FHFC III

Information

I. FHFC III

A. 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) 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.

c) 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.

d) 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.

e) As of October 24, 2013, Florida Housing received the Certificate of Title and took ownership of the Development. Services Taylor Made continued to perform as the management company.

f) 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) requires 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. Minimum set-asides are 4 units at 50% AMI and 15 units at 60% AMI.

g) Marcus and Millichap (M&M) was contracted to market the Development for sale to a purchaser who would keep the Development affordable. The Board approved the sale of the development to Elderly Housing Management Corporation ("EHMC") at the August 8, 2014 Board meeting. After further due diligence, EHMC withdrew its bid because of a requirement to pay dues to the Kashi Property Owner's Association ("POA"). The development has a one-third voting membership in the POA but effectively are minority partners since Kashi members have the other two-thirds voting membership. The POA can change the budget and dues and the development cannot control the expenses and thus the cashflow.

h) Florida Housing then put the development back out for bid and CB Richard Ellis (CBRE) was contracted to market the Development for sale to a purchaser who would keep the Development affordable. CBRE valued the development at a range of $550,000 to $650,000. Bids submitted ranged from $275,000 to $765,000. The highest bidder, Great American Media, LLC, (GAM) indicated during the bidding process that they would agree to maintaining the affordability restrictions if the Development could be released from the POA. Since FHFC has no control or authority to grant such a release, GAM's offer was given no further consideration. After careful vetting of the other bids, FHFC staff successfully negotiated with CHO Re Holdings, LLC (CHO), whose original bid was for $500,000. Final negotiations with CHO resulted in a purchase price of $700,000. This includes a $200,000 down payment and Florida Housing to finance the remaining $500,000 at a 0% interest rate and monthly payments of approximately $3,374.87 plus fees for the remainder of the HOME affordability period, which ends March 21, 2030. CHO agreed to keep the HOME affordability restrictions on the Development until March 21, 2030. Staff recommended the Board approve the sale to CHO for the $700,000 negotiated offer allowing Florida Housing to recover a portion of the HOME loan amount and allowing the Development to remain affordable. Because the development will stay affordable, FHFC will not have to reimburse the HOME funds. The Board affirmed the sale at the December 9, 2016 Board meeting.

2. **<u>Present Situation</u>**

a) The sale of By the River to CHO BTR, LLC was completed on December 19, 2017.