) Petitioner timely filed its Petition contesting Florida Housing's scoring of its application.

d) An informal hearing was held before Florida Housing's contract Hearing Officer on January 13, 2010.

e) The sole issue for determination at the informal hearing was whether Petitioner met threshold requirements relating to its housing credit equity commitment as required by Part V.D.2. of the 2009 Universal Application Instructions.

f) Recommended Order:

(1) On February 4, 2010, the Hearing Officer issued his Recommended Order, a copy of which is attached hereto, as Exhibit K, in which he recommended that Florida Housing enter a Final Order affirming Florida Housing's scoring of Petitioner's application that APD 19 failed to meet the threshold requirements relating to its housing credit equity commitment letter, and denying the relief requested in the Petition.

**2. Recommendation**

Staff recommends that that the Board: (i) adopt the findings of fact in the Recommended Order; (ii) adopt the conclusions of law in the Recommended Order; (iii) adopt the Recommendation in the Recommended Order; and (iv) enter a Final Order accordingly.

# LEGAL

## *Action*

**H. In Re: Ability Mayfair II, LLC. - FHFC Case No. 2009-072 UC; Application No. 2009-121CH**

| | |
|---|---|
| **Development Name: ("Development"):** | **Mayfair Village Apartments** |
| **Developer/Principal: ("Developer"):** | **Grove House of Jacksonville, Inc.<br>DBA Ability Housing of NE Florida, Inc.** |
| **Number of Units: 83** | **Location: Duval County** |
| **Type: Garden** | **Set Aside: 10% @ 30% AMI<br>90% @ 60% AMI** |
| **Demographics: Homeless** | **HC: $4,000,000<br>HOME: $1,399,000** |

**1. Background**

a) During the 2009 Universal Cycle, Ability Mayfair II, LLC. ("Petitioner"), applied for an allocation of Housing Credits and HOME funds to construct Mayfair Village Apartments (the "Development") in Duval County, Florida. Florida Housing scored Petitioner's application and determined that it failed threshold requirements and did not achieve maximum points.

b) On December 3, 2009, Florida Housing notified all applicants of its score, provided all applicants with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes, and an Election of Rights form.

c) On or about December 28, 2009, Petitioner filed a "Petition for Review of 2009 Universal Cycle Final Scoring Summary Report for Ability Mayfair II, LLC." challenging Florida Housing's scoring decision of its application.

d) An informal hearing was held before Florida Housing's contract Hearing Officer on January 12 - 15, 2010. In lieu of the scheduled hearing, the parties entered into a Consent Agreement, attached as Exhibit L.

**2. Present Situation**

a) The sole issue raised was the determination by Florida Housing during the Universal Cycle scoring process that Petitioner's development site "is divided by one or more easements and thus meets the definition of Scattered Sites" in rule 67-48.002(106). Upon further review, Florida Housing determined that the utility easement did not divide the Petitioner's Development site within the meaning of the "scattered sites" definition.

b) On January 15, 2010, Florida Housing and Petitioner entered into a Consent Agreement which stipulated Petitioner met all threshold requirements and is entitled to 70 total points, 6 ability to proceed tie-breaker points and 7.5 proximity tie-breaker points.

**3. Recommendation**

Staff recommends the Board adopt as its own, the Stipulated Findings of Fact and the Stipulated Conclusions of Law set forth in the Consent Agreement, and enter its Final Order consistent with the Stipulated Disposition set forth in the Consent Agreement.

# LEGAL

## *Action*

**I. In Re: HTG Lakeridge Greens, Ltd. - FHFC Case No. 2009-071UC; Application No. 2009-222C**

| | |
|---|---|
| **Development Name: ("Development"):** | **Banyan Station** |
| **Developer/Principal: ("Developer"):** | **HTG Lakeridge Greens, Ltd.** |
| **Number of Units: 95** | **Location: Palm Beach County** |
| **Type: High-Rise** | **Set Aside: 10% @ 28% AMI<br>90% @ 60% AMI** |
| **Demographics: Family** | **HC: $2,110,000** |

**1. Background**

a) During the 2009 Universal Cycle, HTG Lakeridge Greens, Ltd. ("HTG"), applied for an allocation of low income housing tax credits to help finance the construction of an affordable housing development in Palm Beach County, Florida. Florida Housing determined that the HTG Application failed threshold requirements on the basis that HTG failed to qualify as a Non-Profit Applicant, in that its Articles of Incorporation did not demonstrate that one of its purposes is to foster low-income housing.

b) On December 3, 2009, Florida Housing notified all applicants of its score, provided all applicants with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes, and an Election of Rights form.

c) On or about December 28, 2009, Petitioner filed a "Petition for Review" (Petition) challenging Florida Housing's scoring decision of its application.

d) An informal hearing was scheduled before Florida Housing's contract Hearing Officer on January 14, 2010. However, in lieu of the scheduled hearing, the parties entered into a Consent Agreement, attached as Exhibit M.

**2. Present Situation**

a) The sole issue raised by the Petition was the determination by Florida Housing during the Universal Cycle scoring process that HTG did not provide adequate documentation as to the purpose of the non-profit entity being to foster low-income housing. Had Florida Housing not found this issue, all threshold requirements would have been met and HTG would have achieved a total score of 70, and 6 Ability to Proceed Tie-Breaker points, as well as 7.50 Proximity Tie-Breaker points.

b) Florida Housing has determined that adequate documentation has indeed been submitted as to the non-profit entity issue. Thus, HTG is entitled to 70 total points, 6 Ability to Proceed Tie-Breaker points, and 7.50 proximity Tie-Breaker points. Additional, HTG has satisfied al threshold requirements.

**3. Recommendation**

Staff recommends the Board adopt the Stipulated Findings of Fact and the Stipulated Conclusions of Law set forth in the Consent Agreement, and enter its Final Order consistent with the Stipulated Disposition set forth in the Consent Agreement.

# LEGAL

## *Action*

**J. In Re: Dr. Kennedy Homes, LTD. - FHFC Case No. 2009-073 UC; Application No. 2009-144C**

| | |
|---|---|
| **Development Name: ("Development"):** | **Dr. Kennedy Homes** |
| **Developer/Principal: ("Developer"):** | **Dr. Kennedy Homes Development, LLC**<br>**Dr. Kennedy Homes GP, Inc.** |
| **Number of Units: 132** | **Location: Broward County** |
| **Type: Mid-Rise with Elevator** | **Set Aside: 10% @ 28% AMI**<br>**90% @ 60% AMI** |
| **Demographics: Family** | **HC: $2,150,720** |

**1. Background**

a) During the 2009 Universal Cycle, Dr. Kennedy Homes, LTD. ("Petitioner"), applied for an allocation of Housing Credits to construct Dr. Kennedy Homes (the "Development") in Broward County, Florida. Florida Housing scored Petitioner's application and determined that it failed threshold requirements and did not achieve maximum points.

b) On December 3, 2009, Florida Housing notified all applicants of its score, provided all applicants with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes, and an Election of Rights form.

c) On or about December 28, 2009, Petitioner filed a "Petition for Review of 2009 Universal Cycle Final Scoring Summary Report for Dr. Kennedy Homes, Ltd." challenging Florida Housing's scoring decision of its application.

d) An informal hearing was held before Florida Housing's contract Hearing Officer on January 12 - 15, 2010. In lieu of the scheduled hearing, the parties entered into a Consent Agreement, attached as Exhibit N.

**2. Present Situation**

a) The sole issue raised was the determination by Florida Housing during the Universal Cycle scoring process that Petitioner's development site "is divided by one or more easements and thus meets the definition of Scattered Sites" in rule 67-48.002(106). Upon further review, Florida Housing determined that the utility easement did not divide the Petitioner's Development site within the meaning of the "scattered sites" definition.

b) On January 15, 2010, Florida Housing and Petitioner entered into a Consent Agreement which stipulated Petitioner met all threshold requirements and is entitled to 70 total points, 6 ability to proceed tie-breaker points and 7.5 proximity tie-breaker points.

**3. Recommendation**

Staff recommends the Board adopt as its own, the Stipulated Findings of Fact and the Stipulated Conclusions of Law set forth in the Consent Agreement, and enter its Final Order consistent with the Stipulated Disposition set forth in the Consent Agreement.

# LEGAL

## *Action*

**K. In Re: Ehlinger Apartments, LTD. - FHFC Case No. 2009-074 UC; Application No. 2009-146C**

| | |
|---|---|
| **Development Name: ("Development"):** | **Ehlinger Apartments** |
| **Developer/Principal: ("Developer"):** | **Ehlinger Apartments Development, LLC**<br>**Building Better Communities, Inc.** |
| **Number of Units: 155** | **Location: Broward County** |
| **Type: Garden** | **Set Aside: 10% @ 28% AMI**<br>**90% @ 60% AMI** |
| **Demographics: Family** | **HC: $2,526,000** |

**1. Background**

a) During the 2009 Universal Cycle, Ehlinger Apartments, LTD. ("Petitioner"), applied for an allocation of Housing Credits to construct Ehlinger Apartments (the "Development") in Broward County, Florida. Florida Housing scored Petitioner's application and determined that it failed threshold requirements and did not achieve maximum points.

b) On December 3, 2009, Florida Housing notified all applicants of its score, provided all applicants with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes, and an Election of Rights form.

c) On or about December 28, 2009, Petitioner filed a "Petition for Review of 2009 Universal Cycle Final Scoring Summary Report for Ehlinger Apartments, Ltd." challenging Florida Housing's scoring decision of its application.

d) An informal hearing was held before Florida Housing's contract Hearing Officer on January 12 - 15, 2010. In lieu of the scheduled hearing, the parties entered into a Consent Agreement, attached as Exhibit O.

**2. Present Situation**

a) The sole issue raised was the determination by Florida Housing during the Universal Cycle scoring process that Petitioner's development site "is divided by one or more easements and thus meets the definition of Scattered Sites" in rule 67-48.002(106). Upon further review, Florida Housing determined that the utility easement did not divide the Petitioner's Development site within the meaning of the "scattered sites" definition.

b) On January 15, 2010, Florida Housing and Petitioner entered into a Consent Agreement which stipulated Petitioner met all threshold requirements and is entitled to 70 total points, 6 ability to proceed tie-breaker points and 7.5 proximity tie-breaker points.

**3. Recommendation**

Staff recommends the Board adopt as its own, the Stipulated Findings of Fact and the Stipulated Conclusions of Law set forth in the Consent Agreement, and enter its Final Order consistent with the Stipulated Disposition set forth in the Consent Agreement.

# I. LEGAL

## A. In Re: Summit Housing Partners, LLC – FHFC Case No. 2010-004 VW

| | |
|---|---|
| **Development Name: ("Development"):** | **Oak Pointe Apartments** |
| **Developer/Principal: ("Developer"):** | **Summit Oak Pointe Apartments, Ltd., Summit Housing Partners Management, LLC** |
| **Number of Units: 184** | **Location: Leon County** |
| **Type: Garden** | **Set Aside: 85% @ 60% AMI** |
| **Demographics: Family** | **7,600,000.00 Tax-Exempt Bonds** |

### 1. Background

a) During the 2009 Multifamily Mortgage Revenue Bond ("MMRB") Supplemental Bond Cycle, Summit Housing Partners, LLC ("Petitioner") applied for an award of $7,600,000.00 in Tax-Exempt, Private Activity bonds to construct Oak Pointe Apartments (the "Development") in Leon County, Florida. Petitioner's Application was #2009A-215B.

b) On December 4, 2009, the Board approved $7,600,000.00 of Tax-Exempt, Private Activity bond allocation to Petitioner subject to further approvals and verifications by the Credit Underwriter, Bond Counsel, Special Counsel and the appropriate Florida Housing staff. In credit underwriting, it was discovered that the Development is located within the Set-Aside Location A area of Leon County, Florida.

c) On February 15, 2010, Florida Housing received a "Petition for Emergency Waiver of Certain Set-Aside Requirements Contained in Application Instructions Adopted by Rule 67-21.003." ("Petition") A copy of the Petition is attached as Exhibit A.

d) Petitioner requests a waiver of the Rule requiring that Developments within a Set-Aside Location A area commit to Set-Aside at least 85% of the Development's residential units at 50% AMI or less and a waiver of the Rule requiring it must meet the minimum ELI Set-Aside threshold set in the Instructions.[1] Petitioner states that it will not be able to offer the rental units as affordable housing it is required to comply with these requirements.

e) Petitioner stated as a basis for requesting an emergency waiver of the Rules, that the contract for the purchase of the Development expires on March 10, 2010, and that it is concerned that it will not be able to feasibly extend the contract for the time necessary to allow its request to be considered at the April 30, 2010 Board meeting.

[1] Part III E.1.b.(1)(b) of the Application Instructions state: Applicants with a Set-Aside Location A Development must meet the following set-aside requirements: Applicants requesting MMRB must commit to set aside at least 85% of the Development's residential units at 50 percent AMI or less. Part III E.1.b.(1)(c) of the Application Instructions state: Applicants with a Set-Aside Location A Development must meet the following set-aside requirements: All Applicants must meet the minimum ELI Set-Aside Threshold set out at Part III.E.1.b(2)(a)(iii) of these instructions.

f) On February 26, 2010, the Notice of Petition was published in the Florida Administrative Weekly in Volume 36, Number 08. To date, Florida Housing has received no comments concerning the Petition.

g) Section 120.542(2), Florida Statutes provides in pertinent part:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

h) Section 120.542(3), Florida Statutes, provides that the Governor and Cabinet, sitting as the Administration Commission shall adopt uniform rules of procedure for granting or denying emergency waivers. Under Rules 28-104.005(1), (2), and (3), Fla. Admin. Code, it provides in part:

> (1) The agency shall grant or deny a petition for emergency variance or waiver within 30 days of its receipt by the agency.
>
> (2) …Interested persons…may submit written comments on the petition for emergency variance or waiver within 5 days after publication of the notice required herein…
>
> (3) If the agency decides that the situation is not an emergency, the petition shall then be reviewed by the agency on a non-emergency basis…

i) Under these circumstances, the situation as presented in the Petition is not an emergency. Petitioner's expiration date for the contract for purchase was not created or aggravated by Florida Housing's rules and does not warrant expedited attention by the Board or an abbreviated time period for public comment. Delays in closing and accompanying extensions of purchase and sale contracts are not uncommon in transactions of this nature. Petitioner's application was submitted on October 20, 2009, and Petitioner is responsible for comprehending the terms and complying with the Instructions and the Rules. It would violate the principles of fairness to other applicants to allow Petitioner to proceed with its Development without complying with the Set-Aside requirements found at Part III E. of the Instructions. Petitioner has not demonstrated sufficiently how it will further serve the purpose of Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida without adhering to the Set-Aside Location A requirements.

**2. Recommendation**

Staff recommends the Board **DENY** the 'Petition for Emergency Waiver of Certain Set-Aside Requirements Contained in Application Instructions Adopted by Rule 67-21.003."

**B. In Re: CP Development Group 2, LLC – FHFC Case No. 2009-065 UC; Application No. 2009-114C**

| | |
|---|---|
| **Development Name: ("Development"):** | **The Tempo** |
| **Developer/Principal: ("Developer"):** | |
| **Number of Units: 146** | **Location: Tampa, Florida** |
| **Type:** | |
| **Demographics:** | **HC: $1,103,825** |

**1. Background**

a) During the 2009 Universal Cycle, CP Development Group 2, LLC ("Petitioner"), applied for an allocation of Housing Credits to construct The Tempo (the "Development") in Tampa, Florida. Florida Housing scored Petitioner's application and determined that it failed threshold requirements pertaining to its housing credit equity commitment.

b) On December 3, 2009, Florida Housing notified all applicants of its score, provided all applicants with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes, and an Election of Rights form.

c) Petitioner timely filed its Petition contesting Florida Housing's scoring of its application.

d) Prior to the informal hearing, Florida Housing agreed to rescind one of the threshold failures pertaining to the housing credit equity commitment letter.

e) An informal hearing was held before Florida Housing's contract Hearing Officer on January 13, 2010.

f) The sole issue for determination at the informal hearing was whether Petitioner met threshold requirements relating to its housing credit equity commitment as required under Rule 67-48.004(14), Fla. Admin. Code, and Part V.D.2. of the 2009 Universal Cycle Application Instructions.

g) Underlying Facts:

(1) In its original application, Petitioner applied for an allocation of housing credits in the annual amount of $1,103,825.

(2) In its preliminary scoring of the Petitioner's application, Florida Housing identified certain deficiencies with respect to the housing credit equity commitment issued by Bank of America.

(3) On cure, Petitioner submitted a revised equity commitment letter from Bank of America. However, the revised letter was based on an increased annual housing credit allocation amount of $1,470,887. In addition to the revised equity commitment, the Petitioner also submitted a revised page from its application in an attempt to increase its original funding request to the amount of $1,470,887.

(4) At final scoring, Florida Housing rejected the revised equity letter noting that "The Applicant attempted to cure [the original deficiency] by providing an equity commitment; however, the commitment reflects a larger HC request than applied for, which is not allowable under paragraph 67-48.004(m), F.A.C. Therefore, the commitment could not be counted as a source of financing."

h) Following the informal hearing, Petitioner and Florida Housing submitted proposed recommended orders.

i) On February 4, 2010, the Hearing Officer issued his Recommended Order, a copy of which is attached hereto as Exhibit B, in which he recommended that Florida Housing enter a Final Order that the Petitioner has met the threshold requirements relating to its housing credit equity commitment letter.

j) Florida Housing's Argument in Opposition to Recommended Order:

(1) It is the position of Florida Housing staff that the conclusions of law, or parts thereof, in paragraphs 7, 8, 9 and 10, on pages 8 and 9 of the Recommended Order are contrary to Florida Housing's governing rules.

(2) Florida Housing staff timely filed its Argument in Opposition to Recommended Order as provided in Rule 67-48.005(6), F.A.C. A copy is attached hereto as Exhibit C.

k) Petitioner's Motion to Strike Florida Housing's Argument in Opposition to Recommended Order:

Petitioner filed its Motion to Strike Florida Housing's Argument in Opposition to Recommended Order. A copy is attached hereto as Exhibit D. The basis for the motion is that Florida Housing lacks statutory or rule authority to challenge the Recommended Order.

**2. Recommendation**

Staff recommends that that the Board: (i) deny Petitioner's motion to strike; (ii) adopt the findings of fact in the Recommended Order; (iii) reject the conclusions of law at paragraphs 7, 8, 9 and 10, on pages 8 and 9, of the Recommended Order; (iv) adopt conclusions of law consistent with its own rules and case precedent as provided in the Argument in Opposition to Recommended Order; (v) reject the recommendation in the Recommended Order; (vi) find that Petitioner failed to meet threshold requirements relating to its housing credit equity commitment letter; and (vii) enter a Final Order accordingly.

**C. In Re: APD Housing Partners 20, LP – FHFC Case No. 2009-067; Application No. 2009-214C**

| | |
|---|---|
| **Development Name: ("Development"):** | **TM Alexander** |
| **Developer/Principal: ("Developer"):** | |
| **Number of Units: 151** | **Location: Miami-Dade County** |
| **Type:** | |
| **Demographics:** | **HC: $1,405,417** |

**1. Background**

a) During the 2009 Universal Cycle, APD Housing Partners 20, LP ("Petitioner"), applied for an allocation of Housing Credits to construct TM Alexander (the "Development") in Miami-Dade County, Florida. Florida Housing scored Petitioner's application and determined that it failed threshold requirements pertaining to site control and financing.

b) On December 3, 2009, Florida Housing notified all applicants of its score, provided all applicants with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes, and an Election of Rights form.

c) Petitioner timely filed its Petition contesting Florida Housing's scoring of its application.

d) Prior to the informal hearing, Florida Housing agreed to rescind the threshold failure pertaining to financing.

e) An informal hearing was held before Florida Housing's contract Hearing Officer on January 13, 2010.

f) The sole issue for determination at the informal hearing was whether Petitioner demonstrated site control for its proposed development as required by Part III.C.2. of the 2009 Universal Application Instructions.

g) Underlying Facts:

(1) In its original application, the Petitioner attempted to demonstrate site control by providing a Contract for Purchase and Sale of Real Property (the "Contract") between Mederos-T.M. Alexander Acquisitions, LLC, as "Seller," and The American Opportunity Foundation, Inc., and Allied Pacific Development, LLC, as "Buyer." The Petitioner, APD 20, was not a party to the Contract.

(2) At preliminary scoring, Florida Housing determined that Petitioner's Application failed to satisfy the threshold requirements for site control because the "August 17, 2009 Purchase and Sale Agreement does not reflect the Applicant as the buyer and no assignment was provided."

(3) During the cure period, APD 20 provided a First Amendment to and Assignment and Assumption of Contract for Purchase and Sale of Real Property (the "Assignment and Assumption Agreement"). The Assignment and Assumption Agreement on its first page purports to be a tri-party agreement entered into by the Seller and the original Buyer under the Contract, and by APD 20, as the new buyer. Under its terms, the original Buyer purports to assign its rights, title and interest under the Contract to the new buyer; the new buyer purports to assume and perform the obligations of the original Buyer under the Contract; the Seller purports to consent to the assignment and assumption of the Contract; and, the parties purportedly agree to amend the Contract.

(4) While the Assignment and Assumption Agreement was executed by the original Buyer under the Contract, neither the Seller under the Contract, Mederos-T.M. Alexander Acquisitions, LLC, nor the Petitioner, APD Housing Partners 20, LP, executed the agreement. Instead, the Assignment and Assumption Agreement was executed by an entity named Mederos-Civic Acquisitions, LLC, as the seller, and an entity named APD Housing Partners 19, LP, as the new buyer.

(5) Florida Housing rejected the cure at final scoring because the assignment was not signed on behalf of the Petitioner, APD 20, and because it was not signed on behalf of the Seller, Mederos-T.M. Alexander Acquisitions, LLC.

h) Following the informal hearing, Petitioner and Florida Housing submitted proposed recommended orders.

i) On February 4, 2010, the Hearing Officer issued his Recommended Order, a copy of which is attached hereto as Exhibit E, in which he recommended that Florida Housing enter a Final Order finding that the Petitioner achieved threshold for site control, and reversing Florida Housing's rejection of Petitioner's application.

j) Florida Housing's Argument in Opposition to Recommended Order:

(1) It is the position of Florida Housing staff that the conclusions of law, or parts thereof, in paragraphs 7, 8, 9 and 10, on page 10 of the Recommended Order are without basis under Florida Housing's rules, and are contrary to case precedent and basic contract law.

(2) Florida Housing staff timely filed its Argument in Opposition to Recommended Order as provided in Rule 67-48.005(6), F.A.C. A copy is attached hereto as Exhibit F.

k) Petitioner's Motion to Strike Florida Housing's Argument in Opposition to Recommended Order:

Petitioner filed its Motion to Strike Florida Housing's Argument in Opposition to Recommended Order. A copy is attached hereto as Exhibit G. The basis for the motion is that Florida Housing lacks statutory or rule authority to challenge the Recommended Order.

**2. Recommendation**

Staff recommends that that the Board: (i) deny Petitioner's motion to strike; (ii) adopt the findings of fact in the Recommended Order; (iii) reject the conclusions of law at paragraphs 7, 8, 9 and 10, on page 10, of the Recommended Order; (iv) adopt conclusions of law consistent with its own rules and case precedent as provided in the Argument in Opposition to Recommended Order; (v) reject the recommendation in the Recommended Order; (vi) find that Petitioner failed to meet threshold requirements relating to site control; and (vii) enter a Final Order accordingly.

# II. LOW INCOME HOUSING TAX CREDITS

## A. Request Approval of Market Study Letters

### 1. Background/Present Situation

a) On July 31, 2009, Florida Housing staff issued RFP 2009-04 to award Exchange funds with or without TCAP funding (that would require a nominal allocation of 9 percent Housing Credits) for Applicants that received a Housing Credit award in 2006, 2007 and 2008 that, as of February 17, 2009, have been unsuccessful in locating a syndicator for the Housing Credits which would make the proposed development financially viable. On August 20, 2009 the Board approved the award list of the Request for Proposals (RFP) 2009-04 and directed staff to proceed with all necessary credit underwriting activities.

b) On December 4, 2009 the Board approved the authorization for Panama Commons and The Portland to be invited into credit underwriting. Staff issued an invitation to enter credit underwriting for the two Developments listed below on December 4, 2009. Staff received a market study review letter for each Development. Staff has reviewed these letters and finds that each of the Developments meets all of the requirements of Rule Chapter 67-48, F.A.C and RFP 2009-04.

(1) The Portland (2009-263X) Exhibit A

(2) Panama Commons (2009-264X) Exhibit B

### 2. Recommendation

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

**B. Market Study Review Letter for Elmwood Terrace (2009-262X)**

**1. Background/Present Situation**

a) On July 31, 2009, Florida Housing staff issued RFP 2009-04 to award Exchange funds with or without TCAP funding (that would require a nominal allocation of 9 percent Housing Credits) for Applicants that received a Housing Credit award in 2006, 2007 and 2008 that, as of February 17, 2009, have been unsuccessful in locating a syndicator for the Housing Credits which would make the proposed development financially viable. On August 20, 2009 the Board approved the award list of the Request for Proposals (RFP) 2009-04 and directed staff to proceed with all necessary credit underwriting activities.

b) On December 4, 2009 the Board approved the authorization for Elmwood Terrace to be invited into credit underwriting. Staff issued an invitation to enter credit underwriting on December 4, 2009. Staff has received a market study letter for Elmwood Terrace (Exhibit C) containing a negative recommendation due to 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 2009-04 to be approved for further credit underwriting consideration.

**2. Recommendation**

Rescind and return the Housing Credit award and Exchange funding to Florida Housing Finance Corporation.

# III. MISCELLANEOUS

## A. 2010 Program Funding Application/Proposal Lottery Seed Number Selection

### 1. Background

The instructions for various Florida Housing programs and competitive solicitations provide that each application or proposal for funding will receive a random lottery number at or prior to the issuance of final scores and that the lottery numbers will be assigned by Florida Housing's internal auditors using a random number generator program.

### 2. Present Situation

A seed number must be selected so that the internal auditors will be able to generate random lottery numbers for any Request for Proposal for Exchange funding awarded during the calendar year 2010, as well as any other Florida Housing program that requires a lottery seed number to be assigned either by rule or competitive solicitation in 2010.

### 3. Recommendation

From the listing of numbers provided by internal audit, the Chair should select a seed number to be used for competitive applications and requests for proposal for the calendar year 2010.

# IV. PROFESSIONAL SERVICES SELECTION (PSS)

## A. Request Permission to Issue a Request for Proposals (RFP) for Mortgage Servicing for the Single Family Mortgage Revenue Bond ("SFMRB") Program

### 1. Background

a) On August 23, 2002, Florida Housing's Board of Directors selected The Leader Mortgage Company as Servicer for the SFMRB Program. On April 1, 2002, U.S. Bank Home Mortgage acquired The Leader Mortgage Company and assumed all rights and obligations of The Leader Mortgage Company. In 2006, Florida Housing entered into a Memorandum of Understanding with U.S. Bank Home Mortgage to continually provide mortgage servicing for the SFMRB Program for Florida Housing's future SFMRB Program issues.

b) Pursuant to the terms of the original Request for Proposals, the final term of the contract will end in August of 2010.

### 2. Present Situation

a) The RFP to be issued will require experienced Respondents to perform all of the loan servicing functions for the SFMRB Program.

b) The primary responsibilities of the Servicer selected may include, but not be limited to, the following:

(1) Pooling first mortgage loans into mortgage backed securities ("MBS") for the SFMRB Program;

(2) Selling MBS via the TBA market with permission from Florida Housing. Selling Whole loans via the Fannie Mae cash window with permission from Florida Housing;

(3) Servicing all Florida Housing second mortgage loans made in conjunction with the SFMRB Program;

c) In addition to servicing mortgage loans, the duties of the Servicer selected may include, but not be limited to:

(1) Provide and manage a reservation system for participating lenders to utilize program funds and that will also enable Florida Housing to track usage;

(2) Provide and manage a compliance and mortgage monitoring system that will allow Servicer to purchase eligible loans from participating lenders;

(3) Provide underwriting and table funding for correspondent lenders;

(4) Provide periodic lender training sessions as needed and directed by SFMRB Program staff;

(5) Notify Florida Housing and participating lenders of any changes with Agency (Fannie Mae, Freddie Mac and Ginnie Mae) guidelines, rules and regulations;

(6) Provide reports as needed by Florida Housing staff.

d) RFP responses will be reviewed by a committee appointed by the Executive Director. It is anticipated that the committee will make a recommendation to the Board at the April 2010 meeting.

**3. Recommendation**

a) Staff recommends the Board authorize staff to begin the solicitation (RFP) process in order to obtain responses from qualified entities to provide mortgage servicing for the SFMRB Program.

b) Staff recommends that the Board authorize the Executive Director to establish a Review Committee to review the RFP responses and make a recommendation to the Board.

# V. SPECIAL ASSETS

## A. Approve Forbearance of Set-asides Requirements for Housing Credit Developments beyond the Fifteen-Year Compliance Period with Low Occupancies

### 1. Background

a) FHFC has provided Housing Tax Credits for Low Income Housing Tax Credit (LIHTC) developments throughout Florida beginning in the late 1980's. Since 1990, developers have been required to execute Extended Low Income Housing Agreements (EUAs) restricting rental to income qualified applicants. Many of these developments have reached the expiration of the initial 15-year Compliance Period. However, they are still operating under Extended Low Income Housing Agreements which require the property to remain in LIHTC compliance an additional 15 years or beyond. These EUAs require the Development to restrict occupancy to qualified applicants with incomes at 60% of Area Median Income (AMI) or below. In today's economic environment, the incomes of many applicants who require affordable housing are above 60% AMI.

### 2. Present Situation

a) With the current economic situation in Florida, the physical occupancy levels for many of these LIHTC developments has decreased, in some cases within the lower 80% range or less. We have also experienced an unprecedented level of foreclosures of multifamily developments, thereby eliminated the use restrictions on the developments and reducing affordable housing stock within the State. In a letter from the Coalition of Affordable Housing Providers, the Coalition members request that Florida Housing allow:

> "Properties with buildings beyond the initial "15 year Compliance Period" whose occupancy is below 95% to be allowed to waive 60% median income requirements for some units. All apartment homes (including those with waived income restrictions), will still be required to be rent restricted so that the gross rent would not exceed 30% of the imputed income limitation that the LIHTC program requires. (No rent increases from the current requirement)". We would limit the number of unrestricted income units to no more than 20% of the total number of units at the community.
>
> If the property once again exceeds 95% physical occupancy level, the "next available unit" concept will be put into place. In other words, if occupancy is above 95%, the next available unit would have to be rented to a family earning below the 60% median income.
>
> If occupancy would dip back down below 95%, units will be available on an unrestricted income basis; again until 95% occupancy was achieved. This would virtually assure that any family unit who qualified under the original income requirements would have access to the apartment homes."

b) Program Reports show continuing low occupancy levels at many of FHFC's funded developments. Staff agrees that due to the current economic situation and the impact it is having on some of FHFC's developments forbearance is needed on some of the income restrictions in order to bring in additional renters and to support the continuing sustainability of these developments.

**3. Recommendation**

It is in the best interests of FHFC and its affordable housing mission to reduce the financial stress of the Developments where FHFC has authority to do so in order to aid in their ability to remain viable developments during these historically difficult economic conditions. Staff recommends that the Board approve the request to allow Developments with LIHTC funding only with all buildings beyond the initial "15-year Compliance Period" that have physical occupancy levels below 95% to serve tenant populations above 60% of Area Median Gross Income (AMGI) or the National Nonmetropolitan Median Gross Income (NNMGI) when applicable, as adjusted for family size, for no more than 20% of the total number of units at the Development through April 1, 2011, subject to the following conditions and direct staff to proceed with forbearance agreements as determined by FHFC legal staff.

(1) Eligible Developments must provide a current rent roll with physical occupancy levels below 95% and register all of the Developments within the Developer's portfolio on the Florida Housing Locator at www.floridahousingsearch.org and agree to list all of the Developments within the Developer's portfolio with the Florida Housing Locator service on a continuing basis for the remainder of the extended use period.

(2) Rents collected for the units above the 60% AMGI limitation or NNMGI limitation when applicable, as adjusted for family size must not exceed the 60% rent limit (minus the utility allowance) set for the LIHTC program.

(3) If at any time the Development exceeds the 95% physical occupancy level, the Next Available Unit Rule, under IRC §42(g)(2)(D), concept becomes applicable and any residential rental unit in the Development (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income does not exceed the 60% AMGI limitation or NNMGI limitation when applicable, as adjusted for family size.

(4) If occupancy levels decrease below 95%, units will be available on an unrestricted income basis; again until 95% occupancy is achieved.

(5) All Developments within the portfolio of the Developer making this request must submit Florida Housing Finance Corporation Program Report, PR-1, Rev. 01/09 on a monthly basis for the remainder of the extended use period.

***Action***

(6) All Developments within the portfolio of the Developer making this request must provide Florida Housing with an audited financial statement, as applicable, and a fully completed and executed Financial Reporting Form (SR-1), Rev. 02/09, ("Form SR-1"), on an annual basis by the submission deadline as established in Rule Chapter 67-53, F.A.C. to the Corporation's servicer for the remainder of the extended use period.

(7) Each Developer will be responsible for Florida Housing's fees to process the Forbearance Agreements.

# VI. UNIVERSAL CYCLE

## A. 2009 Universal Cycle Ranking

### 1. Background/Present Situation

Upon the Board's approval of the final orders regarding the 2009 Universal Application Cycle informal hearings, staff will present the final ranking of the Applications for the Board's consideration and approval. Staff will provide supplemental materials at the Board meeting.

### 2. Recommendation

Approve the final ranking per staff's recommendation and the final orders (as approved by the Board) and direct staff to proceed with the issuing of invitations to credit underwriting and preliminary commitment letters to those Applicants that are in the funding range.

# I. AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

## A. Request Approval of Credit Underwriting Report for Villages at Delray (2009-037CT)

| | |
|---|---|
| **Development Name: Villages at Delray ("Development")** | **Location: Palm Beach County** |
| **Developer/Principal: Auburn Development, LLC ("Developer")** | **Set-Aside: 11% @ 28% AMI & 89% @ 60% AMI** |
| **Number of Units: 144** | **Tax Credit Assistance Program: $7,500,000** |
| **Type: Garden Style** | **Housing Credit Allocation: $2,110,000** |
| **Demographics: Family** | **MMRB: N/A** |

### 1. Background/Present Situation

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 February 24, 2010, 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 $2,110,000 (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. Recommendation

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