

## FHFC III, INC.

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#### I. FHFC III, INC.

##### A. Ratification of the Execution of the Revised Second Purchase and Sale Agreement for Landings at Boot Ranch Apartments

###### 1. Background

- a) Boot Ranch West, Ltd. d/b/a Landings at Boot Ranch Apartments (“Boot Ranch”) is a 232 unit multifamily development located in Palm Harbor, approximately 20 miles northwest of Tampa in Pinellas County. The property was financed with FHFC bonds, 1995 Series K, an allocation of 4% housing credits and SAIL. The Guarantee Program and HUD (through a Risk-Sharing agreement) guaranteed the first mortgage.
- b) On March 16, 2009, the Guarantee Program filed an Application for Initial Claim Payment with HUD and on May 7, 2009, filed for foreclosure in the 6th Circuit Court in Pinellas County, case number 2009-008285-CI-007.
- c) On August 27, 2009, Boot Ranch filed their consent to summary judgment and final summary judgment was granted on September 4, 2009. A foreclosure sale date was set for October 6, 2009. FHFC was the winning bidder at the foreclosure sale and a certificate of title was issued on October 19, 2009 in the name of FHFC III, Inc.
- d) Following established protocol, Boot Ranch was listed for sale via competitive bid process with C.B. Richard Ellis (CBRE). The deadline for submitting bids was April 13, 2010. A total of 31 bids were received. On April 19, 2010, after CBRE vetted the offerors, CBRE submitted the best and final offers from the following offerors:
  - (1) Aspen Square Management
  - (2) BH Equities
  - (3) Blue Rock Partners LLC
  - (4) Carter-Haston Holdings LLC
  - (5) Commerce Park Management
  - (6) Douglas Partners
  - (7) ELCO Landmark Acquisitions LLC
  - (8) Fundamental Advisors
  - (9) Hawthorne Residential Partners
  - (10) Henderson Global Investors
  - (11) JLC Southeast
  - (12) Midland Property Group

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- (13) Milestone Investments, LLC
  - (14) Prospect Property Group
  - (15) Simon Konover Development
  - (16) Southeast Capital
  - (17) Stoneleigh Companies
  - (18) WRH
- e) Staff met April 22, 2010 to select top bidders and formulate a recommendation for approval of the sale.
- f) Pursuant to Board Resolution 2010-003 dated January 22, 2010, the Board delegated authority to the Chair or Vice Chair, with the advice of Florida Housing's financial advisor, to select and approve an offeror for the sale of any property held by FHFC III. With CBRE's and Florida Housing's financial advisor's favorable recommendation, staff received approval to negotiate a purchase and sale agreement for the sale of Boot Ranch to Hawthorne Residential Partners (Hawthorne).
- g) On April 23, 2010, the Board Chair authorized staff to proceed with the purchase and sale agreement for the sale of Boot Ranch to Hawthorne Residential Partners, and staff promptly engaged Hawthorne.
- h) At the FHFC III board meeting held April 30, 2010, the Board ratified the execution of the purchase and sale agreement and directed staff to proceed with the closing on the sale of Boot Ranch.
- i) As of May 11, 2010, despite staff and CBRE's efforts to further the proposed sale, Hawthorne had not executed a purchase and sale agreement nor deposited the proposed \$400,000 upfront earnest money. Subsequent to being selected, Hawthorne experienced delays in funding the earnest money deposit due to internal approval requirements, which were not communicated upfront in their bid. Furthermore, Hawthorne subsequently proposed a joint venture with a 3<sup>rd</sup>-party entity, again a term undisclosed in their original bid. Lastly, according to CBRE, Hawthorne concurrently bid on another property (located in Texas), directing its focus and resources there instead of Boot Ranch.
- j) In light of circumstances, staff recommended that the offer from Hawthorne be set-aside and no longer pursued and requested approval to negotiate a purchase and sale agreement for the sale of Boot Ranch with alternate offerors, as listed in priority below:

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#### Primary

#### WRH

(a) Based upon WRH's \$11.75 million offer, including a total of a \$350,000 upfront earnest money deposit, 25 day deadline for due diligence and projected closing 20 days thereafter, with no extensions, cash on hand to close the transaction without financing, and CBRE's and Florida Housing's financial advisor's favorable recommendations.

(b) Note, certain business components and/or principals of WRH were previously that of William R. Hough & Co, which was purchased by RBC Dain Rauscher and is now known as RBC Capital Markets (RBC). RBC is currently one of 14 firms under contract with FHFC for investment banking services. Helen (Hough) Feinberg, our contact at RBC, has stated that she is not a part of WRH, but has a relative who is and she is aware of the WRH bid. Staff has reviewed the investment banking contracts for potential conflicts-of-interest and determined that WRH is not under contract with FHFC and no conflict exists.

#### Secondary

#### Milestone Investment, LLC

Based upon Milestone Investment's \$12 million offer, including a \$500,000 upfront earnest money deposit, 28 day deadline for due diligence and projected closing 28 days thereafter, with a potential extension up to 15 additional days, cash on hand to close the transaction without financing (although a final approval by their investment committee is required following due diligence period), and CBRE's and Florida Housing's financial advisor's favorable recommendations.

- k) The net claim incurred on Boot Ranch is approximately \$10 million. Adding accrued HUD debenture interest projected through closing and final settlement, as well as legal costs, collateral projection expenses, broker fees and disposition-related costs (together totaling approximately \$1,100,000), the aggregate monetary exposure will be approximately \$11.1 million. In light of the recommended offers, the Guarantee Program's recovery of capital on disposition of the asset should closely approach breakeven.
- l) On May 13, 2010, the Board Chair authorized staff to proceed with the purchase and sale agreement for the sale of Boot Ranch to WRH and, if negotiations with WRH fail, Milestone Investments LLC as secondary.
- m) At the FHFC III board meeting held June 18, 2010, the Board ratified the execution of the purchase and sale agreement with WRH (primary) and Milestone (secondary) and directed staff to proceed with the closing on the sale of Boot Ranch.

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

- a) As of July 2, 2010, the contracted deadline for the due diligence period, WRH elected to terminate the contract, as an extension of the contract had not yet been agreed upon and terminating the contract preserved their earnest monies (\$350,000, which would have been non-refundable otherwise) and provided time to facilitate completion and receipt of the estimated repair costs from their engineer.
- b) On July 14, 2010, WRH offered to reinstate the contract with a \$500,000 price reduction (in light of increased repair costs as estimated by the engineering firm), while making their \$350,000 earnest money deposit non-refundable and maintaining the original July 20, 2010 closing date. Despite the price reduction, the proposed terms should provide nearly a full recovery when compared to the \$10.6M HUD claim (this includes \$600,000 of accrued debenture interest).

#### **3. Recommendation**

Ratify the revised purchase and sale agreement for the sale of Landings at Boot Ranch Apartments to WRH and direct staff to proceed with the closing on the sale.