FHFC III

Action

I. FHFC III

A. Authorize the Executive Director to Appoint Two Members of Florida Housing's staff to the Maha Kashi Property Owners Association for By The River (HOME RFP 2006-02SNP, 2007-002FHSH)

Development Name: By The River ("Development")	**Location: Indian River County**
Developer/Principal: By The River, Inc. ("Borrower")	**Set-Aside: 20% @ 50% AMI, 80%@60% AMI**
Number of Units: 41	**Allocated Amount: HOME $2,959,216; SHADP $1,847,357**
Demographics: Elderly	**Servicer: NA**

1. <u>Background</u>

a) On March 6, 2013, representatives of By The River, Inc. (the "Borrower") notified Florida Housing that By The River (the "Development"), did not have enough operating funds to operate the Development for more than sixty days and asked for assistance from Florida Housing. After reviewing the Development's financial position, assessing the Development's elderly population, and determining that the Borrower would not have adequate funds to operate the Development properly in the future, Florida Housing notified the Borrower that operating proceeds could not be funded for the Development and that surrender of the property was the best solution.

b) The Borrower agreed to consent to foreclosure. The Borrower contracted with Services Taylor Made (a FHFC approved management company) for the management of the Development through foreclosure.

c) On April 11, 2013, Notice of Lis Pendens was filed. On May 21, 2013, Services Taylor Made was appointed by the Court to act as Receiver for the Development. On September 11, 2013, Final Judgment for Foreclosure was entered by the Court and on October 11, 2013, FHFC III, Inc. ("FHFC III") was the highest bidder at the foreclosure auction.

d) As of October 24, 2013, Florida Housing received the Certificate of Title and has taken ownership of the Development. Services Taylor Made continues to perform as the management company. Marcus and Millichap (M&M) was contracted to market the Development for sale to a purchaser who would keep the Development affordable.

Action

2. <u>Present Situation</u>

The Development operates subject to a mandatory Homeowners' Association, the Maha Kashi Property Owners Association ("POA"). As owner of the Development, FHFC III is entitled to representation on the Maha Kashi Property Owners Association Board. The Development can appoint two members to the Board. The Board members will represent the Development in setting the budget for the POA and all other items that may come before the Board. The owner of the Development has a 27% voting membership with the Kashi owners having the majority remaining voting power.

3. <u>Recommendation</u>

Authorize the Executive Director to appoint two members of Florida Housing's staff to represent FHFC III on the Maha Kashi Property Owners Association Board of Directors.

FHFC III

Information

I. FHFC III

A. In Re: By The River

1. Background

a) By The River Apartments ("Development") d/b/a By The River, Inc. ("By The River", "Borrower") is a 41 unit multifamily development in Indian River County, financed with $2,959,216 of funds from the HOME Program and $1,847,357 from the Special Housing Assistance and Development Program ("SHADP"). A Land Use Restriction Agreement ("LURA"), dated September 8, 2008, restricts the occupancy for 50 years to Frail Elders with Area Median Income ("AMI") levels for HOME assisted units: 20% @ 30% AMI (9 units); 80% @ 60% AMI; and SHADP: 25% @ 30% AMI (11 units) and 75% @ 60% AMI.

b) By the River is also financed with a loan from Seacoast National Bank under the Federal Home Loan Bank of Atlanta's Affordable Housing Direct Subsidy Program in the amount of $487,782 ("Third Mortgage"). Indian River County also provided funding to the Development in the form of a Hurricane Housing Recovery grant in the amount of $1,251,840 ("HHR Grant").

c) On March 6, 2013, representatives of the Borrower notified Florida Housing that the Development did not have enough operating funds to operate the Development for more than sixty days and asked for assistance from Florida Housing. After reviewing the Development's financial position, assessing the Development's elderly population, and determining that the Borrower would not have adequate funds to operate the Development properly in the future, Florida Housing notified the Borrower that operating proceeds could not be funded for the Development and that surrender of the property was the best solution.

d) The Borrower agreed to consent to foreclosure. The Borrower contracted with Services Taylor Made (a FHFC approved management company) for the management of the Development through foreclosure.

e) On April 11, 2013, Notice of Lis Pendens was filed. On May 21, 2013, Services Taylor Made was appointed by the Court to act as Receiver for the Development. On September 11, 2013, Final Judgment for Foreclosure was entered by the Court and on October 11, 2013, FHFC III, Inc. was the highest bidder at the foreclosure auction.

f) As of October 24, 2013, Florida Housing received the Certificate of Title and has taken ownership of the Development. Marcus and Millichap were contracted to market the Development for sale to a purchaser who would keep the Development affordable. Services Taylor Made continues to perform as the management company.

g) When the affordability requirements are not met for the full HOME affordability period, Section 219(b) of the HOME statute (42 U.S.C. 12749) and 24 CFR 92.503(b)(1) require participating jurisdictions (in this case, Florida Housing is the participating jurisdiction or PJ) to repay the HOME funds lent to the rental housing development to the HOME Investment Trust Fund. The PJ is responsible for repaying the funds, whether or not it is able to recover any portion of the HOME funds from the owner. Although 24 CFR 92.252(e) provides that the affordability restrictions may terminate upon foreclosure, the long-term affordability required by the federal HOME program do not terminate. The federal affordability requirements can be met if a new owner agrees to enter into a written agreement subjecting the development to the HOME affordability requirements for the remainder of the affordability period.

h) M&M valued the development at $500,000. The highest bid received was from Elderly Housing Management Corporation (EHMC). Their bid was for $525,000. This bid included $150,000 down payment and Florida Housing to finance the remaining $375,000 at a 0% interest rate for 30 years with annual payments of $12,500. EHMC had agreed to keep the HOME affordability restrictions on the Development for 30 years as well. Staff proposed that the EHMC $525,000 offer be accepted allowing Florida Housing to recover a portion of the HOME loan amount and allowing the Development to remain affordable for its elderly residents.

i) Pursuant to Board Resolution 2010-003 dated January 22, 2010, the Board authorizes Stephen P. Auger, Executive Director of Florida Housing, and in the Executive Director's absence, to Barbara E. Goltz, Chief Financial Officer, with the advice of Florida Housing's financial advisor, upon approval by the Chair, or in the absence of the Chair, the Vice Chair to (i) engage in activities to sell the Development (the "Sale"), (ii) to negotiate, finalize, execute, deliver and perform on behalf of FHFC III any and all agreements, documents, certificates and instruments required in connection with the Sale of the Development, and (iii) bind FHFC III thereby, as may become necessary between Board meetings to maintain or recover the maximum value from such properties.

j) On July 14, 2014, the Board Chair authorized staff to proceed with the sale of By The River.

k) The sale was expected to close before the end of August.

l) The Board ratified the sale of By The River to EHMC at the August 8, 2014 meeting.

2. <u>Present Situation</u>

The Buyer exercised its option to pull out of the purchase because of issues it had with the Property Owner’s Association (POA) Agreement which does not limit the amount of dues that can be charged in any single year. The buyer believed this could cause a negative cash flow without the Buyer’s ability to control it. The owner of the Development has a 27% voting membership with the Kashi owners having the majority remaining voting power. FHFC and its attorneys are currently discussing this situation with the Kashi owners to determine if there is a solution that will allow the Development to be sold. At this time FHFC III is the owner and Services Taylor Made continues to perform as the management company. The Development is 100% occupied.