

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ELMWOOD TERRACE LIMITED PARTNERSHIP,

Petitioner,

CASE NO.: 2010-020GA

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

**PETITION FOR ADMINISTRATIVE HEARING**

Elmwood Terrace Limited Partnership ("Elmwood" or the "Petitioner") hereby files this Petition for Administrative Hearing challenging Respondent Florida Housing Finance Corporation's proposed agency action that would rescind tax credit funding previously awarded to Elmwood which was intended to finance the construction of Elmwood's proposed affordable housing project. The proposed agency action would also deny Elmwood funding from the federal economic stimulus programs that were initiated in 2009 to assist developers of affordable housing who have been impacted by the nationwide economic decline. In support of this Petition, Elmwood states as follows:

1. This challenge to proposed agency action is filed pursuant to Sections 120.569 and 120.57(1) Florida Statutes, ("Fla. Stat."),<sup>1</sup> and Rule 28-110.004, Florida Administrative Code ("Fla. Admin. Code."). The Division of Administrative Hearings ("DOAH") has jurisdiction over the subject matter and parties to this proceeding. See, Sections 120.569 and 120.57(1), Fla. Stat.

<sup>1</sup> All citations contained herein are to the official version of the 2009 Florida Statutes unless otherwise noted.

### Parties

2. Elmwood is a Florida Limited Partnership whose business address is 2206 Jo-Ann Drive, Sarasota, Florida 34231. For purposes of this proceeding, the Petitioner's address and telephone number should be considered that of its undersigned counsel.

3. Petitioner is engaged in the development of affordable housing in this state. Petitioner is a "Developer" as defined in Rule 67-48.002(29), Fla. Admin. Code. Petitioner possesses the requisite skill, experience and credit-worthiness to successfully produce affordable housing. Through its General Partner and affiliated entities, Petitioner regularly submits applications for public financing of affordable housing developments. Petitioner's General Partner and its affiliated entities have successfully completed the construction of eleven affordable housing developments and in excess of 1,100 units of affordable housing in Florida with financing from programs administered by Florida Housing Finance Corporation.

4. The affected agency in this proceeding is the Florida Housing Finance Corporation ("Florida Housing" or "Respondent"). Florida Housing's address is 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

5. Florida Housing is a public corporation created by Section 420.504, Fla. Stat., to administer the governmental function of financing or refinancing affordable housing and related facilities in Florida. Florida Housing's statutory authority and mandates appear in Part V of Chapter 420, Fla. Stat. See, Sections 420.501-420.55, Fla. Stat. Florida Housing is governed by a Board of Directors consisting of nine individuals, appointed by the Governor and confirmed by the Florida Senate. See, Section 420.504(3), Fla. Stat.

6. On March 8, 2010, Elmwood received a Notice from Florida Housing stating that, as a result of action taken by Florida Housing's Board at a meeting on February 26, 2010, the

federal housing Tax Credit Award and Exchange funding previously awarded to Elmwood was rescinded and Elmwood would, consequently, be ineligible for an award of funding from federal economic stimulus programs that were adopted in 2009 in response to the nationwide decline in economic conditions. A copy of the Notice from Florida Housing to Elmwood is attached hereto as Exhibit A. The Notice indicated that the decision was based upon a negative recommendation in a market study letter which was attached to the Notice. As set forth in the Notice, Elmwood was advised that it had 21 days from receipt of the Notice to request an administrative hearing on the matter. This Pctition is timely filed in accordance with the provisions of the Notice and the requirements of Sections 120.569 and 120.57(1), Fla. Stat., and Rule 28-110.004, Fla. Admin. Code. As set forth below, Elmwood's substantial interests will be affected if the Board's preliminary decisions to rescind the tax credit allocation to Elmwood and to deny Elmwood the ability to participate in the federal economic stimulus programs are not overturned. The Board's preliminary decisions are based upon a flawed and incomplete analysis and are inconsistent with the statutory goals and directives for the funding sources being allocated. In addition, Florida Housing has failed to follow the applicable procedural framework and guidelines in reaching its preliminary decision and that failure has had a material impact upon the proposed action. The Board's proposed decisions are based upon the improper use or application of an unadopted rule contrary to the requirements of Section 120.57(1)(e), Fla. Stat., and/or the incorrect or improper application of an invalid rule. Because Elmwood is substantially affected by Florida Housing's proposed action, Elmwood has standing to initiate and participate in this proceeding.

## Background

### Florida Housing's Programs

7. Florida Housing administers several programs aimed at assisting developers to build affordable housing in an attempt to protect financially marginalized citizens in the state from excessive housing costs. The programs through which Florida Housing allocates resources to fund affordable housing in this state include: a federally funded multi-family mortgage revenue bond program (the "Multi-Family Bond Program")<sup>2</sup> established under Section 420.509, *et. seq.*, Fla. Stat.; the State Apartment Incentive Loan Program (the "SAIL Program") created pursuant to Section 420.5087, *et. seq.*, Fla. Stat.<sup>3</sup>; and the federal low income housing tax credit program (the "Tax Credit Program") established in Florida under the authority of Section 420.5093, Fla. Stat. These funding sources are allocated by Florida Housing to finance the construction or substantial rehabilitation of affordable housing.

8. A portion of the affordable housing units constructed based upon funding from programs administered by Florida Housing must be set aside for residents earning no more than a specified percentage of area median income ("AMI").<sup>4</sup> Historically, a large percentage of the units constructed with funding allocated by Florida Housing have been targeted to tenants earning 60% of AMI. Special incentives or specific designations have typically been needed to achieve the set-aside of units at below 60% AMI.

9. For purposes of this Petition, the primary program of interest is the Tax Credit Program which is described briefly below.

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<sup>2</sup> Each year, Florida Housing receives a portion of the state's tax exempt bond allocation, some of which it issues to finance the construction of affordable multi-family rental housing. The tax exempt bond proceeds are loaned to developers to finance the construction of a development. The cash flow generated from rental income pays back those bonds over time.

<sup>3</sup> SAIL Funds are primarily available through a portion of documentary stamp tax revenues collected on real estate transactions in Florida. For state fiscal year 2009-2010, the Legislature did not appropriate any money for SAIL due to the state's current budget crisis.

<sup>4</sup> AMI levels are determined by the federal Housing and Urban Development agency ("HUD").

## Tax Credits

10. The Tax Credit program was created in 1986 by the federal government. Florida Housing is the designated agency in Florida to allocate Tax Credits to developers of affordable housing. Every year since 1986, Florida has received an allocation of 9% Tax Credits to be used to fund the construction of affordable housing.<sup>5</sup>

11. Tax Credits are a dollar for dollar offset to federal income tax liability. Developers awarded Tax Credits get the credit amount every year for ten years. The developer will often sell the future stream of tax credits to a syndicator, who, in turn, sells them to investors seeking to shelter income from federal income taxes. The federal government annually allocates to each state a specific amount of Tax Credits using a population-based formula. As required by the federal government, the state each year adopts a Qualified Allocation Plan ("QAP"), which is incorporated by reference into Florida Housing's rules. The QAP sets forth the selection criteria and the preferences for developments that will be awarded Tax Credits each year. See, Rule 67-48.002(88), Fla. Admin. Code.

12. Unlike the proceeds from issuance of bonds where there is debt that has to be paid back over time, a developer who is awarded Tax Credits and syndicates those Credits receives cash equity with no debt associated with it. Thus, Tax Credits provide an attractive subsidy and, consequently, are a highly sought after funding source.

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<sup>5</sup> Low income housing tax credits come in two varieties: competitively awarded "9%" tax credits, and non-competitively awarded "4%" tax credits. The 9% and 4% designations relate to the approximate percentage of a development's eligible cost basis that is awarded in annual tax credits. The 4% tax credits are "non-competitive" tax credits that get paired with tax exempt mortgage revenue bonds. As long as more than half of the total development cost of an affordable rental development is financed through the issuance of tax exempt bonds, a developer is eligible for an award of 4% tax credits. In other words, there is no direct competitive process involved in the allocation of the 4% tax credits. By contrast, 9% tax credits are awarded through a competitive process which, in Florida, is the Universal Cycle discussed below.

### The Universal Cycle

13. Florida Housing has historically allocated funding from the Multi-Family Bond, SAIL and Tax Credit Programs through a single annual application process. Since 2002, Florida Housing has administered the three programs through a combined competitive process known as the “Universal Cycle.” The Universal Cycle operates like an annual competitive bidding process in which applicants compete against other applicants to be selected for funding.

14. Florida Housing has adopted rules which incorporate by reference the application forms and instructions for the Universal Cycle as well as general policies governing the allocation of funds from the various programs its administers. Typically, Florida Housing amends its Universal Cycle rules, forms and instructions every year.

15. The Universal Cycle and the attendant complex application review process are intended to equitably and reasonably distribute affordable housing throughout the state.<sup>6</sup>

16. The process used by Florida Housing to review and approve the Universal Cycle applications is delineated in Rule 67-48.004, Fla. Admin. Code, and is summarized as follows:

- Developers submit applications by a specified date.
- Florida Housing staff reviews all applications to determine if certain threshold requirements are met. A score is assigned to each application. Applications receive points towards a numerical score based on such features as programs for

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<sup>6</sup> The Universal Cycle provides a mechanism for selecting applications to meet certain targeting goals that address housing needs of particular demographic groups. “Set-Asides” are an important component of the process. Every three years a study is performed for each county within the state to determine affordable housing needs in certain demographic categories which are then incorporated into set-asides for each Universal Cycle. Each set-aside group essentially has its own separate funding category which is assigned a share of the funds distributed by Florida Housing that year. In addition, there are commonly set-asides each year aimed at addressing the identified needs for the preservation of existing affordable housing complexes and set-asides for rural development as well. Funds are also allocated in the Universal Cycle by way of geographic targeting. The adopted rules and application instructions designate the counties into three groups based on population. Within the county size groups, Florida Housing uses a formula called SAUL (an acronym for Set-Aside Unit Limitation), which is set forth in the application instructions and incorporated by reference into the rules for each Cycle, to attempt to evenly distribute units throughout the state.

tenants, amenities of the development as a whole and of the tenants' units, local government contributions to the specific development, and local government ordinances and planning efforts that support affordable housing in general.

- After the initial review and scoring, a list of all applications, along with their scores, is published on Florida Housing's website. The applicants are then given a specific period of time to alert Florida Housing staff of any perceived errors made in the initial review of the applications. An appeal procedure for challenging the scores assigned by Florida Housing is set forth in Rule 67-48.005, Fla. Admin Code.

17. Following the completion of the appeal proceedings, Florida Housing publishes final rankings which delineate the applications that are within the "funding range" for the various programs. The final rankings determine which applications are preliminarily selected for funding. The applicants ranked in the funding range are then invited into the "credit underwriting" process. Credit Underwriting review of a development selected for funding is governed by Rule 67-48.0072, Fla. Admin. Code. In the Credit Underwriting process, third party financial consultants (selected by Respondent, but paid for by the individual applicants) determine whether the project proposed in the application is financially sound. The Credit Underwriter is charged with preparing a report that analyzes various aspects of the proposed development, including the financing sources, plans and specifications, cost analysis, zoning verification, site control, environmental reports, construction contracts, and engineering and architectural contracts.

18. Subsection (10) of Rule 67-48.0072 requires as part of the Credit Underwriting process an appraisal (as defined by the Uniform Standards of Professional Appraisal Practice),

and a market study paid for by the Applicant. After considering the market study and the Development's financial impact on other developments in the area previously funded by Florida Housing, the Credit Underwriter prepares a recommendation as to whether to approve or disapprove a funding allocation.

19. As part of each Universal Cycle process, Florida designates certain geographic areas of the state which are potentially saturated with affordable housing units as "Location A" areas. Florida Housing first began incorporating into its application process a mechanism for identifying weak markets, known as "Location A" areas, approximately 6 years ago. The Location A areas are designated in advance of the Universal Cycle so that developers are alerted as to those areas where Florida Housing has concluded that the market is potentially too weak to support another affordable housing project. The Location A designations for the Universal Cycle are included in the application instructions which are incorporated by reference into the rules of Florida Housing before the Application Deadline for every year's Universal Cycle.

#### Elmwood's Application in the 2007 Universal Cycle

20. Elmwood timely filed an application in the 2007 Universal Cycle seeking an award of Tax Credits and a supplemental loan to construct a 116-unit family apartment complex ("Elmwood Terrace") in Ft. Myers, Lee County, Florida.

21. Elmwood complied with all of the requirements of the application form and instructions, and achieved a perfect score for its application. Elmwood also achieved maximum tie-breaker points. As a result, Elmwood was allocated \$1,498,680 in Tax Credits from the 2007 Universal Cycle. In addition, because Elmwood committed to set-aside more than the required number of units for low-income households, it was also awarded a supplemental loan.



22. After receiving its award of Tax Credits, Elmwood was required to pay a reservation fee of over \$100,000 to Florida Housing by December 31, 2007. Based on the final ranking of its application, Elmwood was invited into Florida Housing's Credit Underwriting process. Elmwood was required to expend considerable time and effort in seeking credit underwriting approval for its proposed development. Among the numerous fees and costs Elmwood incurred as part of the process were credit underwriting fees (for the original and supplemental loan), credit reporting fees, an appraisal fee, and a plan and cost analysis fee. Elmwood also incurred considerable costs for architectural, engineering, environmental and legal services. In total, Elmwood has invested over \$2.0 million into the Elmwood Terrace project. Much of this expenditure was required by Florida Housing in order for Elmwood to preserve its allocation of Tax Credits.

23. In a report dated September 11, 2008, Florida Housing's designated Credit Underwriter, Seltzer Management Group, Inc. ("Seltzer"), set forth its analysis of the Elmwood project as required under Florida Housing's Credit Underwriting Rule and issued a favorable recommendation for funding the proposed Elmwood development. The September 2008 Credit Underwriting Report (the "First Credit Underwriting Report") is attached hereto as Exhibit B. Seltzer's First Credit Underwriting Report for Elmwood Terrace was approved by the Florida Housing Board on September 22, 2008.

#### Economic Downturn and ARRA

24. By the fall of 2008, significant changes were taking place in the economic environment and the housing market in particular. Many of the projects that had been awarded funding through the Florida Housing Universal Cycle process were encountering difficulties and in many instances were unable to close. By the later part of 2008, it became evident that the

market for Tax Credits had precipitously dropped as a result of the changed economic environment.

25. Shortly before Elmwood was scheduled to close on its Tax Credits in the latter part of 2008, the syndicator who had originally expressed its intent to purchase the Tax Credits awarded to Elmwood suddenly announced that it would not go forward with the syndication. This withdrawal was a direct result of the nationwide downturn in economic conditions.

26. Many other projects that were awarded Tax Credits during the 2007 and 2008 Universal Cycles similarly experienced difficulty in finding syndicators to purchase the awarded Tax Credits and, thus, were unable to proceed to closing.

27. In early 2009, in recognition of the collapse of the housing market and the difficulty in marketing Tax Credits, the federal government, as part of its economic stimulus efforts, established mechanisms to assist in the development of affordable housing and offset some of the economic devastation to developers. The American Recovery and Reinvestment Act of 2009 ("ARRA") enacted by the U.S. Congress included specific provisions intended to address the collapse of the Tax Credit market. ARRA gives states the ability to return to the federal government previously awarded Tax Credits that had not been utilized. These Tax Credits are exchanged for a cash distribution of 85 cents for each tax credit dollar returned. ARRA provides federal stimulus money (the "Exchange Funds") to the states for the returned Tax Credits. As set forth in the federal legislation, the Exchange Funds are supposed to be used by the state allocating authority (Florida Housing) to fund developers who were unable to syndicate their Tax Credits due to the economic downturn. In other words, the Tax Credits that had not been utilized as a result of the declining economic conditions were allowed to be

converted into cash from the federal government to be allocated to developers who were ready to proceed with their affordable housing projects but for the inability to syndicate their Tax Credits.

28. The ARRA also included a direct allocation of funds to state housing finance agencies under the Tax Credit Assistance Program (“TCAP”). These TCAP funds were allocated to the states to “resume funding of affordable rental housing projects across the nation while stimulating job creation in the hard-hat construction industry.” TCAP is a separate program included as part of ARRA to provide gap financing for affordable housing projects that were negatively impacted by the economic downturn.

#### The RFP

29. On July 31, 2009, Florida Housing issued RFP 2009-04 (the “RFP”) setting forth criteria and qualifications for developers with an “active award of tax credits” to seek funding for their stalled affordable housing projects from the economic stimulus funds that has been allotted to Florida by the federal government as part of the ARRA. A copy of the RFP is attached as Exhibit C.

30. The RFP solicited proposals from developers with an “Active Award” of Tax Credits who were unable to syndicate their previously awarded tax credits and were seeking alternate funding to construct affordable housing utilizing Exchange Funds from the Tax Credit Exchange Program authorized under Section 1602 of the ARRA.<sup>7</sup> See, Exh. C, Section 2, p. 3-4. The RFP provided a general description of the type of projects that were considered eligible for this alternate funding. See, Exh. C, Section 4, D.

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<sup>7</sup> The RFP was developed by Florida Housing as a method for allocating the Exchange Funds received by Florida Housing as a result of the return of Tax Credits to the federal government. The RFP also set forth a method for applicants to request TCAP Funds.

### RFP Challenge

31. The RFP required applicants to submit proposals to Florida Housing by no later than August 14, 2009. Elmwood timely submitted an application seeking financing for its affordable housing project through the RFP.

32. There were 38 projects that held an “active award of tax credits” as defined in the RFP and were potentially eligible for an allocation of the federal stimulus funds. However, there were certain provisions included in the RFP which would have essentially eliminated Elmwood and one other project with an active award from qualifying for an allocation of Exchange Funds. In other words, Elmwood and one other project were effectively eliminated from consideration by the terms of the RFP even before these applications were submitted. On August 17, 2009, Elmwood timely protested its exclusion from the RFP in accordance with the provisions of Section 120.57(3), Fla. Stat., and Rule 28-10.004, Fla. Admin. Code. Elmwood specifically challenged the provisions in the RFP that essentially eliminated it in advance from receiving an allocation of federal stimulus funds.

33. The RFP includes a provision which essentially eliminated from funding consideration any proposed development that was located in a “Location A” county where there was an existing development that was built using multi-family bonds that were credit enhanced through Florida Housing’s Guarantee Fund. The Location A designations that were used for purposes of, the RFP were not the Location A designations in place at the time the developers submitted their initial applications, but, instead, were new Location A designations adopted for purposes of the 2009 Universal Cycle. The new Location A designation included all of Lee County where the proposed Elmwood Terrace development would be located. At the time that Elmwood submitted its Application for Tax Credits, the proposed site for its development was

not located in a Location A. In its challenge to the RFP provision, Elmwood alleged, among other things, that Florida Housing improperly excluded Elmwood from consideration for funding based on erroneous assumptions and conclusions that were utilized in reaching the Location A designation prior to the issuance of the RFP.

34. Elmwood's challenge to the RFP's provisions was referred to the Division of Administrative Hearings ("DOAH") where it was assigned to Administrative Law Judge Susan B. Harrell, DOAH Case No. 09-4682810. Judge Harrell conducted a hearing on Elmwood's challenge to the RFP provisions on September 23-25, 2009, and issued a Recommended Order on November 12, 2009, concluding that certain portions of the RFP were invalid, including the provisions that would have excluded Elmwood from receiving an award. A copy of Judge Harrell's Recommended Order is attached hereto as Exhibit D. The Recommended Order concluded that the RFP improperly excluded Elmwood from consideration for funding.

35. In a Final Order dated December 4, 2009, the Florida Housing Board adopted the Recommended Order which concluded, among other things, that the new Location A designations should not to be used to exclude Elmwood from funding consideration under the RFP. A copy of the Final Order is attached as Exhibit E.

36. Based upon that Final Order, Elmwood was invited by letter from Florida Housing dated December 4, 2009, to reenter the Credit Underwriting process in accordance with the remaining provisions of the RFP. In order to proceed with the Credit Underwriting process, Elmwood was required to pay an additional \$10,000 to Florida Housing's designated Credit Underwriter, Seltzer. As set forth above, Seltzer was the Credit Underwriter who previously prepared the favorable Credit Underwriting Report for the Elmwood project in September 2008. See, Exh. B.

### Second Credit Underwriting Report

37. After Elmwood paid the additional Credit Underwriting fees, Seltzer hired Meridian Appraisal Group, Inc. ("Meridian") to conduct an analysis of the anticipated demand and existing developments in proximity to the proposed Elmwood project (the "Market Study").

38. On February 8, 2010, Seltzer issued a letter report to Ms. Candice Allbaugh of Florida Housing Finance Corporation, regarding the Elmwood application. A copy of this letter, hereinafter referred to as the "Second Credit Underwriting Report," is attached to the Notice which is Exhibit A to this Petition. This Second Credit Underwriting Report concluded that the primary market area for Elmwood Terrace met the 90% average annual occupancy requirement in the Credit Underwriting Rule. However, the Second Credit Underwriting Report recommends that "federal stimulus funding be denied to Elmwood because of the proposed development's potential financial impacts on developments in the area previously funded by Florida Housing and an anticipated negative impact to the two Guarantee Fund properties located within five miles of the proposed development." The Second Credit Underwriting Report incorporates several comments from the Market Study prepared by Meridian dated January 26, 2010. The Second Credit Underwriting Report notes that the Market Study confirmed "there were two Guarantee Fund properties with a family demographic, Bernwood Trace and Westwood, within five miles or less of the Subject development [Elmwood]." Those two properties, hereinafter the "Guarantee Fund Projects" were noted to have occupancy rates of 92% and 85% at the time of the Market Study.

39. There is an insufficient factual basis for Florida Housing to conclude construction of Elmwood will have a materially adverse impact on the Guarantee Fund Projects.

40. The Second Credit Underwriting Report and Market Study fail to adequately take into account the different set aside obligation that Elmwood would be required to meet and, consequently, the different market it will be serving in the long term as compared to the Guarantee Fund Projects.

41. The Guarantee Fund Projects were funded through Florida Housing's Multi-Family Bond program several years ago.<sup>8</sup> The Guarantee Fund Projects were financed based upon assumptions that the set-aside units for those developments would be leased at the 60% AMI level. With the recent economic downturn, the Guarantee Fund Projects have apparently temporarily reduced their rents due to increased competition from neighboring market rate developments that have reduced their rental rates. By contrast, there has been no noticeable reduction in demand for the 50% AMI units in the County.

42. The Second Credit Underwriting Report notes that Elmwood would be required to set aside 20% of its units at 33% or less of AMI and the remaining 80% of the units would be set aside at 50% or less of AMI for a period of fifty years. By contrast, the Guarantee Fund Projects set aside units are at 60% AMI. Despite the difference in the set aside components, the Second Credit Underwriting Report concludes that construction of Elmwood is "expected to impact development with units at the 60% AMI level lying within ten (10) miles of the subject [Elmwood], including two Guarantee Fund developments." However, there is insufficient data

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<sup>8</sup> In order to enhance the marketability of the bonds issued under the Multi-Family Bond Program, Florida Housing would, in return for a fee, provide credit enhancement for certain of the bonds. In essence, the credit enhancement or guarantee was an additional credit source that backs up the rent revenues that would normally repay the bondholders, through the Florida Affordable Housing Guarantee Program. See, Section 420.5092, Fla. Stat. The Guarantee Program was created in 1992 and was used to increase the ratings of certain bonds and reduce the interest rate the developer was required to pay on the bonds, effectively raising the amount of money that a bond issue could raise. The Guarantee Fund was funded by issuing capitalizing bonds. The Guarantee Fund currently has approximately \$155 million as a result of three outstanding bond issues. The Guarantee Program has issued credit enhancements guaranteeing over 100 projects. The claims-paying ability of the Guarantee Program is backed by receipts from documentary stamp taxes. No new projects have been backed by the Guarantee Program for the last several years.

and analysis to support this conclusion and the procedures used to reach this conclusion did not comport with the requirements in the existing rules. Market data and actual experience confirm that there is essentially an unlimited market demand for 50% AMI units.

43. The Second Credit Underwriting Report does not quantify the projected impact of the construction of Elmwood and does not analyze any options or alternatives that could potentially minimize any such anticipated impact. The Second Credit Underwriting Report also fails to analyze or consider the anticipated duration of any projected impact and whether any impact would continue when economic conditions improve.

44. The developer of the proposed Elmwood project has already constructed and opened a virtually identical project to Elmwood immediately adjacent to the Elmwood site. That adjacent project, "Maple Crest," was opened in February 2009 and quickly achieved full occupancy. An analysis of the lease up data for Maple Crest has been conducted by the Elmwood developer in order to accurately assess the reasonably anticipated market draw and economic viability for Elmwood. Based upon the actual experience of Maple Crest, the construction and opening of Elmwood will have very minimal, if any, short term impact on the existing impact of guarantee projects and will have virtually no long-term impact. The Second Credit Underwriting Report prepared by Seltzer and the Market Study fail to properly evaluate and consider the actual experience at Maple Crest.

45. The Second Credit Underwriting Report's conclusion that construction of Elmwood would impact the Guarantee Fund Projects is based upon unsupported and/or unwarranted speculation that some of the residents at the existing Guarantee Fund projects could qualify for the proposed 50% units at Elmwood and that some unspecified number of these residents will move to Elmwood if it is constructed. However, the basis for this assumption is



unclear. The speculation as to the anticipated behavior of existing residents of the Guarantee Fund Projects is not analyzed in the context of reasonably expected market turnover. Moreover, actual experience at Maple Crest and other available data demonstrates that there is a very large, untapped market for 50% AMI units. The Second Credit Underwriting Report inadequately addressed this data and includes an insufficient assessment as to the market demand for 50% AMI units.

46. In addition, Florida Housing has not followed the applicable procedures and mechanisms specified in the Credit Underwriting Rule in reaching its decision to deny funding to Elmwood. As a consequence, Elmwood has been denied an opportunity to present comments and data in response to the assumptions and conclusions in the Second Credit Underwriting Report.

47. The construction of Elmwood would provide affordable housing to a needy market consistent with the goals set forth in Chapter 420, Fla. Stat. Denying funding to Elmwood based upon speculative impact to the Guarantee Fund Projects effectively ignores the long-term housing needs for the 50% AMI market. Such a result is contrary to the statutory directives to Florida Housing.

48. The Second Credit Underwriting Report concludes:

... based on the information presented in the [Market] Study and its [Seltzer's] own due diligence, and in accordance with the guidelines issued by FHFC, Seltzer recommends that Florida Housing rescind the Applicant's tentative funding award because of the Subject [Elmwood] development's potential financial impact on developments in the area previously funded by Florida Housing and an anticipated negative impact to the two Guarantee Fund properties located within five miles of the proposed development, Elmwood Terrace.

The "guidelines issued by FHFC" referenced in the Second Credit Underwriting Report are not identified and Elmwood disputes and challenges the application of undisclosed criteria in

reaching the funding decision on its Application. From the information available, it appears the preliminary decision to rescind funding to Elmwood is based on the application of an unadopted rule contrary to the requirements of Sections 120.54(1)(a), 120.56(4)(e) and 120.57(1)(e), Fla. Stat.

49. As set forth above, the Florida Housing Board previously approved the First Credit Underwriting Report for the Elmwood Terrace project in September 2008 confirming that the proposed development was economically viable and consistent with the Credit Underwriting Rule.

50. Subsequent to the award of Tax Credits to Elmwood in 2007 and the approval of Elmwood's First Credit Underwriting Report in 2008, Florida Housing amended the credit underwriting rule for the 2009 Universal Cycle to require the Credit Underwriter to "review and determine whether there will be a negative impact to Guarantee Fund Developments within the primary market area or five miles of the proposed Development, whichever is greater." See, Rule 67-48.0072(10), Fla. Admin. Code. The amendment to this rule to include assessment of impact on Guarantee Fund Developments should not be retroactively applied to Elmwood because this provision was not in effect at the time Elmwood originally achieved its funding and, consequently, Elmwood was not able to tailor its behavior or factor this consideration into its business plan.

51. While the new underwriting criteria regarding impact may be appropriate for new applicants seeking funding in the 2009 Universal Cycle, utilizing it in the evaluation of projects that have already received an allocation of Tax Credits is contrary to competition because it effectively favors certain applicants who were unable to proceed with their projects due to the downturn in economic conditions over others who were similarly effected. Unlike applicants in

the 2009 Universal Cycle who had ample opportunity to structure their proposed projects and applications with full knowledge of Florida Housing's concerns as to potential impact to Guarantee Fund developments, applicants for the Exchange Funds and TCAP Funds under the RFP have already made significant investments based upon the Location A designations and Application Instructions in place at the time they received their original funding awards.

52. Elmwood applied in the RFP process in order to compete for an award of Exchange Funds with other developers who were awarded Tax Credits in the 2007 and 2008 Universal Cycles but were not able to close on their deals. With an allocation of Exchange and TCAP funds pursuant to the RFP, Elmwood's project would be as financially viable as many of the other projects funded under the RFP and construction of Elmwood would address an affordable housing need that is comparable to other funded projects.

53. The new credit underwriting criteria regarding impact does not compel rejection of Elmwood. Furthermore, this new provision is vague and cannot be used to deny funding to Elmwood because it fails to provide adequate standards or criteria for assessing impact and fails to provide appropriate advance notice to developers such as Elmwood as to the consequences of any impact that may occur.

54. Application of the new Credit Underwriting impact criteria as a basis to deny funding to Elmwood under the RFP imposes a disproportionate standard upon Elmwood which artificially impacts upon its ability to compete against similarly situated applicants for funding. By limiting Elmwood's ability to compete for an allocation, the new impact criteria are contrary to competition and contrary to the goals of a competitive bidding process.

55. Based upon information and belief, Elmwood asserts that the new underwriting criteria for determining eligibility for funding under the RFP are based on inadequate or faulty assumptions or speculations.

56. Prior to Elmwood's RFP challenge, the evaluation process for the RFP responses was set forth in Section 7 of the RFP. This provision stated that the Florida Housing Review Committee would:

. . . select Applicants most likely to be considered for award, make any adjustments deemed necessary to best serve the interest of Florida Housing's mission, and develop a recommendation or series of recommendations to the Board. The Committee will then rank the Applications deemed eligible for funding with preference given to Applications that are Shovel-Ready. The Board may use the Proposals, the Committee's scoring, and any other information or recommendation provided by the Committee or staff, and any other information the Board deems relevant in the selection of Applicants to whom to award funding.

57. The ALJ in the RFP Challenge invalidated this provision on the grounds that it was vague and vested unbridled discretion with the Florida Housing Board in making funding determinations. Similarly, the new credit underwriting impact criteria is unacceptably vague because it does not include any standards or basis for assessing impact, does not factor in the reasons for the vulnerability of the Guarantee Funds developments fails to consider the materiality of any purported impact and/or fails to consider the potential options for minimizing that impact. The undefined impact criteria fail to provide adequate guidelines and standards for the Credit Underwriter to conduct its evaluation and vests unbridled discretion with the Board to make funding allocations under the RFP. The proposed application of this provision to deny funding to Elmwood is arbitrary and capricious, contrary to competition and is based on inadequate guidelines for ensuring that the public funds being allocated are spent in the best interest of the state.

58. The Second Credit Underwriting Report and Market Study fail to consider the unique financing assumptions and resulting economic circumstances involved with the Guarantee Fund developments. For many years, Florida Housing prioritized the construction of the maximum number of affordable housing units possible under the programs it administered, in particular the Multi-Family Bond Program. As a consequence, a large percentage of the existing developments, including the Guarantee Fund Projects, were financed based upon assumptions of the set-aside units only at the 60% AMI level. While this approach increased the number of units that could be constructed, it did little to address the housing needs for the 50% AMI and below market.

59. With the decline in economic conditions, the units financed based upon 60% AMI projections have been faced with unanticipated competition from market rate developments. While Florida Housing is justifiably concerned about its potential exposure under the Guarantee Fund, denying needed housing to the 50% AMI market is shortsighted and contrary to the statutory directives to Florida Housing. Denying funding to projects such as Elmwood that will include long-term set-asides at 50% AMI and below will not solve the inherent financial issues confronting developments such as the Guarantee Fund Projects that were financed based upon assumptions that may not be achievable or realistic at a time of declining economic conditions.

60. Seltzer and Florida Housing have failed to sufficiently analyze or consider the underlying cause for the purported vulnerability of the Guarantee Fund Projects and improperly and inaccurately assumed that denial of funding to Elmwood will rectify the fundamental problems facing developments such as the Guarantee Fund Projects that were financed in reliance upon targeting the 60% AMI market. The draconian approach to protecting the

Guarantee Projects fails to adequately balance or consider the long-term unsatisfied need for affordable housing in Lee County at the 50% AMI level.

61. There are other less onerous approaches that would address or alleviate any reasonable concerns about the potential impact of the Elmwood project on the Guarantee Fund Projects. Florida Housing and Seltzer have failed to fully evaluate or consider such options. In addition, Florida Housing failed to timely and reasonably act upon or respond to Elmwood's offers to modify its proposed project to address any reasonable concerns about potential pact to the Guarantee Fund Projects.

62. The Second Credit Underwriting Report and Market Study are an insufficient and unsupported basis to deny Elmwood an allocation of Exchange Funds, particularly in view of the significant expenditures that have already been incurred to meet the requirements imposed by Florida Housing to secure the initial Tax Credit allocation. The data and assumptions upon which the proposed agency action is based were not presented to Elmwood nor has Elmwood been allowed an opportunity to respond or rebut the assumptions as required under the applicable rule.

63. Elmwood and one other applicant with an active award of Tax Credits as defined in the RFP are the only two projects that have been denied funding for their projects from the federal stimulus funds. Based upon information and belief, Florida Housing has not fully distributed all of the federal stimulus funds allotted to Florida under the ARRA. Rather than distribute the funds to projects such as Elmwood who were directly impacted by the declining economic conditions, Florida Housing is apparently seeking to utilize the federal stimulus funds that would have otherwise gone to Elmwood for other purposes, including, but are not limited to, the potential funding of proposed developments that did not have an active award of Tax Credits

at the time of the adoption of the ARRA or at the time of issuance of the RFP. In other words, rather than award the Exchange Funds to Elmwood, Florida Housing is apparently attempting to use the Tax Credits previously awarded to Elmwood for purposes of funding developers who were not impacted by the nationwide financial crisis to the same extent as Elmwood through a new request for proposal process. The use of the federal stimulus funds to finance projects that did not have an active award of tax credits at the time of the collapse of the Tax Credit equity market is contrary to the goals of the ARRA which was intended, at least in part to assist developers with projects that were “shovel ready” but were not able to close on their projects due to the collapse in the real estate and Tax Credit markets.

64. Elmwood’s proposed project is at least as financially viable and will provide affordable housing in a market that is at least as needy as other projects that have been funded through the RFP. Moreover, unlike subsequent applicants who are currently seeking funding from Florida Housing under a new request for proposals, Elmwood has already expended considerable funds and effort towards advancing its project, and, consequently, Elmwood is more “shovel ready” than applicants who did not hold an “active award” of Tax Credits at the time of the initial RFP.

#### **Disputed Issues of Material Fact and Law**

65. Disputed issues of material fact and law exist and entitle Elmwood to a formal administrative hearing pursuant to Section 120.57(1), Florida Statutes. The disputed issues of material fact and law include, but are not limited to, the following:

- a. Whether the Market Study and Second Credit Underwriting Report which recommend denial of an award of Exchange Funds to Elmwood are based on erroneous or incomplete assumptions and analysis;

b. Whether the Second Credit Underwriting Report was prepared in accordance with the applicable rules;

c. Whether Florida Housing has followed the applicable procedures in developing and considering the Second Credit Underwriting Report and Market Study;

d. Whether the preliminary decision to eliminate Elmwood from consideration for an allocation of Exchange Funds and TCAP Funds is consistent with the purpose and intent of ARRA and/or Florida Housing's statutory mandates;

e. Whether it is contrary to competition or otherwise inappropriate to impose the new underwriting criteria regarding impact on Guarantee Fund Developments to projects such as Elmwood that had previously received an award or tax credits and/or a favorable credit underwriting report;

f. Whether the new credit underwriting criteria regarding impact should be applied in evaluating the Elmwood application and/or whether applying the new provision to Elmwood is arbitrary or capricious and/or contrary to competition;

g. Whether the new credit underwriting criteria regarding impact to Guarantee Fund Developments is vague and/or vests unbridled discretion to the Florida Housing Board and/or whether the procedures and basis for assessing it are sufficiently prescribed and consistent with the applicable statutes and administrative rules;

h. Whether the new underwriting criteria regarding impact to Guarantee Fund Developments contains appropriate and sufficient criteria for comparison or evaluation of proposals;



i. Whether the new underwriting criteria regarding impact to Guarantee Fund Developments adequately describes the basis for refusing to make an award of Exchange Funds and/or TCAP Funds;

j. Whether the new underwriting criteria regarding impact to Guarantee Fund Developments inappropriately favors certain developers or projects and/or artificially limits the pool of projects eligible for funding and/or whether such a result is consistent with the ARRA and the RFP;

k. Whether the newly imposed underwriting standards are consistent with fair and open competition for the allocation of Exchange Funds and TCAP Funds;

l. Whether the Second Credit Underwriting Report and Market Study adequately considered all the available data regarding the market and/or whether there is sufficient basis to conclude that construction of Elmwood will have an impact on the Guarantee Fund Projects of such magnitude as to justify rescinding the Tax Credit previously awarded Elmwood and deny the Exchange Funds and TCAP Funding to Elmwood;

m. Whether Florida Housing has sufficient, reliable and complete information to evaluate the impact of the Elmwood project on the Guarantee Fund Projects and/or whether the proposed decision to exclude Elmwood from eligibility for an award of Exchange Funds and/or TCAP Funds is based on unquantified speculation as to short-term impact;

n. Whether the proposed denial of funding to Elmwood is contrary to competition and/or contrary to Florida Housing's governing statutes or rules;

o. Whether Florida Housing is precluded from excluding the Elmwood project from consideration for Exchange Funds and/or TCAP Funds because Florida Housing has failed to consider less onerous approaches to protect against potential impact to the Guarantee Fund Projects including, but not limited to, modifications suggested by Elmwood;

p. Elmwood also disputes any and all material facts relied upon by Florida Housing to deem Elmwood ineligible for an award of Exchange Funds and TCAP Funds. In addition, Elmwood disputes the legal basis as well as any and all material facts relied upon for asserting that the Tax Credits for the Elmwood Terrace project are deemed rescinded;

q. Such other issues as may be revealed during discovery and the deposition process.

#### **Statutes and Rules Entitling Relief**

66. The statutes which are applicable in this case and that require modification of the RFP specifications include, but are not limited to, Sections 120.569 and 120.57(1), 120.57(3) and 420.5093, Florida Statutes, and Rules 67-48.0072, 67-48.004 and 67-48.005, Fla. Admin Code.

#### **Concise Statement of Ultimate Fact and Law, Including the Specific Facts Warranting Reversal of Agency's Intended Action**

67. The Second Credit Underwriting Report and Market Study fail to provide a complete and accurate assessment of market need and impact and do not sufficiently analyze all the relevant information and/or are based on erroneous or unsupported assumptions and speculation.

68. The Second Credit Underwriting Report and Market Study fail to consider relevant information and fail to provide an adequate justification for denial of funding to

Elmwood's project. The assumption that construction of Elmwood will have an unacceptable, unquantified impact on existing Guarantee Projects is contrary to the greater weight of the evidence and does not adequately balance all of the relevant information available. The conclusion in the Second Credit Underwriting Report is speculative and based on an incomplete and/or erroneous evaluation of the actual market conditions in the area. Among other things, the conclusion fails to quantify any benefit or protection that will be accorded to the Guarantee Projects by denying funding to Elmwood.

69. The new underwriting criteria regarding impact to Guarantee Fund Projects does not require or justify denial of federal stimulus funding to Elmwood. The criteria should not be applied to deny funding to Elmwood which was awarded Tax Credits before the impact consideration was inserted into the Credit Underwriting Rule. The Florida Housing Board's preliminary determination to rescind the Tax Credits awarded to Elmwood and to deny Elmwood funding under the RFP should be overturned because it is contrary to competition, inconsistent with prior interpretations of the governing statutes, the existing rules, and previously enunciated policies. See, Section 120.57(3)(f), Fla. Stat. (2008).

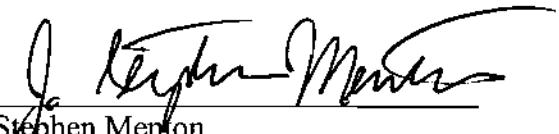
70. With an allocation of Exchange Funds pursuant to the RFP, Elmwood's project would meet the goals and intent of the ARRA. The Elmwood project is financially viable and would provide needed affordable housing consistent with the goals of Chapter 420, Fla. Stat. Elmwood is at least as deserving of funding as many of the other projects who have been funded with the federal stimulus funds. There is no legal authority that authorizes Florida Housing to allocate or disburse Exchange and/or TCAP Fund funds to developers who have not made the same commitment or investment as Elmwood and are not as "shovel ready."

71. The Board's preliminary decision to exclude a viable, beneficial project such as Elmwood is not in the best interests of the State, and violates the governing statutes and administrative rules.

WHEREFORE, pursuant to Sections 120.569 and 120.57(1), F.S., and Rule 28-110.004, Fla. Admin. Code, Elmwood requests the following relief:

- a) That this matter be referred to the Division of Administrative Hearings for a *de novo* hearing to be conducted before an Administrative Law Judge pursuant to Sections 120.569 and 120.57(1), Florida Statutes.
- b) That Recommended and Final Orders be entered finding that Elmwood is entitled to an allocation of Exchange Funds and TCAP Funds under the RFP.
- c) That Elmwood be awarded attorneys fees pursuant to Sections 120.54(1)(a), 120.56(4)(e), 120.57(1)(e) and 120.595(4), Fla. Stat., based upon Florida Housing's improper application of an unadopted rule.

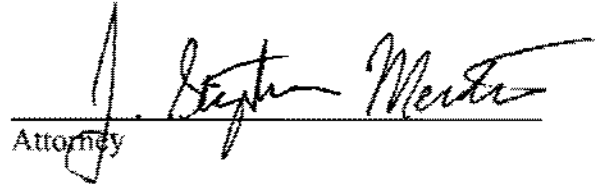
RESPECTFULLY SUBMITTED this 29th day of March 2010.

  
\_\_\_\_\_  
J. Stephen Menton  
Fla. Bar No. 331181  
Rutledge, Ecenia & Purnell, P.A.  
119 South Monroe Street, Suite 202  
Tallahassee, Florida 32301  
(850) 681-6788  
(850) 681-6515 (facsimile)  
Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that this original has been hand delivered to the Agency Clerk, Florida Housing Finance Corporation, and a copy to Wellington Meffert, General Counsel,

Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000 Tallahassee,  
Florida 32301; this 29th day of March 2010.

  
\_\_\_\_\_  
Attorney

March 5, 2010

Via Federal Express

Mr. Donald Paxton  
Elmwood Terrace Limited Partnership  
2206 Jo An Dr.  
Sarasota, FL 34231

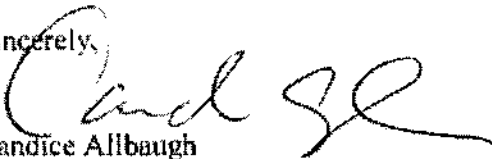
Re: Final Action and Notice of Rights  
Elmwood Terrace/2009-262X  
RFP 2009-04

Dear Mr. Paxton:

As you know, at its meeting on February 26, 2010, Florida Housing's Board rescinded the Housing Credit award and Exchange funding awarded to the Elmwood Terrace development and directed the award and funding be returned to Florida Housing. The Board's action was taken as a result of the negative recommendation in the market study letter issued by the Credit Underwriter and is in accord with Section Five, subsection B, i.e. of RFP 2009-04 which requires that the funding awarded under the RFP "shall be rescinded and returned to Florida Housing" if the Board does not approve the market study. A copy of the Florida Housing staff recommendation and the market study letter as they appeared in the Board agenda are attached to this letter.

If you wish to contest the action taken by Florida Housing in this matter, you may request a hearing as provided in the Notice of Rights attached to this letter.

Sincerely,

  
Candice Allbaugh  
Housing Credit Administrator

CC: Kevin L. Tatreau, Director of Multifamily Development Programs  
Derek Helms, Multifamily Loans Administrator  
Jan Rayboun, Loan Closing Coordinator  
Ben Johnson, Seltzer Management Group

Enclosures: Staff recommendation and market study letter from Board Agenda  
Notice of Rights

Charlie Crist, Governor

Board of Directors: David E. Oellerich, Chairman • Stuart Scheraga, Vice Chairman • Tom Pelham, Ex Officio  
Ken Fairman • Clifford Hardy • Jerry Maygarden • Marilyn L. Sawyer • Lynn Hoffman • Leonard Tyka

Stephen P. Auger, Executive Director

EXHIBIT

A

FLORIDA HOUSING FINANCE CORPORATION

NOTICE OF RIGHTS

If your substantial interests are affected by Florida Housing Finance Corporation's (Florida Housing) action(s) in this matter, you have the right to request an administrative hearing on that action pursuant to Section 120.569, Florida Statutes. You may request either a formal or an informal hearing by filing a petition within 21 days of the date of your receipt of this Notice of Rights in the manner provided below.

Petitions are deemed filed upon receipt of the original documents by Florida Housing's Clerk at the following address:

Corporation Clerk  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329

Petitions or other requests for hearing will not be accepted via telefax or other electronic means.

Formal Administrative Hearing: If a genuine issue(s) of material fact is in dispute, you may seek a formal administrative hearing by filing a petition for hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, within said 21 day period. Petitions must substantially comply with the requirements of Rule 28 – 106.201(2), Florida Administrative Code, a copy of which is attached to this Notice of Rights.

Informal Administrative Hearing: If there are no issues of material fact in dispute, you may seek an informal administrative hearing by filing a petition for hearing pursuant to Sections 120.569 and 120.57(2), Florida Statutes, within said 21 day period. Petitions must substantially comply with the requirements of Rule 28 – 106.301(2), Florida Administrative Code, a copy of which is attached to this Notice of Rights.

Mediation under Section 120.573, Florida Statutes, is not available.

Your petition must be received by Florida Housing within 21 days of the date of your receipt of this Notice of Rights. FAILURE TO FILE A PETITION WITHIN 21 DAYS WILL CONSTITUTE A WAIVER OF YOUR RIGHT TO REQUEST A HEARING IN THIS MATTER.

Please be governed accordingly.

Attachments: Copies of Rules 28 – 106.201(2) and 28 – 106.301(2), Florida Administrative Code.

**28-106.201 Initiation of Proceedings.**

(1) Unless otherwise provided by statute, and except for agency enforcement and disciplinary actions that shall be initiated under Rule 28-106.2015, F.A.C., initiation of proceedings shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document that requests an evidentiary proceeding and asserts the existence of a disputed issue of material fact. Each petition shall be legible and on 8 1/2 by 11 inch white paper. Unless printed, the impression shall be on one side of the paper only and lines shall be double-spaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

(3) Upon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition, and if granted shall, unless otherwise provided by law, refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.

*Specific Authority 120.54(3), (5) FS. Law Implemented 120.54(5), 120.569, 120.57 FS. History—New 4-1-97, Amended 9-17-98, 1-15-07.*



**28-106.301 Initiation of Proceedings.**

(1) Unless otherwise provided by statute and except for agency enforcement and disciplinary actions initiated under subsection 28-106.2015(1), F.A.C., initiation of a proceeding shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document which requests a proceeding. Each petition shall be legible and on 8 1/2 by 11 inch white paper or on a form provided by the agency. Unless printed, the impression shall be on one side of the paper only and lines shall be doubled-spaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) An explanation of how the petitioner's substantial interests will be affected by the agency determination;

(d) A statement of when and how the petitioner received notice of the agency decision;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action;

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action; and

(h) A statement that no material facts are in dispute.

*Specific Authority 120.54(5) FS. Law Implemented 120.54(5), 120.569, 120.57 FS. History—New 4-1-97, Amended 9-17-98, 1-15-07, 12-24-07.*

## LOW INCOME HOUSING TAX CREDITS

### *Action*

#### **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.

SELTZER MANAGEMENT GROUP, INC.

17633 ASHLEY DRIVE  
PANAMA CITY BEACH, FL 32413  
TEL: (850) 233-3646  
FAX: (850) 233-1429

February 8, 2010

Ms. Candice Allbaugh  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, FL 32301-1329

Re: Elmwood Terrace, #2009-262X

Dear Ms. Allbaugh:

Elmwood Terrace Limited Partnership ("Applicant") has applied for RFP 2009-04 Tax Credit Exchange Funds from Florida Housing Finance Corporation ("FHFC" or "Florida Housing") to finance the construction of Elmwood Terrace ("Elmwood" or "Subject"). The proposed development is located on the east side of Evans Avenue, north of Elmwood Street in the city of Fort Myers, Lee County, FL 33901. Elmwood is proposed to consist of 116 garden-style residential units contained within five (5) three-story walk-up buildings plus a clubhouse. The Subject development is located in a 2009 designated Location A. Therefore, the exchange set asides are 20% (24 units) at 33% or less of the area median income ("AMI"), and 80% (92 units) at 50% or less of AMI, to total 116 residential units or a 100% set aside for an affordability period of 50 years. This development has selected a family demographic commitment and is located within a 2009 Difficult Development Area ("DDA") and a Qualified Census Tract ("QCT").

The Applicant is a Florida limited partnership registered with the State of Florida on March 21, 2007. The general partner of the Applicant is Beneficial Elmwood Terrace L.L.C. ("BET"), with a .01% ownership interest in the Applicant. The limited partner is Donald W. Paxton with a limited partner ownership interest of 99.99%. The developer of the Subject is RLI Beneficial Development 7 L.L.C. ("RLI 7"). The members of RLI 7 are Beneficial Development II L.L.C. (52.5%), Lomas Holdings Corporation (1.0%) and AHG-RLI, L.L.C. (46.5%).

Initial consideration for funding is conditioned that the submarket for the proposed development has an average occupancy of 90% or greater for the same demographic population. Florida Housing has requested that Selzter Management Group, Inc. ("SMG" or "Selzter") confirm the average occupancy rate for the submarket.

In accordance with guidelines issued by FHFC, a Market Study (the "Study") was prepared for the Subject property by Meridian Appraisal Group, Inc. ("Meridian" or the "Appraiser"), dated January 26, 2010. The Study was engaged by SMG, as agent for FHFC.

The Subject lies in Lee County (the "County") which is located in the Southwest Florida Region. Growth trends and projections for the County are positive but unemployment rates are increasing. The overall economy has declined during the past year with higher unemployment rates and instability in the real estate market. Rental rates and sale prices in the region also reflect declining tendencies. Meridian anticipates current market conditions will continue until the economy recovers.

Ms. Candice Allbaugh  
Elmwood Terrace 2009-262X  
February 8, 2010  
Page 2

The Study defines the Subject's Primary Market Area ("PMA") as the area contained within a ten-mile radius of the Subject property. The PMA is primarily determined based on data gathered in the Small Area Data ("SAD") case study that can be found on the FHFC website. The study indicates that most affordable housing developments receive about two-thirds to three-fourths of their residents from within ten (10) miles. In addition, about 40% of the residents living in affordable housing units work within five (5) miles of their home and about 65% work within ten (10) miles of their home. The Competitive Market Area ("CMA"), or the Subject's submarket, is defined as those developments lying in closest proximity to the Subject with similar income restrictions and demographic commitments. The Subject's CMA for calculation of occupancy of like-kind units is determined by radiating out from the Subject property until enough units are surveyed to provide an accurate portrayal of the market conditions for properties that would be directly competitive with the Subject. The Study also verifies that the proposed Subject will be located in a DDA and a QCT.

The Study identified twenty-nine (29) stabilized income-restricted developments in the Subject's PMA. Eight (8) of the properties identified in the PMA having an elderly demographic and seven (7) properties designated for persons with disabilities are excluded because each has a different demographic than the Subject. The remaining fourteen (14) properties have a family demographic. In January 2010, the Appraiser's profile of the fourteen remaining income-restricted developments in the PMA reflected an occupancy rate range from 49% to 95% with an average occupancy of 83%. Twelve of the fourteen developments in Meridian's survey are offering concessions ranging from discounted move-in costs to reduced rental rates or one month free. The remaining two (2) developments are not offering concessions.

Six (6) of the remaining fourteen (14) developments are excluded because each receives rental assistance subsidies. An additional seven (7) developments are excluded because they have different income restrictions with the units set aside for residents who qualify at the 60% AMI level. The remaining one development, Maple Crest, is considered the only competing property located in the Subject's PMA and defines the radius of the CMA. Eighteen (18) of Maple Crest's 118 units are set aside for residents qualified at 50% AMI or less and eighteen (18) of the units are set aside at 35% AMI or less. The remaining 82 units are set aside at 60% AMI. The weighted average occupancy for the Maple Crest units set aside at 50% AMI or less is 100%. The weighted average occupancy for the similar income restricted like-kind units within the submarket is therefore, 100%. Weighted average occupancy is based on the total number of units occupied divided by the total number of units for the development included in the submarket. Maple Crest has a waiting list for the units set aside at 50% AMI or less. As of January 29, 2010, occupancy for Maple Crest as a whole, including the units set aside at 60% AMI, is 92%. The principal owners of the general partners for Maple Crest and the Subject development are the same.

Based on the information presented in the Study and its own due diligence, SMG concludes that the Elmwood Terrace submarket does have an average occupancy rate of 90% for the same Demographic population.

Demographic analysis indicates a sufficient pool of potential residents with approximately 431 income-qualified households added to the PMA annually over the next five years. According to the demographics, the supply of units relative to the demand results in Levels of Effort of 10.4%, 5.3% and 2.3% in the three-, five- and ten-mile radius market areas, respectively. The demographic analysis also appears to indicate that the size of the Subject development is

Ms. Candice Allbaugh  
Elmwood Terrace 2009-262X  
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appropriate relative to the number of income-qualified renter households as reflected by Capture Rates of 5.5% (three-mile), 2.6% (five-mile) and 1.1% (ten-mile). If the 60% AMI units are considered in the supply, the Levels of Effort are 93.6% (three-mile), 48.0% (five-mile) and 23.6% (ten-mile).

The Study confirms there are two Guarantee Fund properties with a family demographic, Bernwood Trace and Westwood, located in the Subject's PMA and within five miles or less of the Subject development. The occupancy rate for Bernwood Trace is 92% and for Westwood is 85%.

While the impact on the units set aside at 50% AMI in Maple Crest, the only like-kind development in the CMA, is expected to be minimal, the Subject is expected to impact developments with units at the 60% AMI level lying within the PMA including the two Guarantee Fund developments. Meridian's analysis reflects that the developments with units set aside at 60% AMI, including Bernwood Trace and Westwood, have numerous residents with incomes that qualify for the Subject's 50% AMI units. Seltzer's due diligence reflects that as of December 31, 2009, 65.4% of the occupied units at Westwood and 37.4% of the occupied units at Bernwood Trace are leased by residents with household incomes that would qualify them for units set aside at or below 50% of AMI as reflected by Florida Housing's 2009 Income Limits for the Cape Coral-Fort Myers MSA (Lee County).

The Subject's unit mix consists of 10.3% one-bedroom units, 48.3% two-bedroom units and 41.4% three-bedroom units. According to the Market Study, the development's unit mix is not optimal owing to the Subject's high percentage of three-bedroom units in relation to the small average household size in the PMA (2.33 persons). The Subject has a lower percentage of one-bedroom units, similar percentage of two-bedroom units and higher percentage of three-bedroom units compared to other affordable developments for the general population in Lee County. Occupancy rates in three-bedroom units are generally lower than in one- and two-bedroom units throughout the PMA. Therefore, the Subject's unit mix has the potential to have a particularly strong impact on three-bedroom units in other affordable developments within the PMA.

Meridian concludes that Elmwood Terrace is expected to impact developments with units at the 60% AMI level lying within ten (10) miles of the Subject including two Guarantee Fund developments. Seltzer concurs with Meridian's conclusion.

The Appraiser further states that the proposed development will be able to attain maximum HC rents for its units as set aside. Assuming the Subject's first units are delivered in August 2011, with completion in December 2011, the Appraiser anticipates an average absorption rate of eighteen (18) to twenty (20) units per month as an income-restricted development.

SMG has reviewed the Study and performed independent due diligence related to the underlying data utilized by the Appraiser. Seltzer's due diligence included a comparison of the Study's property description to those in the application, identification of affordable housing properties located in the vicinity of the Subject and comparison to those properties included in the PMA and submarket, a review of FHFC occupancy information (including SMG internal monitoring sources) and comparison of that data to occupancy data utilized by the Appraiser, and the testing of various occupancy calculations included in the Study. Seltzer's review and due diligence reports findings consistent with those presented in the Study indicating that the underlying data relied upon by the Appraiser and the conclusions rendered by the Appraiser are

Ms. Candice Allbaugh  
Elmwood Terrace 2009-262X  
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Page 4

reasonable and logical. Accordingly, SMG finds the Study to be satisfactory for purposes of establishing the average occupancy of the Subject's submarket.

Based on the information presented in the Study and its own due diligence, SMG concludes that the submarket average occupancy rate for the Subject meets the minimum requirement of 90%. However, based on the information presented in the Study and its own due diligence, and in accordance with guidelines issued by FHFC, Seltzer recommends that Florida Housing rescind the Applicant's tentative funding award because of the Subject development's potential financial impact on developments in the area previously funded by Florida Housing and an anticipated negative impact to the two Guarantee Fund properties located within five miles of the proposed development, Elmwood Terrace.

If you have any questions regarding this preliminary credit underwriting letter, please do not hesitate to call me at (850) 233-3616, ext. 238.

Sincerely,

SELTZER MANAGEMENT GROUP, INC.



Wanda Greggo  
Credit Underwriter

**Flo**



**Supplemental Loan and Housing Credit Program  
2007-204C**

**Section A Report Summary**

**Section B Supplemental Loan Conditions and  
HC Allocation Recommendation and Contingencies**

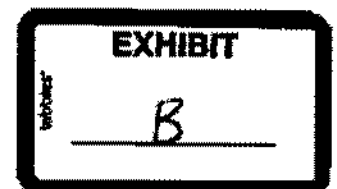
**Section C Supporting Information and Schedules**

*Prepared by*

***Seltzer Management Group, Inc.***

*Final Report*

*September 11, 2008*



SMG

**Elmwood Terrace**  
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**Section A**  
**Report Summary**

SUPPLEMENTAL LOAN & HC CREDIT UNDERWRITING REPORT

SMG

**Recommendation**

Seltzer Management Group, Inc. ("SMG" or "Seltzer") recommends a Housing Credit ("HC") allocation in the annual amount of \$1,498,680 and a Supplemental Loan of \$1,020,000 be awarded to this development by the Florida Housing Finance Corporation ("FHFC" or "Florida Housing").

DEVELOPMENT & SET-ASIDES																																																															
Location	Evans Avenue at Elmwood Street Fort Myers, Lee County, Florida 33901																																																														
Number of Units/Unit Mix	<table border="1"> <thead> <tr> <th>Bed-rooms</th> <th>Baths</th> <th>No. of Units</th> <th>Unit Size (SF)</th> </tr> </thead> <tbody> <tr><td>1</td><td>1</td><td>1</td><td>771</td></tr> <tr><td>1</td><td>1</td><td>2</td><td>773</td></tr> <tr><td>1</td><td>1</td><td>3</td><td>773</td></tr> <tr><td>1</td><td>1</td><td>1</td><td>798</td></tr> <tr><td>1</td><td>1</td><td>5</td><td>800</td></tr> <tr><td>2</td><td>2</td><td>1</td><td>1,034</td></tr> <tr><td>2</td><td>2</td><td>2</td><td>1,034</td></tr> <tr><td>2</td><td>2</td><td>11</td><td>1,036</td></tr> <tr><td>2</td><td>2</td><td>42</td><td>1,036</td></tr> <tr><td>3</td><td>2</td><td>1</td><td>1,270</td></tr> <tr><td>3</td><td>2</td><td>2</td><td>1,270</td></tr> <tr><td>3</td><td>2</td><td>9</td><td>1,272</td></tr> <tr><td>3</td><td>2</td><td>36</td><td>1,272</td></tr> <tr><td><b>Totals</b></td><td></td><td><b>116</b></td><td><b>128,494</b></td></tr> </tbody> </table>	Bed-rooms	Baths	No. of Units	Unit Size (SF)	1	1	1	771	1	1	2	773	1	1	3	773	1	1	1	798	1	1	5	800	2	2	1	1,034	2	2	2	1,034	2	2	11	1,036	2	2	42	1,036	3	2	1	1,270	3	2	2	1,270	3	2	9	1,272	3	2	36	1,272	<b>Totals</b>		<b>116</b>	<b>128,494</b>		
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<b>Totals</b>		<b>116</b>	<b>128,494</b>																																																												
Demographic Commitment	Family																																																														
Set Asides	<u>Supplemental Loan</u> 10% (12 ELI Units) @ 33% AMI  <u>HC</u> 20% (24 ELI units) @ 33% AMI 80% (remaining units) @ 50% AMI																																																														
Set Aside Term	<u>Supplemental Loan</u> = 15 Years HC = 50 Years  ELI set aside units above the 10% threshold minimum requirement may convert to serve families at or below 60% AMI for the remaining 35 years of the 50 year HC set aside period.																																																														
County Size	Medium																																																														
Development Category	New Construction																																																														

## SUPPLEMENTAL LOAN &amp; HC CREDIT UNDERWRITING REPORT

SMG

Development Type	Garden Style Apartments
Occupancy Rate	N/A
Parking	Per the approved site plan 240 parking spaces of which 12 are handicapped accessible.
Improvements	The development will consist of five three-story garden style residential buildings and one clubhouse. Construction is wood frame with stucco exterior and concrete slab on grade foundation.
Site Acreage	9.38 gross acres per survey
Density	12.37 units per gross acre
Zoning	PO—Professional which permit up to 16.00 units per acre
Flood Zone Designation	"X" does not require Flood Insurance
<b>DEVELOPMENT TEAM</b>	
Applicant/Borrower	Elmwood Terrace Limited Partnership is a Florida Limited Partnership formed March 21, 2007.
General Partner	<p>The sole general partner is Beneficial Elmwood Terrace, LLC ("BET"), a Florida Limited Liability Company with a .01% ownership interest.</p> <p>The sole member of BET is RLI Beneficial Holdings 7, LLC ("RLIBH7"), a Florida Limited Liability Company with a 100% ownership interest.</p> <p>The members of RLIBH7 are Hope Shiverick Lomas, LLC ("HSLomas") an Ohio Limited Liability Company with a 47.5% ownership interest and Beneficial Holdings II, LLC ("BHII"), a Florida Limited Liability Company with a 52.5% ownership interest.</p> <p>HSLomas acts as nominee and agent for AHG-RLI, LLC ("AHG"), a Florida Limited Liability Company and Lomas Holdings, Corp. ("Lomas"), an Ohio corporation. Both AHG and Lomas are owned solely by Robert Lomas.</p> <p>The members of BHII are O'Grady Family Holdings, LLC ("OFH") with a 10% ownership interest and Paxton Family Holdings, LLC ("PFH") with a 90% ownership interest. The sole member of OFH is Kathleen O'Grady and the sole member of PFH is Donald W. Paxton.</p>
Limited Partner/Syndicator	<p>Donald W. Paxton is the initial limited partner holding a 99.99% ownership interest.</p> <p>Enterprise Community Investment, Inc. ("Enterprise"), its assigns or affiliate, will be the Limited Partner and will purchase a 99.99% limited partnership interest at or prior to Supplemental Loan closing.</p>

## SUPPLEMENTAL LOAN &amp; HC CREDIT UNDERWRITING REPORT

SMG

Guarantors	Applicant; BET; RLIBH7; BHII; PFH; RLIBD7 plus Donald W. Paxton, individually.
Developer	RLI Beneficial Development 7, LLC ("RLIBD7") having as its members Beneficial Development II, LLC ("BDII") with a 52.5% ownership interest, AHG with a 46.5% ownership interest and Lomas with a 1.0% ownership interest.
General Contractor	Construction Enterprises, Inc. ("CEI")
Management Company	American Management Services, LLC d/b/a Pinnacle ("Pinnacle")
First Mortgage Lender – Construction Loan	Stearns Bank, N.A. ("Stearns")
First Mortgage Lender – Permanent Loan	Greystone Servicing Corporation, Inc. ("Greystone")
Credit Enhancer on First Mortgage	N/A
<b>FINANCING INFORMATION</b>	
FHFC Programs	Housing Credit Program & Supplemental Loan Program
First Mortgage Amount	\$2,000,000
"All in" Underwritten Interest Rate	4.50%
Term/Amortization	20/20
Supplemental Mortgage Amount	\$1,020,000
"All in" Underwritten Interest Rate	0.497%
Term/Amortization	15/0
Restricted Rent-Favorable Financing Value at Stabilization	\$4,690,000
Market Rent-Market Financing Value at Stabilization	\$9,530,000
Restricted Loan To Value – First Mortgage	42.6%
Market Loan To Value - First Mortgage	21.0%
Projected Net Operating Income	\$192,405
Debt Service Coverage – First and Second Mortgages	1.226
FHFC Assistance (HC and Supplemental Loan) Per Unit	\$137,990
HC Annual Allocation Per Unit	\$12,920
Syndication Price	\$0.8814 per dollar of HC
Debt Service Reserve	None

## SUPPLEMENTAL LOAN &amp; HC CREDIT UNDERWRITING REPORT

SMG

Construction / Permanent Sources:

Source	Lender	Construction	Permanent	Permanent Loan per Unit
First Mortgage	Stearns Bank	\$12,284,000	\$0	\$0
First Mortgage	Greystone	\$0	\$2,000,000	\$17,241
Second Mtg (Supplemental Loan)	FHFC	\$1,020,000	\$1,020,000	\$8,793
HC Equity	Enterprise	\$3,872,648	\$12,908,825	\$111,283
Defer. Developer Fee	RLI Beneficial Dev 7, LLC	\$130,283	\$1,378,106	\$11,880
<b>Total</b>		<b>\$17,306,931</b>	<b>\$17,306,931</b>	<b>\$149,197</b>

COMPARISON CRITERIA	YES	NO
Does the level of experience of the current team equal or exceed that of the team described in the application?	X	
Are all funding sources the same as shown in the Application?		1
Are all local government recommendations/contributions still in place at the level described in the Application?	X	
Is the Development feasible with all amenities/features listed in the Application?	X	
Do the site plans/architectural drawings account for all amenities/features listed in the Application?	X	
Does the Applicant have site control at or above the level indicated in the Application?	X	
Does the Applicant have adequate zoning as indicated in the Application?	X	
Has the Development been evaluated for feasibility using the total length of set-aside committed to in the Application?	X	
Have the Development costs remained equal to or less than those listed in the Application?	X	
Is the Development feasible using the set-asides committed to in the Application?		2
If the Development has committed to serve a special target group (e.g. elderly, large family, etc.), do the development and operating plans contain specific provisions for implementation?	X	
HOME ONLY: If points were given for match funds, is the match percentage the same as or greater than that indicated in the Application?	N/A	
HC ONLY: Is the rate of syndication the same as or greater than that shown in the Application?		3
Is the Development in all other material respects the same as presented in the Application?		4

**SUPPLEMENTAL LOAN & HC CREDIT UNDERWRITING REPORT****SMG**

The following are explanations of each item checked "No" in the table above:

1. Changes in Funding:

- a. First Mortgage Construction Loan: The 2007 Universal Application anticipated a first mortgage construction loan from Column Financial ("Column") in the amount of \$6,936,873. Since the Application, the Applicant has received a first mortgage construction loan proposal dated August 21, 2008, from Stearns Bank, N.A. ("Stearns") for a \$12,284,000 first mortgage construction loan.
- b. First Mortgage Permanent Loan: The 2007 Universal Application anticipated a first mortgage permanent loan from Column in the amount of \$2,798,228. Since the Application, the Applicant has received a first mortgage permanent loan commitment from Greystone Servicing Corporation, Inc. ("Greystone") dated August 18, 2008, for a \$2,000,000 first mortgage permanent loan.
- c. Syndication of the HC: The Initial Syndicator per the Universal Application was Column. Applicant subsequently received a Letter of Intent dated July 24, 2008 and revised August 29, 2008, from Enterprise Community Investment, Inc. ("Enterprise") to provide syndication of the HC. The investment Enterprise will make will be \$12,908,825 which is \$727,798 less than the \$13,636,623 initial Column commitment.

2. The appraiser concludes that the subject can obtain maximum allowable HC rents for those units rented at 33% AMI but not for the units rented at 60% AMI. The Fort Myers area has experienced a considerable downturn in the housing market over the past year primarily due to the significant new supply of condominiums which are being leased in an effort to generate income. In order to be competitive, the subject site proposed charging rents that would be priced significantly below competitive HC rents at 60% AMI. The appraiser opined that the fact that the proposed subject rents will be significantly lower than all competition would have a very detrimental impact on the additional HC properties in the PMA. In order to limit adversely impacting the HC units at 60% AMI, the Florida Housing Finance Corporation 2007 Carryover Allocation Agreement required that Applicant set aside 20% of the residential units at 33% of area median income, as Applicant committed in the application, but required that 80% of the units (92 units) be set aside at 50% AMI instead of 60% AMI. The agreement noted that one (1) year after stabilization of the development, the Owner may contact the Servicer and request a market study, paid for by the Owner. At such time, Florida Housing, the Servicer and the Owner will review the market study and at the sole discretion of Florida Housing, the set-asides may be revised to 20% of the residential units at 33% of area median income and 80% of the residential units at 60% of area median income. Owner acknowledged, agreed and accepted the FHFC 2007 Carryover Allocation Agreement on December 5, 2007.

3. The rate of syndication has decreased from \$0.9100 per dollar of syndicated Housing Credits to \$0.8614 per dollar of syndicated Housing Credits. The syndicator changed from Column to Enterprise.

4. Other Changes to the Application:

- a. The Application anticipated that there would be twelve residential buildings containing 12 one bedroom/one bath units, 58 two bedroom/two bath units and 46 three bedroom/two bath units. In December 2007, Applicant requested approval to reduce the number of

**SUPPLEMENTAL LOAN & HC CREDIT UNDERWRITING REPORT****SMQ**

residential buildings from 12 buildings to five. Applicant's request was approved December 17, 2007, and reflected in the 2007 Carryover Allocation Agreement between Florida Housing and Applicant. Applicant requested on May 12, 2008, to change the unit mix to 12 one bedroom/one bath units, 56 two bedroom/two bath units and 48 three bedroom/two bath units.

- b. The Option Contract for Purchase and Sale ("Option Contract") included in the Universal Application and subsequent documents related to the parcel as purchased by the Applicant are not the same. According to F. Vernon Bennett, Esquire, of the law firm of Broad and Cassel, the Option Contract references a parcel of approximately 9.4 acres and refers to a parcel which was intended by the Seller and the Purchaser to be the remaining tract of land still owned by the Sellers, lying South of the lands previously conveyed by Seller to the Florida Department of Transportation ("DOT"). The original legal description referenced as "Exhibit A" to the Option Contract was furnished by the Sellers and taken from a survey dated February 20, 2003, which was the only legal description the Seller had at the time the Option Contract was entered. Subsequent to the 2003 survey sketch and legal description, the legal description of the DOT parcel was revised slightly which resulted in the remaining parcel being slightly reduced in size by 0.07 acres. Applicant has provided a Special Warranty Deed with title in the name of the Applicant, a survey by South Florida Surveying, Inc. dated September 4, 2008, and a Florida Owner's Policy of Title Insurance which evidence the corrected legal description. An Affidavit Certifying Site Control and Tie-Breaker measurement Point for Elmwood Terrace, Universal Cycle Application 2007-204C, dated June 30, 2008, executed by Donald W. Paxton of Elmwood Terrace Limited Partnership and provided to Florida Housing certifies that the Tie-Breaker Measurement Point as defined in Rule Chapter 67-48, F.A.C. and as stated on the Surveyor Certification Form provided with the Application remains the same.

These changes have no material impact to the Supplement Loan and HC recommendation for this development.

Does the Development Team have any FHFC Financed Developments on the Past Due/Non-Compliance Report?

Florida Housing's Past Due Report dated July 29, 2008, does not reflect past due items for the principals.

The Asset Management Non-Compliance Report dated July 21, 2008, does not reflect any items outside of the correction period for the principals.

Strengths:

1. The appraiser, Meridian Appraisal Group. ("MAG"), Winter Park, Florida concluded the subject site is physically and legally well suited for multifamily development. The neighborhood provides all necessary support services for successful multifamily development and due to the limited supply of units targeted toward residents in the income range qualifying for units set aside at 33% AMI and 50% AMI will attain a stabilized occupancy rate for the subject of 95%.
2. The appraiser states that the subject's 2007 Housing Credit maximum net rent should be achievable.

**SUPPLEMENTAL LOAN & HC CREDIT UNDERWRITING REPORT****SMG**Other Considerations: NoneMitigating Factors: NoneWaiver Requests/Special Conditions:

1. Applicant submitted a Petition for Waiver of Rule 67-48.0075(7)(a)(1), Fla. Admin. Code to the September 26, 2008, FHFC Board Meeting, requesting a change in terms of the Supplemental Loan. Petitioner requests permission to forgo the automatic forgiveness of the Supplemental Loan's principal balance provided the units for which the Supplemental Loan was awarded were targeted to ELI Households for at least 15 years, and to instead cause the ELI Loan to be repaid at the end of the initial 15-year period, with an automatic extension of the maturity date at the end of the initial 15-year period for an additional 30 years if the units for which the ELI Loan was awarded were targeted to ELI Households during that initial 15-year period.

Additional Information:

1. The appraiser, Meridian Appraisal Group, included four Guaranty Fund Properties within the subject's 10-mile market area in its analysis. These properties have the following occupancy rates as of June 2008: Bernwood Trace at 76%; Brittany I at 68%; Brittany II at 74% and Westwood at 88%. Seltzer identified one additional Guaranty Fund Property in Fort Myers, Andros Isle d/b/a Vista Palms which has an occupancy rate of 52% as of June 2008. The set asides for the developments within these units are at 60% AMI. Since the subject has reduced the units originally set aside at 60% to 50%, the appraiser has opined that lease up of the subject will not have a significant detrimental affect upon these Guaranty Fund Properties.
2. The Applicant currently has an outstanding Pre-development Loan payable to Stearns Bank, N.A. ("Stearns"). Repayment of this loan in full prior to or at the time of the Supplemental Loan closing is a condition to closing.

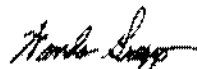
Issues and Concerns: NoneRecommendation:

SMG recommends a \$1,498,680 annual allocation of HC and a Supplemental Loan of \$1,020,000 be awarded to this development.

Seltzer's recommendations are based upon the assumptions detailed in the Report Summary (Section A) and Supporting Information and Schedules (Section C). In addition, the recommendations are subject to the Loan Conditions and HC Allocation Contingencies detailed in Section B of this credit underwriting report. The reader is cautioned to refer to these sections for complete information.

This recommendation is only valid for six months from the date of the report.

Prepared by:



Wanda Greggo  
Credit Underwriter

Reviewed by:



Cindy Highsmith  
Supervisor, Credit Underwriting



## SUPPLEMENTAL LOAN &amp; HC CREDIT UNDERWRITING REPORT

SMG

**Overview****Construction Financing Sources**

Source	Lender	Applicant	Revised Applicant	Underwriter	Interest Rate	Construction Debt Service
First Mortgage	Stearns Bank	\$8,936,873	\$0	\$12,284,000	6.690%	\$819,745
Second Mtg (Supplemental Loan)	FHFC	\$1,020,000	\$1,020,000	\$1,020,000	0.497%	\$5,057
HC Equity	Enterprise	\$8,522,889	\$0	\$3,872,648	n/a	n/a
Defer. Developer Fee	RLI Beneficial Dev 7, LLC	\$1,039,058	\$0	\$130,283	n/a	n/a
<b>Total</b>		<b>\$17,518,820</b>	<b>\$1,020,000</b>	<b>\$17,306,931</b>		<b>\$824,802</b>

First Mortgage Loan:

According to the Stearns proposal, the construction loan requires payments of interest only monthly during the construction period. Stearns will charge interest on the daily outstanding principal balance of the construction loan at an annual rate equal to the Prime Rate as published in the Wall Street Journal, plus a margin of 100 basis points with a minimum interest rate of 6.69% and a maximum interest rate of 8.90%. During the term of the construction loan, the interest rate may fluctuate from day to day. With the indicative rate as of August 22, 2008, at 6.00% (Prime Rate of 5.00% plus the margin) the minimum rate of 6.69% has been used for credit underwriting purposes. The loan provides for a maximum 24-month construction period and a 1.63% construction loan origination fee. Seltzer's calculation is based on a 21-month construction/stabilization period and an average outstanding loan balance of 57% of the total loan amount during construction. It is anticipated that at the time of conversion to permanent financing, the construction loan will be paid off by equity payments and a first mortgage loan from Greystone Servicing Corporation, Inc.

Other Construction Sources of Funds:

Additional sources of funds for this development during construction are a FHFC Supplemental Loan, housing credit equity and deferred developer fees.

The developer will have to defer \$130,283 of developer fees after all available loan proceeds and the HC equity have been received during the construction period.

Construction/Stabilization Period:

Based upon demographic and market analysis, including existing and proposed developments, the appraiser projects the Elmwood Terrace units to be absorbed at a rate of approximately ten units per month. The construction phase will last approximately twelve months. Stabilization is anticipated to occur within nine months of construction completion with the first units leased 3 months prior to construction completion. For purposes of this Credit Underwriting, Seltzer assumes a 21-month construction/ stabilization period.

## SUPPLEMENTAL LOAN &amp; HC CREDIT UNDERWRITING REPORT

SMG

**Permanent Financing Sources**

Source	Lender	Applicant	Revised Applicant	Underwriter	Interest Rate	Amort. Yrs.	Term Yrs.	Annual Debt Service
First Mortgage	Greystone	\$2,798,228	\$2,000,000	\$2,000,000	4.50%	20	20	\$151,836
2nd Mtg (Supplemental Loan)	FHFC	\$1,020,000	\$1,020,000	\$1,020,000	0.497%	0	15	\$5,071
HC Equity	Enterprise	\$13,636,623	\$12,908,825	\$12,908,825	n/a	n/a	n/a	n/a
Def. Developer Fee	RLI Beneficial Dev 7, LLC	\$63,959	\$1,326,244	\$1,378,106	n/a	n/a	n/a	n/a
<b>Total</b>		<b>\$17,518,820</b>	<b>\$17,255,069</b>	<b>\$17,306,931</b>				<b>\$156,907</b>

First Mortgage Loan:

The Applicant has submitted a commitment letter from Greystone dated August 18, 2008, for a first mortgage permanent loan. The original principal amount of the permanent loan will be the lesser of (i) a maximum permanent loan amount of \$2,000,000; (ii) the principal amount necessary to maintain minimum debt service coverage of 1.15 to 1.00; or (iii) the principal amount determined by multiplying the underwriting value by the maximum loan-to-value of 90%. A permanent loan of \$2,000,000 has been utilized for credit underwriting purposes. The loan will have a maximum 20-year term from loan conversion with a 20-year amortization schedule. Interest will be a fixed rate and shall be established by Greystone prior to construction ("rate lock") and is currently estimated to be 4.50%. A non-refundable origination fee equal to 1% of the permanent loan amount payable upon the earlier of construction loan closing or at rate lock is required. Provided the development has been completed and has achieved 90% occupancy for 90 days, Greystone shall re-underwrite the permanent loan and shall determine the final permanent loan amount.

FHFC Supplemental Loan:

The Applicant qualifies for a FHFC Supplemental Loan based on the additional units set aside above the minimum ELI required. The loan will be non-amortizing at 0% base interest rate over the life of the loan with the principal forgivable provided the units are targeted to ELI units for at least 15 years. On August 25, 2008, Applicant submitted a Petition for Waiver of Rule 67-48.0075(7)(a)(1), Fla. Admin. Code to the September 26, 2008, FHFC Board Meeting, requesting a change in terms of the Supplemental Loan. Petitioner requests permission to forgo the automatic forgiveness of the Supplemental Loan's principal balance provided the units for which the Supplemental Loan was awarded were targeted to ELI Households for at least 15 years, and to instead cause the ELI Loan to be repaid at the end of the initial 15-year period, with an automatic extension of the maturity date at the end of the initial 15-year period for an additional 30 years if the units for which the ELI Loan was awarded were targeted to ELI Households during that initial 15-year period. Annual payments of all applicable fees will be required. This credit underwriting assumes interest payments at 0.497% (the base rate plus applicable fees).

Housing Credits Equity Investment:

The Applicant has applied to Florida Housing to receive 9% Housing Credits.

A HC equity investment Letter of Intent dated July 24, 2008, and revised August 29, 2008, from Enterprise is summarized as follows:

## SUPPLEMENTAL LOAN &amp; HC CREDIT UNDERWRITING REPORT

SMG

Capital Contributions	Amount	Percent of Total	When Due
1st Installment	\$2,581,765	20%	Prior to or at construction loan closing
2nd Installment	\$1,290,883	10%	Prior to 1/1/2009
3rd Installment	\$5,808,971	45%	Construction Completion/Temporary C/Os
4th Installment	\$3,227,206	25%	Stabilization and Conversion to Permanent Financing
Total	\$12,908,825	100%	

Annual Tax Credits per Syndication Agreement: \$1,498,680

Total HC Syndication: \$14,985,301

Syndication Percentage (limited partner interest): 99.99%

Calculated HC Exchange Rate (per dollar): \$0.8614

Proceeds Available During Construction: \$3,872,648

Per Rule, at least 20% of the total equity will be provided prior to or simultaneously with the closing of the construction financing.

Other Permanent Sources of Funds:

The developer will have to defer \$1,378,106 of developer fees for payment from development operations after all loan proceeds and capital contributions payable under the syndication agreement have been received.

## SUPPLEMENTAL LOAN &amp; HC CREDIT UNDERWRITING REPORT

SMG

**Uses of Funds**

	Applicant Total Costs	Applicant Revised Total Costs	Underwriter Total Costs	HC Ineligible Costs
<b>Actual Construction Costs</b>				
Construction Contract				
Site Work	\$0	\$0	\$0	\$0
Off-Site	\$0	\$0	\$0	\$0
New Rental Units	\$8,710,966	\$8,244,418	\$8,198,335	\$0
Rehabilitation of Existing Units	\$0	\$0	\$0	\$0
Recreational Amenities	\$61,000	\$0	\$0	\$0
Furniture, Fixtures and Equipment	\$0	\$0	\$0	\$0
Washers & Dryers	\$0	\$0	\$0	\$0
Contractor's Fee (Not to Exceed 14%)	\$1,192,544	\$1,108,618	\$1,147,766	\$0
Total Construction Contract	\$9,964,510	\$9,353,036	\$9,346,101	\$0
Other - Hard Cost Contingency	\$615,994	\$426,182	\$467,305	\$0
<b>Total Actual Construction Costs</b>	<b>\$10,580,504</b>	<b>\$9,779,218</b>	<b>\$9,813,406</b>	<b>\$0</b>

*Notes to the Actual Construction Costs:*

1. The Applicant has provided a construction contract dated September 4, 2008, between the Applicant and Construction Enterprises, Inc. ("CEI") in the amount of \$9,346,101. The contract provides for retainage of 10% to be reduced to 0% when the development reaches 50% completion. Final payment including retainage shall be made when the contract has been fully performed except for the correction of nonconforming work and requirements that normally survive final payment, and within 30 days of the issuance of a final certification for payment by the Architect. The contract requires the contractor to achieve substantial completion of the entire work not later than 365 days from the date of commencement.
2. General contractor fees at 14.00% are within Rule requirements.
3. Seltzer reduced the hard cost construction contingency to 5% of hard costs.
4. SMG received a Pre-Construction Analysis ("PCA") from Construction Analysis Systems, Inc. ("CASI") dated August 25, 2008, and revised September 4, 2008. Complete results of the PCA are provided in Section C of this report.

## SUPPLEMENTAL LOAN &amp; HC CREDIT UNDERWRITING REPORT

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	Applicant Total Costs	Applicant Revised Total Costs	Underwriter Total Costs	HC Ineligible Costs
<b>General Development Costs</b>				
Accounting Fees	\$58,500	\$118,500	\$118,500	\$0
Appraisal	\$8,500	\$8,500	\$8,500	\$0
Architect's Fee - Design	\$152,000	\$266,500	\$266,500	\$0
Architect's Fee - Supervision	\$24,000	\$80,000	\$80,000	\$0
Builder's Risk Insurance	\$0	\$0	\$0	\$0
Building Permit	\$26,000	\$225,000	\$225,000	\$0
Brokerage Fees - Land	\$25,000	\$0	\$0	\$0
Brokerage Fees - Buildings	\$0	\$0	\$0	\$0
Closing Costs - Construction Loan	\$12,000	\$48,176	\$48,176	\$0
Closing Costs - Permanent Loan	\$12,000	\$12,000	\$12,000	\$12,000
Engineering Fee	\$288,584	\$336,711	\$336,711	\$0
Environmental Report	\$11,100	\$11,100	\$11,100	\$0
FHFC Administrative Fee	\$119,894	\$119,526	\$119,894	\$119,894
FHFC Application Fee	\$2,000	\$2,000	\$2,000	\$2,000
FHFC Compliance Fee	\$54,380	\$75,729	\$77,297	\$77,297
FHFC Credit Underwriting Fee	\$13,440	\$13,440	\$13,895	\$0
Impact Fees	\$318,000	\$254,998	\$254,998	\$0
Inspection Fees	\$18,000	\$22,928	\$37,028	\$0
Insurance	\$24,000	\$24,000	\$24,000	\$0
Legal Fees	\$140,000	\$140,000	\$140,000	\$25,000
Market Study	\$5,500	\$5,500	\$5,500	\$0
Marketing and Advertising	\$30,000	\$81,000	\$81,000	\$81,000
Pre-Constr. Analysis / Existing Prop. Eval.	\$0	\$18,000	\$3,900	\$0
Property Taxes	\$28,665	\$28,354	\$28,354	\$0
Soil Test	\$6,650	\$10,000	\$10,000	\$0
Survey	\$7,100	\$22,800	\$22,800	\$0
Title Insurance	\$90,368	\$92,095	\$92,095	\$82,095
Utility Connection Fees	\$0	\$0	\$0	\$0
Other: Furniture, Fixtures and Equipment	\$38,220	\$61,000	\$61,000	\$34,800
Other: Lease Up Reserve	\$0	\$60,000	\$60,000	\$60,000
Contingency	\$0	\$0	\$107,002	\$0
<b>Total General Development Costs</b>	<b>\$1,513,911</b>	<b>\$2,137,857</b>	<b>\$2,247,050</b>	<b>\$494,086</b>

*Notes to the General Development Costs:*

1. There were no brokerage fees paid by the Applicant.
2. Closing Costs – Construction Loan include the costs to close the first mortgage construction loan and the second mortgage Supplemental Loan.
3. The FHFC Administrative Fee is based on 8% of the recommended annual allocation of HC. The FHFC Application Fee is reflective of the 2007 HC application fee. The FHFC Compliance Fee is based upon the amount published by Florida Housing in 2008 for 116 units set aside for 50 years plus the pre-final allocation fee paid at preliminary allocation. The FHFC Underwriting Fee reflects the \$10,102 HC underwriting fee and the additional program fee of \$3,593 for the Supplemental Loan.

## SUPPLEMENTAL LOAN &amp; HC CREDIT UNDERWRITING REPORT

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4. Insurance is the cost to purchase liability insurance during construction.
5. The Pre-Construction Analysis line item was decreased to reflect only the cost for the PCA and four site inspections required by the HC program. The remainder of the inspection fees included in this line item was added to the inspection fee line.
6. Other: Furniture, Fixtures and Equipment include the cost for furniture, fixtures and equipment in common areas plus the cost of washer and dryers for 50% of the units at \$600 per unit. Applicant will rent the washers and dryers to the residents so the cost of the washers and dryers is included as an ineligible cost.
7. Other: Lease Up Reserve is the amount required by Enterprise.
8. SMG has increased the Soft Cost Contingency to 5% of the anticipated soft costs.
9. Other General Development Costs are based on the Applicant's estimates, which appear reasonable.

	Applicant Total Costs	Applicant Revised Total Costs	Underwriter Total Costs	HC Ineligible Costs
<b>Financial Costs</b>				
PLP Loan Interest	\$0	\$160,000	\$160,000	\$0
Construction Loan Interest	\$849,942	\$912,706	\$819,745	\$351,319
Construction Loan Origination Fee	\$140,338	\$200,230	\$200,230	\$0
Bridge Loan Interest	\$0	\$0	\$0	\$0
Supplemental Loan Commitment Fee	\$0	\$10,200	\$10,200	\$0
Permanent Loan Credit Enhancement	\$0	\$0	\$0	\$0
Permanent Loan Origination Fee	\$34,978	\$20,000	\$20,000	\$20,000
Reserves Required By Syndicator	\$0	\$341,000	\$343,000	\$343,000
<b>Total Financial Costs</b>	<b>\$1,025,258</b>	<b>\$1,644,136</b>	<b>\$1,553,175</b>	<b>\$714,319</b>

*Notes to the Financial Costs:*

1. Pre-development loan interest includes the interest to pay the Stearns Bank pre-development loan.
2. Construction Loan Interest is based on a 21-month construction/stabilization period and an average outstanding loan balance of 57% of the total loan amount during construction.
3. Construction Loan Origination Fee is an amount per the construction lender's commitment letter.
4. Permanent Loan Origination Fee is an amount per the permanent lender's commitment letter.
5. Reserves Required by Syndicator reflect the Partnership Operating Reserve required by Enterprise that will be available to fund operating deficits after the development has achieved stabilized occupancy. The Partnership Operating Reserve will be established from Enterprise's fourth equity installment. Developer fee has not been earned on the Partnership Operating Reserve.

## SUPPLEMENTAL LOAN &amp; HC CREDIT UNDERWRITING REPORT

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	Applicant Total Costs	Applicant Revised Total Costs	Underwriter Total Costs	HC Ineligible Costs
<b>Non-Land Acquisition Costs</b>				
Building Acquisition Costs	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0
<b>Total Non-Land Acquisition Costs</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

*Notes to the Non-Land Acquisition Costs:*

1. Since this is a new construction development, there are no non-land acquisition costs.

	Applicant Total Costs	Applicant Revised Total Costs	Underwriter Total Costs	HC Ineligible Costs
Development Cost Before Land & Developer Fee	\$13,119,673	\$13,561,211	\$13,613,631	\$1,208,405
<b>Other Development Costs</b>				
Developer Fee on Acquisition of Buildings	\$0	\$0	\$0	\$0
Developer Fee	\$2,099,147	\$2,275,146	\$1,693,300	\$0
Other - Excess Purchase Price	\$0	\$0	\$430,000	\$430,000
<b>Total Other Development Costs</b>	<b>\$2,099,147</b>	<b>\$2,275,146</b>	<b>\$2,123,300</b>	<b>\$430,000</b>

*Notes to the Other Development Costs:*

1. Other – Excessive Purchase Price is the excess cost of the real estate over the amount of the appraised value of the land.
2. Developer fee is within 16.00% of total development costs exclusive of land and developer fee consistent with Florida Housing's Rule requirements. Developer fee has not been earned on Reserves Required by Syndicator in the amount of \$343,000.

	Applicant Total Costs	Applicant Revised Total Costs	Underwriter Total Costs	HC Ineligible Costs
Development Cost Before Land	\$15,218,820	\$15,836,357	\$15,736,931	\$1,638,405
<b>Land Acquisition Costs</b>				
Land	\$2,300,000	\$2,000,000	\$1,570,000	\$1,570,000
Other - Land Closing Costs & Extension Fees	\$0	\$0	\$0	\$0
<b>Total Land Acquisition Costs</b>	<b>\$2,300,000</b>	<b>\$2,000,000</b>	<b>\$1,570,000</b>	<b>\$1,570,000</b>

*Notes to the Land Acquisition Costs:*

1. The Applicant submitted an Option Contract for Purchase and Sale of Real Property dated March 15, 2007, by and between Bernard J. Dewolfe, Trustee and Marvin L. Metheny, Trustee and Co-Trustees of the Evans Park Land Trust, Seller, and RLI Beneficial Development 7, LLC, Purchaser, for the subject site. The Agreement reflected a purchase price of \$2,300,000 with a closing not later than October 31, 2007. Applicant exercised the

**SUPPLEMENTAL LOAN & HC CREDIT UNDERWRITING REPORT****SMG**

option by April 15, 2007. Applicant also submitted an Assignment and Assumption Agreement dated March 30, 2007, assigning the Real Sales Agreement to Elmwood Terrace Limited Partnership. Amendments to the Option to Purchase dated July 10, 2007, and November 7, 2007, were subsequently provided which reflect extensions of the closing date to July 31, 2008.

The Applicant submitted a Warranty Deed from the Seller dated May 30, 2008, evidencing title in name of the Applicant, Elmwood Terrace Limited Partnership. A closing statement dated June 3, 2008, evidenced a reduced purchase price of \$2,000,000 for the property. The "as is" appraised value of the land is \$1,570,000.

	<b>Applicant Total Costs</b>	<b>Applicant Revised Total Costs</b>	<b>Underwriter Total Costs</b>	<b>HC Ineligible Costs</b>
<b>Total Development Cost</b>	<b>\$17,518,820</b>	<b>\$17,836,357</b>	<b>\$17,306,931</b>	<b>\$3,208,405</b>



## SUPPLEMENTAL LOAN &amp; HC CREDIT UNDERWRITING REPORT

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**Operating Pro forma**

DESCRIPTION	ANNUAL	PER UNIT
<b>Revenue</b>		
Gross Potential Rental Revenue	\$745,236	\$6,424
Other Income:		
Washer/Dryer Rentals	\$8,000	\$69
Cable/Satellite Television Income	\$0	\$0
Miscellaneous Income	\$13,150	\$113
Interest Income	\$0	\$0
Gross Potential Income	\$766,386	\$6,607
<b>Less:</b>		
Vacancy Loss - 5.0%	(\$38,319)	(\$330)
Collection Loss - 1.0%	(\$7,664)	(\$66)
<b>Total Effective Gross Revenue</b>	<b>\$720,403</b>	<b>\$6,210</b>
<b>Expenses</b>		
Fixed:		
Taxes	\$61,180	\$527
Insurance	\$77,952	\$672
Variable:		
Management Fees - 4.0%	\$46,816	\$404
General and Administrative	\$34,800	\$300
Payroll Expenses	\$118,850	\$1,025
Utilities	\$72,500	\$625
Marketing and Advertising	\$26,000	\$224
Maintenance and Repairs	\$43,500	\$375
Grounds Maintenance and Landscaping	\$17,400	\$150
Security	\$0	\$0
Replacement Reserve	\$29,000	\$250
Other: Pest Control	\$0	\$0
Other: Resident Programs	\$0	\$0
<b>Total Expenses</b>	<b>\$527,998</b>	<b>\$4,552</b>
<b>Net Operating Income</b>	<b>\$192,405</b>	<b>\$1,659</b>
<b>Debt Service Payments</b>		
First Mortgage	\$151,836	\$1,309
Second Mortgage	\$5,071	\$44
Third Mortgage	\$0	\$0
Other Fees - Letter of Credit/Guarantee	\$0	\$0
Other Fees - Agency/Trustee/Service	\$0	\$0
<b>Total Debt Service Payments</b>	<b>\$156,907</b>	<b>\$1,353</b>
<b>Operating Income After Debt Service - Before Tax Cash Flow</b>	<b>\$35,498</b>	<b>\$306</b>

## SUPPLEMENTAL LOAN &amp; HC CREDIT UNDERWRITING REPORT

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Debt Service Coverage Ratios	
Debt Service Coverage - First Only	1.267
Debt Service Coverage - All Mortgages	1.226
Debt Service Coverage - All Mortgages and Fees	1.226

Financial Ratios	
Operating Expense Ratio	73.3%
Break-Even Ratio	89.4%

*Notes to the Operating Pro forma and Ratios:*

- The rent schedule is based upon the Applicant's projected rents which equal the Year 2008 Maximum Restricted Rents published by Florida Housing, less applicable utility allowances from the City of Fort Myers County Housing Authority. The 2008 Maximum Restricted Rents are supported by the appraisal. Utility allowances reflect the resident paying electricity, water and sewer, and the Applicant paying for trash disposal and pest control. No manager/employee units are anticipated. The rent roll is shown below:

**Cape Coral - Fort Myers, FL MSA (Lee County)**

Bed-rooms	Baths	No. of Units	Unit Size (SF)	Median Income %	Max Gross HC Rents	Utility Allowance	Max Net HC	Applicant Rents	Underwriter Rents	Annual Rents
1	1	1	771	33%	\$370	\$86	\$284	\$284	\$284	\$3,408
1	1	2	773	33%	\$370	\$86	\$284	\$284	\$284	\$6,816
1	1	3	773	50%	\$561	\$86	\$475	\$475	\$475	\$17,100
1	1	1	798	50%	\$561	\$86	\$475	\$475	\$475	\$5,700
1	1	5	800	50%	\$561	\$86	\$475	\$475	\$475	\$28,500
2	2	1	1,034	33%	\$444	\$109	\$335	\$335	\$335	\$4,020
2	2	2	1,034	50%	\$444	\$109	\$335	\$335	\$335	\$8,040
2	2	11	1,036	33%	\$444	\$109	\$335	\$335	\$335	\$44,220
2	2	42	1,036	50%	\$673	\$109	\$564	\$564	\$564	\$284,256
3	2	1	1,270	33%	\$513	\$127	\$386	\$386	\$386	\$4,632
3	2	2	1,270	50%	\$778	\$127	\$651	\$651	\$651	\$15,624
3	2	9	1,272	33%	\$513	\$127	\$386	\$386	\$386	\$41,688
3	2	36	1,272	50%	\$778	\$127	\$651	\$651	\$651	\$281,232
<b>Totals</b>		<b>116</b>	<b>128,494</b>							<b>\$745,236</b>

- Laundry Income, Cable and Television Income and Miscellaneous Income are based on the Borrower's projections and are more conservative than the Appraiser's projections. Laundry income includes income from the common area laundry located in the clubhouse. Miscellaneous income includes vending income, washer and dryer rentals, late fees, cancellation fees, forfeited deposits, and other miscellaneous sources. The cost to the Applicant for the bulk cable television service is included in the Utilities expense estimate.
- Vacancy Loss and Collection Loss rates are supported by the appraisal.
- Management Fees are based upon the executed management agreement dated May 5, 2008, which reflects 4% of gross income plus \$1,500 per month for preparation of the marketing plan and the budget.

**SUPPLEMENTAL LOAN & HC CREDIT UNDERWRITING REPORT****SMG**

5. Replacement reserves are \$250 per unit per year increasing 3% annually as required by the Enterprise Letter of Intent and the Greystone commitment and are within credit underwriting guidelines.
6. The costs for Resident Programs are included in the Administrative budget and the Advertising budget. These costs primarily reflect the Resident Activities and Health Care as most other resident programs are donated or provided without charge by various local organizations.
7. Based upon operating data from comparable properties, third-party reports (appraisal and market study) and the credit underwriter's independent due diligence, SMG represents that, in its professional opinion, estimates for income and operating expenses fall within a band of reasonableness.
8. A 15-year income and expense projection shows decreasing debt service coverage beginning in year 5 but which remains above credit underwriting requirements throughout the 15 year affordability period. This projection is attached to this report as Exhibit 1.

SMG

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**Section B**

**Supplemental Loan Special and General Conditions and  
HC Allocation Recommendation and Contingencies**

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SEPTEMBER 11, 2008

**Special Conditions**

This recommendation is contingent upon the review and approval of the following items by SMG and Florida Housing at least two weeks prior to closing. Failure to receive approval of these items within this time frame may result in postponement of the closing date.

1. Approval of Applicant's Petition for Waiver of Rule 67-48.0075(7)(a)(1), Fla. Admin. Code requesting a change in terms of the Supplemental Loan. (Refer to Waiver Requests/Special Conditions in Section A of this report for additional information.)
2. Repayment in full of the Stearns Pre-development Loan prior to or at the time of the Supplemental Loan closing is a condition of the loan closing.

**General Conditions**

This recommendation is contingent upon the review and approval of the following items by SMG and Florida Housing at least two weeks prior to closing. Failure to receive approval of these items within this time frame may result in postponement of the closing date.

1. Borrower to comply with any and all recommendations noted in the pre-construction analysis which has been prepared by CASI.
2. Signed and sealed survey, dated within 90 days of closing, unless otherwise approved by Florida Housing and its legal counsel, based upon the particular circumstances of the transaction. The survey shall be certified to Florida Housing and its legal counsel, as well as the title insurance company, and shall indicate the legal description, exact boundaries of the Development, easements, utilities, roads, and means of access to public streets, total acreage, flood hazard area and any other requirements of Florida Housing.
3. Building permits and any other necessary approvals and permits (e.g., final site plan approval, South Florida Water Management District, Department of Environmental Protection, Army Corps of Engineers, Department of Transportation, etc.). An acceptable alternative to this requirement is receipt and satisfactory review of a letter from the local permitting and approval authority stating that the above referenced permits and approvals will be issued upon receipt of applicable fees (with no other conditions), or evidence of 100% lien-free completion, if applicable. If a letter is provided, copies of all permits will be required as a condition of the first post-closing draw.
4. The final "as permitted" (signed and sealed) site plans, building plans, and specifications showing all features and amenities committed to in the application. The Geotechnical Report must be bound within the final plans and specifications.
5. Final sources and uses of funds itemized by source and line item, in a format and in amounts approved by the Servicer. A detailed calculation of the construction interest based on the final draw schedule (see below), documentation of the closing costs, and draft loan closing statement must also be provided. The final sources and uses of funds schedule will be attached to the Loan Agreement as the approved development budget.
6. A final construction draw schedule showing itemized sources and uses of funds for each monthly draw. Supplemental Program Loan proceeds shall be disbursed during the construction phase in an amount per Draw which does not exceed the ratio of the Supplemental Loan to the Total Development Cost, net of deferred developer fees, unless

## SUPPLEMENTAL LOAN &amp; HC CREDIT UNDERWRITING REPORT

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- approved by the Underwriter. The closing draw must include appropriate backup and ACH wiring instructions.
7. Evidence of general liability, flood (if applicable), builder's risk and replacement cost hazard insurance (as certificates of occupancy are received) reflecting Florida Housing as Loss Payee/Mortgagee, with coverages, deductibles and amounts satisfactory to Florida Housing.
  8. If the development is not 100% lien-free completed, a 100% Payment and Performance Bond ("P&P Bond") or a Letter of Credit ("LOC"), in an amount not less than 25% of the construction contract, is required in order to secure the construction contract between the GC and the Borrower. In either case, Florida Housing must be listed as co-obligee. The P&P bonds must be from a company rated at least "A-" by A.M. Best & Co. with a financial size category of at least FSC VI. Florida Housing and/or legal counsel must approve the source, amount(s) and all terms of the P&P Bonds or LOC. If the LOC option is utilized, the LOC must include "evergreen" language and be in a form satisfactory to Florida Housing, its Servicer and its Legal Counsel.
  9. Architect, Construction Consultant, and Borrower certifications on forms provided by Florida Housing will be required for both design and as-built with respect to Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and Federal Fair Housing Act requirements, as applicable.
  10. Resolution to Florida Housing's satisfaction of any outstanding past due or non-compliance items by closing of the loan(s).

This recommendation is contingent upon the review and approval of the following items by Florida Housing and its legal counsel at least two weeks before closing. Failure to receive approval of these items, along with all other items listed on counsel's due diligence list, within this time frame may result in postponement of the closing date.

1. Documentation of the legal formation and current authority to transact business in Florida for the Borrower, the general partner/principal(s)/manager(s) of the Applicant, the guarantors, and any limited partners of the Applicant.
2. Signed and sealed survey, dated within 90 days of closing, unless otherwise approved by Florida Housing and its legal counsel, based upon the particular circumstances of the transaction. The survey shall be certified to Florida Housing and its legal counsel, as well as the title insurance company, and shall indicate the legal description, exact boundaries of the Development, easements, utilities, roads, and means of access to public streets, total acreage, flood hazard area and any other requirements of Florida Housing.
3. An acceptable updated Environmental Audit Report, together with a reliance letter to Florida Housing, prepared within 90 days of closing, unless otherwise approved by Florida Housing and legal counsel, based upon the particular circumstances of the transaction. Borrower to comply with any and all recommendations noted in the Environmental Assessment(s) and Update and the Environmental Review, if applicable.
4. Title insurance pro-forma or commitment for title insurance with copies of all Schedule B exceptions in the amount of the Supplemental Loan naming FHFC as the insured. All endorsements required by FHFC shall be provided.

**SUPPLEMENTAL LOAN & HC CREDIT UNDERWRITING REPORT****SMG**

5. Florida Housing and its legal counsel shall review and approve all other lenders' closing documents and the limited partnership or other applicable agreement. Florida Housing shall be satisfied in its sole discretion that all legal and program requirements for the Supplemental Loan have been satisfied.
6. Evidence of general liability, flood (if applicable), builder's risk, and replacement cost hazard insurance (as certificates of occupancy are received) reflecting Florida Housing as Loss Payee / Mortgagee, with coverages, deductibles and amounts satisfactory to Florida Housing.
7. Receipt of a legal opinion from the Borrower's legal counsel acceptable to Florida Housing addressing the following matters:
  - a. The legal existence and good standing of the Borrower and of any partnership or limited liability company that is the general partner of the Borrower (the "GP") and of any corporation or partnership that is the managing general partner of the GP, of any corporate guarantor and any manager;
  - b. Authorization, execution, and delivery by the Borrower and the Guarantors, of all Supplemental Loan documents;
  - c. The Supplemental Loan documents being in full force and effect and enforceable in accordance with their terms, subject to bankruptcy and equitable principles only;
  - d. The Borrower's and the Guarantor's execution, delivery and performance of the loan documents shall not result in a violation of, or conflict with, any judgments, orders, contracts, mortgages, security agreements or leases to which the Borrower is a party or to which the Development is subject to the Borrower's Partnership Agreement, and;
  - e. Such other matters as Florida Housing or its legal counsel may require.
8. Evidence of compliance with local concurrency laws.
9. Such other assignments, affidavits, certificates, financial statements, closing statements and other documents as may be reasonably requested by Florida Housing or its legal counsel in form and substance acceptable to Florida Housing or its legal counsel, in connection with the Supplemental Loan.
10. UCC Searches for the Borrower and its partnerships, as requested by counsel.
11. Any other reasonable conditions established by Florida Housing and its legal counsel.

**Additional Conditions**

This recommendation is also contingent upon the following additional conditions:

1. Compliance with all provisions of Sections 420.507 and 420.5087 Florida Statutes, and Rule Chapter 67-48, F.A.C.
2. Acceptance by the Borrower and execution of all documents evidencing and securing the Supplemental Loan in form and substance satisfactory to Florida Housing, including, but not limited to, the Promissory Note, the Loan Agreement, the Mortgage and Security Agreement, and the Land Use Restriction Agreement.

## SUPPLEMENTAL LOAN &amp; HC CREDIT UNDERWRITING REPORT

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3. At all times there will be un-disbursed loan funds (collectively held by Florida Housing, First Lender and any other sources) sufficient to complete the Development. If at any time there are not sufficient funds (held by Florida Housing, First Lender and any other sources) to complete the Development, the Borrower will be required to expend additional equity on development costs or to deposit additional equity with Florida Housing which is sufficient (in Florida Housing's judgment) to complete the Development before additional Supplemental Loan funds are disbursed. This condition specifically includes escrowing at closing all syndication and other equity necessary to complete construction or another alternative acceptable to Florida Housing in its sole discretion.
4. A copy of an Amended and Restated Limited Partnership Agreement reflecting purchase of the HC by the Syndicator, Enterprise, or an affiliate, with terms and conditions consistent with the assumptions contained within this credit underwriting report.
5. Receipt and satisfactory review of a Joint Funding Agreement between Applicant and Enterprise, or an affiliate, that requires funding of all HC Equity Installments during construction, even if Borrower is in default under the Limited Partnership Agreement. In the event that the Joint Funding Agreement is not executed, the Supplemental Loan will not be funded until after construction completion.
6. If applicable, Guarantors are to provide the standard FHFC Construction Completion Guarantee to be released upon lien-free completion as approved by the Servicer.
7. Guarantors are to provide the standard FHFC Operating Deficit Guarantee. This guarantee will be released upon achievement of 1.10 combined debt service coverage for the first mortgage and the Supplemental Loan for six (6) consecutive months.
8. Guarantors are to provide the standard FHFC Environmental Indemnity.
9. Guarantors are to provide the standard FHFC Guaranty of Recourse Obligations.
10. CASI is to act as Florida Housing's inspector during the construction period.
11. A mortgagee title insurance policy naming Florida Housing as the insured in the amount of the Supplemental Loan is to be issued immediately after closing. Any exceptions to the title insurance policy must be acceptable to Florida Housing or its legal counsel.
12. Property tax and hazard insurance escrows are to be established and maintained by the First Lender or the Servicer. In the event the reserve account is held by Florida Housing's loan servicing agent, the release of funds shall be at Florida Housing's sole discretion.
13. Replacement Reserves in the amount of \$250 per unit per year increasing 3% annually as required by Enterprise and Greystone will be required to be deposited on a monthly basis into a designated escrow account, to be maintained by the First Mortgagee or Florida Housing's loan servicing agent. However, Applicant has the option to prepay Replacement Reserves, as allowed per Rule 67-048, F.A.C., in the amount of \$29,435 (one-half the required Replacement Reserves for Years 1 and 2), in order to meet the Supplemental Loan Program 1.10:1 DSC requirement. Applicant can waive this election, if at closing of the Supplemental Loan, the required DSC is met without the need to exercise the option. An inflation factor based upon the Consumer Price Index will be applied to the Replacement Reserve deposit beginning in Year 7, unless waived or reduced in the event Obligor



provides a Physical Needs Study prepared by an independent third party acceptable to FHFC that evidences an increase in the deposit is excessive or unnecessary.

14. The General Partner will be required by Enterprise to establish a Partnership Operating Reserve account ("POR") in the amount of \$343,000 to fund operating deficits after the development has achieved three consecutive months of breakeven operations following the achievement of 93% occupancy and actual rental income of at least 93% of projected rental income. The General partner will be permitted to use the POR prior to making Operating Deficit Contributions to the extent the POR has been funded as of the date of the deficit. The POR will be held in an interest-bearing account in a bank approved by the Limited Partner and all withdrawals will be subject to the approval of the Limited Partner. The POR will be established from the Limited Partner's fourth capital contribution.
15. Closing of the first mortgage simultaneous with or prior to closing of the Supplemental Loan.
16. A minimum of 10% retainage holdback on all construction draws until the Development is 50% completed, and 0% retainage thereafter is required. Retainage will not be released until successful completion of construction and issuance of all certificates of occupancy. The general construction contract indicates a 10% retainage holdback through 50% completion then 0% retainage holdback thereafter, which satisfies the minimum requirement.
17. During construction, the developer is only allowed to draw a maximum of 50% of the total developer fee but in no case more than the payable developer fee during construction, which is determined to be "developer's overhead." No more than 35% of "developer's overhead" will be funded at closing. The remainder of the "developer's overhead" will be disbursed during construction on a pro rata basis based on the percentage of completion of the development, as approved and reviewed by FHFC and the Servicer. The remaining unpaid developer fee shall be considered attributable to "developer's profit," and may not be funded until the development has achieved 100% lien free completion, and retainage has been released.
18. Satisfactory completion of a pre-loan closing compliance audit conducted by Florida Housing or Servicer, if applicable.
19. Any other reasonable requirements of the Servicer, Florida Housing or its legal counsel.

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**Housing Credit Allocation Recommendation**

Seltzer Management Group, Inc. recommends a preliminary annual Housing Credit allocation of \$1,498,680. Please see the HC Allocation Calculation section of this report for further details.

**Contingencies**

The HC allocation recommendation is contingent upon the receipt and satisfactory review of the following items by SMG and the Florida Housing Finance Corporation by the deadline established in the Preliminary HC Allocation. Failure to submit these items within this time frame may result in forfeiture of the HC Allocation.

1. Purchase of the HC by Enterprise or its assigns consistent with the assumptions utilized in this report.
2. Resolution to Florida Housing's satisfaction of any outstanding past due or non-compliance items by closing of the loan(s).
3. Any reasonable requirements of Florida Housing and/or SMG.

Exhibit 1

Elmwood Terrace  
Credit Underwriting Report  
15 Year Income and Expense Projection

DESCRIPTION	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
<b>Revenue</b>															
Gross Potential Rental Revenue	\$745,235	\$767,530	\$790,621	\$814,339	\$838,770	\$863,933	\$889,851	\$916,546	\$944,043	\$972,364	\$1,001,536	\$1,031,581	\$1,062,528	\$1,094,404	\$1,127,236
<b>Other Income:</b>															
Washer/Dryer Rentals	\$6,000	\$6,240	\$6,487	\$6,742	\$6,994	\$7,274	\$7,552	\$7,839	\$8,134	\$8,438	\$8,751	\$9,074	\$9,406	\$9,748	\$10,101
Cable Television Income	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Miscellaneous Income	\$13,150	\$13,545	\$13,951	\$14,369	\$14,800	\$15,244	\$15,702	\$16,173	\$16,658	\$17,158	\$17,673	\$18,203	\$18,749	\$19,311	\$19,891
Interest Income	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Gross Potential Income</b>	<b>\$766,385</b>	<b>\$789,378</b>	<b>\$813,059</b>	<b>\$837,451</b>	<b>\$862,574</b>	<b>\$888,461</b>	<b>\$915,105</b>	<b>\$942,556</b>	<b>\$970,830</b>	<b>\$999,960</b>	<b>\$1,029,959</b>	<b>\$1,060,857</b>	<b>\$1,092,683</b>	<b>\$1,125,464</b>	<b>\$1,159,228</b>
<b>Less:</b>															
Vacancy Loss - 5.0%	(\$38,319)	(\$39,469)	(\$40,663)	(\$41,873)	(\$43,129)	(\$44,423)	(\$45,755)	(\$47,128)	(\$48,542)	(\$49,998)	(\$51,498)	(\$53,043)	(\$54,634)	(\$56,273)	(\$57,961)
Collection Loss - 1.0%	(\$7,964)	(\$7,894)	(\$8,131)	(\$8,375)	(\$8,626)	(\$8,884)	(\$9,151)	(\$9,426)	(\$9,709)	(\$10,000)	(\$10,300)	(\$10,609)	(\$10,927)	(\$11,255)	(\$11,592)
<b>Total Effective Gross Revenue</b>	<b>\$720,102</b>	<b>\$742,015</b>	<b>\$764,275</b>	<b>\$787,204</b>	<b>\$811,820</b>	<b>\$835,144</b>	<b>\$859,199</b>	<b>\$886,005</b>	<b>\$912,585</b>	<b>\$939,962</b>	<b>\$968,161</b>	<b>\$997,206</b>	<b>\$1,027,122</b>	<b>\$1,057,936</b>	<b>\$1,089,674</b>
<b>Expenses</b>															
<b>Fixed:</b>															
Taxes	\$61,180	\$63,827	\$66,172	\$68,819	\$71,572	\$74,435	\$77,412	\$80,509	\$83,729	\$87,078	\$90,561	\$94,184	\$97,951	\$101,869	\$105,944
Insurance	\$77,952	\$81,070	\$84,313	\$87,686	\$91,193	\$94,841	\$98,634	\$102,580	\$106,683	\$110,950	\$115,389	\$120,004	\$124,804	\$129,796	\$134,988
<b>Variable:</b>															
Management Fees - General and Administrative	\$48,816	\$42,861	\$43,974	\$45,120	\$46,301	\$47,517	\$48,770	\$50,060	\$51,389	\$52,758	\$54,168	\$55,620	\$57,116	\$58,657	\$60,244
Payroll Expenses	\$116,850	\$123,804	\$128,548	\$133,690	\$139,038	\$144,599	\$150,383	\$156,398	\$162,654	\$169,181	\$175,927	\$182,964	\$190,283	\$197,894	\$205,810
Utilities	\$72,500	\$75,400	\$78,416	\$81,653	\$85,116	\$88,207	\$91,736	\$95,405	\$99,221	\$103,190	\$107,318	\$111,610	\$116,075	\$120,718	\$125,547
Marketing and Advertising	\$26,000	\$27,040	\$28,122	\$29,246	\$30,416	\$31,633	\$32,898	\$34,214	\$35,583	\$37,006	\$38,486	\$40,026	\$41,627	\$43,292	\$45,024
Maintenance and Repairs	\$43,500	\$45,240	\$47,050	\$48,932	\$50,889	\$52,924	\$55,041	\$57,243	\$59,533	\$61,914	\$64,391	\$66,966	\$69,645	\$72,431	\$75,328
Grounds Maintenance and Landscaping	\$17,400	\$18,096	\$19,820	\$19,673	\$20,356	\$21,170	\$22,017	\$22,897	\$23,813	\$24,766	\$25,756	\$26,787	\$27,858	\$28,972	\$30,131
Security	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Replacement Reserve	\$26,000	\$26,870	\$30,766	\$31,889	\$32,640	\$33,619	\$34,828	\$36,066	\$37,336	\$38,638	\$39,974	\$40,143	\$41,347	\$42,587	\$43,865
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Expenses</b>	<b>\$627,998</b>	<b>\$649,118</b>	<b>\$671,083</b>	<b>\$693,828</b>	<b>\$717,653</b>	<b>\$742,380</b>	<b>\$768,006</b>	<b>\$794,809</b>	<b>\$822,802</b>	<b>\$851,506</b>	<b>\$881,566</b>	<b>\$912,829</b>	<b>\$945,342</b>	<b>\$979,156</b>	<b>\$1,014,322</b>
<b>Net Operating Income</b>	<b>\$192,105</b>	<b>\$192,897</b>	<b>\$193,193</b>	<b>\$193,276</b>	<b>\$193,137</b>	<b>\$192,754</b>	<b>\$192,113</b>	<b>\$191,195</b>	<b>\$189,983</b>	<b>\$188,456</b>	<b>\$186,595</b>	<b>\$184,377</b>	<b>\$181,780</b>	<b>\$178,780</b>	<b>\$175,352</b>
<b>Debt Service Payments:</b>															
First Mortgage	\$151,836	\$151,836	\$151,836	\$151,836	\$151,836	\$151,836	\$151,836	\$151,836	\$151,836	\$151,836	\$151,836	\$151,836	\$151,836	\$151,836	\$151,836
Second Mortgage	\$5,071	\$5,071	\$5,071	\$5,071	\$5,071	\$5,071	\$5,071	\$5,071	\$5,071	\$5,071	\$5,071	\$5,071	\$5,071	\$5,071	\$5,071
Third Mortgage	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other Fees - Letter of Credit/Guarantee	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other Fees - Agency/Trustee/Service	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Debt Service Payments</b>	<b>\$156,907</b>	<b>\$156,907</b>	<b>\$156,907</b>	<b>\$156,907</b>	<b>\$156,907</b>	<b>\$156,907</b>	<b>\$156,907</b>	<b>\$156,907</b>	<b>\$156,907</b>	<b>\$156,907</b>	<b>\$156,907</b>	<b>\$156,907</b>	<b>\$156,907</b>	<b>\$156,907</b>	<b>\$156,907</b>
<b>Operating Income After Debt Service - Before Tax Cash Flow</b>	<b>\$35,198</b>	<b>\$35,990</b>	<b>\$36,286</b>	<b>\$36,371</b>	<b>\$36,230</b>	<b>\$35,847</b>	<b>\$35,206</b>	<b>\$34,288</b>	<b>\$33,076</b>	<b>\$31,550</b>	<b>\$29,688</b>	<b>\$27,470</b>	<b>\$24,873</b>	<b>\$21,873</b>	<b>\$18,445</b>
<b>Debt Service Coverage Ratios</b>															
Debt Service Coverage - First Only	1.267	1.270	1.272	1.273	1.272	1.269	1.265	1.259	1.251	1.241	1.229	1.214	1.197	1.177	1.165
Debt Service Coverage - All Mortgages	1.226	1.229	1.231	1.232	1.231	1.228	1.224	1.219	1.211	1.201	1.189	1.175	1.159	1.139	1.118
Debt Service Coverage - All Mortgages and Fees	1.226	1.229	1.231	1.232	1.231	1.228	1.224	1.219	1.211	1.201	1.189	1.176	1.159	1.139	1.118
<b>Financial Ratios</b>															
Operating Expense Ratio	73.3%	74.0%	74.7%	75.4%	76.2%	76.9%	77.7%	78.4%	79.2%	80.0%	80.7%	81.5%	82.3%	83.1%	83.9%
Break-Even Ratio	89.4%	89.4%	89.5%	89.7%	89.8%	89.9%	90.2%	90.4%	90.6%	90.8%	91.1%	91.4%	91.7%	92.1%	92.4%

ELMWOOD TERRACE / 2007-204C and SUPPLEMENTAL LOAN  
DESCRIPTION OF FEATURES AND AMENITIES

A. The Development will consist of:

116 Garden apartment units located in 5 residential buildings.

Unit Mix:

One (1) one bedroom/one bath unit containing a minimum of 771 square feet of heated and cooled living area.

Five (5) one bedroom/one bath units containing a minimum of 773 square feet of heated and cooled living area.

One (1) one bedroom/one bath unit containing a minimum of 798 square feet of heated and cooled living area.

Five (5) one-bedroom/one bath units containing a minimum of 800 square feet of heated and cooled living area.

Three (3) two bedroom/two bath units containing a minimum of 1,034 square feet of heated and cooled living area.

Fifty-three (53) two bedroom/two bath units containing a minimum of 1,036 square feet of heated and cooled living area.

Three (3) three bedroom/two bath units containing a minimum of 1,270 square feet of heated and cooled living area.

Forty-five (45) three bedroom/two bath units containing a minimum of 1,272 square feet of heated and cooled living area.

116 Total Units

The Development is to be constructed in accordance with the final plans and specifications approved by the appropriate city or county building or planning department or equivalent agency, and approved as reflected in the Pre-Construction Analysis prepared for Florida Housing or its Servicer, unless a change has been approved in writing by Florida Housing or its Servicer. The Development will conform to requirements of local, state & federal laws, rules, regulations, ordinances, orders and codes, Federal Fair Housing Act and Americans with Disabilities Act ("ADA"), as applicable.

B. Each unit will be fully equipped with the following:

1. Air conditioning in all units (window units are not allowed; however, through-wall units are permissible for rehabilitation).
2. Window treatments for each window inside each unit.
3. Termite prevention and pest control throughout the entire affordability period.
4. Peephole on all exterior doors.

ELMWOOD TERRACE / 2007-204C and SUPPLEMENTAL LOAN  
DESCRIPTION OF FEATURES AND AMENITIES

5. Exterior lighting in open and common areas.
  6. Cable or satellite TV hook-up in all units.
  7. Range, oven and refrigerator in all units.
  8. At least two full bathrooms in all 3 bedroom or larger new construction units.
  9. Bathtub with shower in at least one bathroom in at least 90% of the new construction, non-Elderly units.
- C. The Applicant has committed to provide the following features in each new construction unit:
1. 30 Year expected life roofing on all buildings
  2. Marble window sills in all units
  3. Steel exterior entry door frames for all units
  4. At least 1.5 bathrooms (one full bath and one with at least a toilet and sink) in all 2 bedroom new construction units
  5. Double compartment kitchen sink in all units
  6. Dishwasher in all new construction units
  7. Garbage disposal in all new construction units
- D. The Applicant has committed to the following amenities in the Development:
1. Community center or clubhouse
  2. Swimming pool
  3. Playground/tot lot, accessible to children with disabilities (must be sized in proportion to Development's size and expected resident population with age-appropriate equipment)
  4. Two or more parking spaces per total number of units
  5. Picnic area with hard cover permanent roof of a design compatible with the Development, open on all sides, containing at least three permanent picnic tables with benches and an adjoining permanent outdoor grill
  6. Computer lab on-site with minimum one computer per 50 units, with basic word

**ELMWOOD TERRACE / 2007-204C and SUPPLEMENTAL LOAN  
DESCRIPTION OF FEATURES AND AMENITIES**

processing, spreadsheets and assorted educational and entertainment software programs and at least one printer

7. Laundry hook-ups and space for full-size washer and dryer inside each unit
  8. Laundry facilities with full-size washers and dryers available in at least one common area on site
- E. The Applicant has committed to provide the following energy conservation features for all buildings in the Development:
1. Heat pump with a minimum HSPF of 8.2 instead of electric resistance
  2. Air conditioning with a minimum SEER rating of 14
  3. Electric water heater with energy factor of .93 or better
  4. Wall insulation of a minimum of R-13 for frame built construction
  5. Attic insulation of R-30 or better
  6. All windows single-pane with shading coefficient of .67 or better
  7. Ceiling fans in all bedrooms and living area in each unit
- F. The Applicant has committed to provide the following Resident Programs:
1. Welfare to Work or Self-Sufficiency Type Programs - The Applicant commits to actively seek residents who are participating in or who have successfully completed the training provided by these types of programs.
  2. First Time Homebuyer Seminars – Applicant or its Management Agent must arrange for and provide, at no cost to the resident, in conjunction with local realtors or lending institutions, semiannual on-site seminars for residents interested in becoming homeowners. Electronic media, if used, must be used in conjunction with live instruction.
  3. Literacy Training - Applicant or its Management agent must make available, at no cost to the resident, literacy tutor(s) who will provide weekly literacy lessons to residents in private space on-site. Electronic media, if used, must be used in conjunction with live instruction.
  4. Job Training – Applicant or its Management Agent must provide, at no cost to the resident, regularly scheduled classes in keyboarding, computer literacy, secretarial skills or other useful job skills, which will be provided at least once each quarter. If the training is not provided on-site, transportation at no cost to the resident must be provided. Electronic media, if used, must be used in conjunction with live instruction.

ELMWOOD TERRACE / 2007-204C and SUPPLEMENTAL LOAN  
DESCRIPTION OF FEATURES AND AMENITIES

5. Health Care – At least quarterly visits by health care professionals such as nurses, doctors, or other licensed care providers. At a minimum, the following services must be provided: health screening, flu shots, vision and hearing tests. Regularly scheduled is defined as not less often than once each quarter. On-site space must be provided. Service must be provided at no cost to the residents, with the exception that the residents may be charged for medications.
6. Resident Activities – These specified activities are planned, arranged, provided and paid for by the Applicant or its Management Agent. These activities must be an integral part of the management plan. The Applicant must develop and execute a comprehensive plan of varied activities that brings the residents together and encourages community pride. The goal here is to foster a sense of community by bringing residents together on a regularly scheduled basis by providing activities such as holiday and special occasion parties, community picnics, newsletters, children's special functions, etc.
7. Health and Nutrition Classes – At least 8 hours per year, provided on site at no cost to the residents. Electronic media, if used, must be used in conjunction with live instruction.
8. Financial Counseling – This service must be provided by the Applicant or its Management Agent, at no cost to the resident, and must include the following components: must be regularly scheduled at least once each quarter; must include tax preparation assistance by qualified professionals; must include educational workshops on such topics as "Learning to Budget," "Handling Personal Finances," "Predatory Lending," or "Comparison Shopping for the Consumer." Electronic media, if used, must be used in conjunction with live instruction.

## COMPLETENESS AND ISSUES CHECKLIST

**DEVELOPMENT NAME:** Elmwood Terrace

**DATE:** September 11, 2008

In accordance with applicable Program Rule(s), the Applicant is required to submit the information required to evaluate, complete, and determine its sufficiency in satisfying the requirements for Credit Underwriting to the Credit Underwriter in accordance with the schedule established by the Florida Housing Finance Corporation ("Florida Housing" or "FHFC"). The following items must be satisfactorily addressed. "Satisfactorily" means that the Credit Underwriter has received assurances from third parties unrelated to the Applicant that the transaction can close within the allotted time frame. Unsatisfactory items, if any, are noted below and in the "Issues and Concerns" section of the Executive Summary.

CREDIT UNDERWRITING REQUIRED ITEMS:	STATUS	NOTE
	Satis. / Unsatis.	
1. The development's final "as submitted for permitting" plans and specifications.  Note: Final "signed, sealed, and approved for construction" plans and specifications will be required thirty days before closing.	Satis.	
2. Final site plan and/or status of site plan approval.	Satis.	
3. Permit Status.	Satis.	
4. Pre-construction analysis ("PCA").	Satis.	
5. Survey.	Satis.	
6. Complete, thorough soil test reports.	Satis.	
7. Full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice.	Satis.	
8. Market Study separate from the Appraisal.	Satis.	
9. Environmental Site Assessment – Phase I and/or Phase II if applicable (If Phase I and/or II disclosed environmental problems requiring remediation, a plan, including time frame and cost, for the remediation is required). If the report is not dated within one year of the application date, an update from the assessor must be provided indicating the current environmental status.	Satis.	
10. Audited financial statements for the most recent fiscal year ended or acceptable alternative as stated in the Rule for credit enhancers, Applicant, general partner, principals, guarantors and general contractor.	Satis.	



## SUPPLEMENTAL LOAN &amp; HC CREDIT UNDERWRITING REPORT

SMG

11. Resumes and experience of Applicant, general contractor and management agent.	Satis.	
12. Credit authorizations; verifications of deposits and mortgage loans.	Satis.	
13. Management Agreement and Management Plan.	Satis	
14. Firm commitment from the credit enhancer or private placement purchaser, if any.	N/A	
15. Firm commitment letter from the syndicator, if any.	Satis.	
16. Firm commitment letter(s) for any other financing sources.	Satis.	
17. Updated sources and uses of funds.	Satis.	
18. Draft construction draw schedule showing sources of funds during each month of the construction and lease-up period.	Satis.	
19. Fifteen-year income, expense, and occupancy projection.	Satis.	
20. Executed general construction contract with "not to exceed" costs.	Satis.	
21. HC ONLY: 20% of the total equity to be provided prior to or simultaneously with the closing of the construction financing.	Satis.	
22. Any additional items required by the credit underwriter.	Satis.	

NOTES AND APPLICANT'S RESPONSES: None

## SUPPLEMENTAL LOAN &amp; HC CREDIT UNDERWRITING REPORT

SMG

**HC Allocation Calculation**

<b>Section I: Qualified Basis Calculation</b>	
Development Cost	\$17,306,931
Less Land Cost	(\$1,570,000)
Less Federal Funds	\$0
Less Other Ineligible Cost	(\$1,638,405)
Less Disproportionate Standard	\$0
<b>Total Eligible Basis</b>	<b>\$14,098,526</b>
Applicable Fraction	100.00%
DDA/QCT Basis Credit	130.00%
<b>Qualified Basis</b>	<b>\$18,328,084</b>
Housing Credit Percentage	9.00%
<b>Annual Housing Credit Allocation</b>	<b>\$1,649,528</b>

*Notes to the Qualified Basis Calculation:*

1. Less Land Cost is the portion of the land cost reflected by the appraised value.
2. Other Ineligible Costs are as shown in the HC Ineligible Costs column of the Uses of Funds section of this report.
3. The subject has a 100% set-aside. Therefore, SMG has utilized an Applicable Fraction of 100.00%.
4. This development is located in a Difficult Development Area ("DDA") and in Qualified Census Tract ("QCT") 11.00 in Lee County. Therefore, a 130.00% basis credit has been applied.
5. Applicant has not already locked-in a Housing Credit Percentage. Therefore, a Housing Credit Percentage of 9.00% is based on to the rate indicated in the Housing and Economic Recovery Act of 2008.

<b>Section II: Gap Calculation</b>	
Total Development Cost (Including Land and Ineligible Costs)	\$17,306,931
Less Mortgages	(\$3,020,000)
Less Grants	\$0
<b>Equity Gap</b>	<b>\$14,286,931</b>
Percentage to Investment Partnership	99.99%
HC Syndication Pricing	\$0.8614
<b>HC Required to Meet Gap</b>	<b>\$16,587,369</b>
<b>Annual HC Required</b>	<b>\$1,658,737</b>

## SUPPLEMENTAL LOAN &amp; HC CREDIT UNDERWRITING REPORT

SMG

*Notes to the Gap Calculation:*

1. The Less Mortgages line item reflects the first mortgage from Greystone and the FHFC Supplemental Loan.
2. HC Syndication Pricing and Percentage to Investment Partnership are based on the July 24, 2008, commitment revised August 29, 2008, from Enterprise, as described in the Permanent Financing Sources segment in Section A of this report.

<b>Section III: Summary</b>	
HC per Applicant Request	\$1,498,680
HC per Qualified Basis	\$1,649,528
HC per Gap Calculation	\$1,658,737
Annual HC Recommended	\$1,498,680

*Notes to the Summary:*

1. The Annual HC Recommended is limited by the Applicant's request.

Exhibit 5  
ELMWOOD TERRACE

Occupancy Comparables

Comparable Rentals Per Appraisal by Meridian Appraisal Group, Inc. May 9, 2008							Average
Property:	Berwood Trace 9804 Berwood Drive Fort Myers	Brittany I & II 4850 Winkler Ave Fort Myers	Hawk's Landing 5935 Hawks Landing Dr Fort Myers	Mariner's Landing 2122 Carrel Road Fort Myers	Westchase 3810 Metro Parkway Fort Myers	Westwood Metro Parkway Fort Myers	
County:	Lee	Lee	Lee	Lee	Lee	Lee	
FHFC Program	MMRB/Guar/HC	MMRB/Guar/HC	SAIL/HC	SAIL/HC	MMRB/HC	MMRB/Guar/HC	
# of Units:	340	320	204	112	352	288	
Leasing Commenced:	2000	2000	2004	2007	1999	2001	
Proximity to Subject	Within 10 miles	Within 10 miles	Within 10 miles	Within 10 miles	Within 10 miles		
Set Asides:	50% AMI	50% AMI	50% AMI	50% AMI	50% AMI	50% AMI	
Occupancy:	82%	87%	85%	98%	75%	89%	88%

Note: The average occupancy of the five developments excluding Mariner's Landing is: 83.4%

Additional Comparables per SMG Database						
	Property	City-County	Program	Units	2007 Avg Occupancy	
1	Andros Isle dba Vista Palms	Lee County	MMRB/Guar/HC	229	74.5%	
2	Crossings at Cape Coral	Lee County	SAIL/HC	168	92.7%	
3	Heron Pond	Lee County	SAIL/HC	156	78.4%	
4	Pueblo Bonito	Lee County	HOME	80	100.0%	
5	Pueblo Bonito II	Lee County	HOME	20	100.0%	
AVERAGE:					89.1%	

OVERALL AVERAGE:	Comparables:	85.6%
	Additional Properties	89.1%
	AVERAGE	87.3%

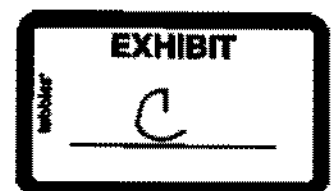
**REQUEST FOR PROPOSALS 2010-04**

**TAX CREDIT EXCHANGE PROGRAM (EXCHANGE) FUNDING FOR  
APPLICANTS THAT SUBMITTED AN ORIGINAL APPLICATION THAT HAS  
AN ACTIVE AWARD OF NINE PERCENT HOUSING CREDITS**

**for**

**FLORIDA HOUSING FINANCE CORPORATION**

**February 26, 2010**



## **SECTION ONE INTRODUCTION**

This Request for Proposal is open to Applicants that submitted an Original Application that has an Active Award of nine percent Housing Credits, as defined herein.

Florida Housing is soliciting sealed proposals from qualified Applicants that commit to provide housing in accordance with the terms and conditions of this RFP, applicable laws, rules, and regulations, and Florida Housing's generally applicable construction and financial standards.

Florida Housing anticipates approximately \$150,000,000 in Exchange funding will be available under this RFP. Any Exchange funding that remains after funding all eligible Proposals under this RFP shall be offered to 2009 Universal Cycle Applicants that receive an award of Housing Credits as a result of a final order issued on or before June 18, 2010 that (i) were included in the Eligible Unfunded Applications section of the 2009 Universal Application Cycle Ranked Order list approved by the Board on February 26, 2010 for which the invitation to enter credit underwriting has been accepted as of the due date stated in the invitation, provided sufficient time exists for such recipients to meet the prescribed Florida Housing and Treasury expenditure timeframes or (ii) filed a petition for hearing as of December 28, 2009 which was addressed in a formal proceeding at the Division of Administrative Hearings and were included in the Failed Threshold section of the 2009 Universal Application Cycle Ranked Order list approved by the Board on February 26, 2010, for which the invitation to enter credit underwriting has been accepted as of the due date stated in the invitation, provided sufficient time exists for such recipients to meet the prescribed Florida Housing and Treasury expenditure timeframes. If funds still remain, such funds may be distributed under a separate RFP upon approval of the Board.

## **SECTION TWO DEFINITIONS**

For purposes of this document, the terms reflected below shall be defined as set out below. Unless otherwise defined below, the definitions included in Rule 67-48.002, F.A.C., or applicable federal regulations apply.

- |                |   |
|----------------|---|
| “Active Award” | An allocation of nine percent Housing Credits, awarded to eligible Applicants by the Board on February 26, 2010, for which the invitation to enter credit underwriting has been accepted as of the due date stated in the invitation.   |
| “Applicant”    | Any person or legally formed entity that is eligible to (i) seek Exchange funding from Florida Housing by responding to this request for proposal or (ii) be offered Exchange funding as a result of a final order issued on or before June 18, 2010, as outlined in Section One above. |

“ARRA”	The American Recovery and Reinvestment Act of 2009.
“Award of HC”	The effective date of the award of HC shall be the date of the invitation to Applicant to enter credit underwriting. The invitation to enter credit underwriting also serves the purpose of informing the Applicant in writing that it has been awarded Housing Credits by the Board of Directors.
“Committee”	The review committee composed only of employees of Florida Housing that is established pursuant to Rule 67-49.007, F.A.C.
“Days”	Calendar days, unless otherwise specified. For computing any period of time allowed under this RFP, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.
“EUA” or Extended Use Agreement	An agreement which sets forth the set-aside requirements and other Development requirements under a Corporation program.
“Exchange” or “Exchange Program”	The Tax Credit Exchange Program authorized under Section 1602 of the American Recovery and Reinvestment Act of 2009.
“Exchange Extended Use Period”	With respect to any building that is included in a Development funded through the Exchange Program, the period that begins on the first day of the Compliance Period in which such building is part of the Development and ends on the later of: (i) the date specified by Florida Housing in the EUA or (ii) the date that is the fifteenth anniversary of the last day of the Compliance Period, unless earlier terminated as provided in Section 42(h)(6) of the IRC.
“Florida Housing”	Florida Housing Finance Corporation, a public corporation and public body corporate and politic created by Section 420.504, Fla. Stat.
“Good Faith Effort”	The Applicant’s demonstration prior to completion of credit underwriting that it has attempted to obtain an investment commitment for its Housing Credit allocation, but was unable to secure a tentative price that made it a viable transaction without additional gap financing.

“Interested Party”	A person or entity that requests a copy of this Request for Proposals from Florida Housing.
“Original Application”	The Application for which the Applicant (i) has an Active Award of nine percent Housing Credits or (ii) has received an award of nine percent Housing Credits as a result of a final order issued on or before June 18, 2010, as outlined in Section One above.
“Proposal”	A written submission by an Applicant that responds to this Request for Proposals.
“Proposed Development”	The Development proposed within the Applicant’s Original Application and this RFP.
“RFP”	This Request for Proposals, including all exhibits referenced in this document and all other documents incorporated by reference.
“Subaward”	That certain funding award made under the provisions of the Exehange Program.
“Threshold Item”	A mandatory requirement of the RFP.
“Website”	The Florida Housing Finance Corporation website, the home address of which is <a href="http://www.floridahousing.org">www.floridahousing.org</a> .

**SECTION THREE  
PROCEDURES AND PROVISIONS**

A. An Applicant must submit one (1) original and four (4) copies of the Proposal in a sealed envelope marked “RFP 2010-04”. Each envelope or package containing Proposals must clearly state the name of the Applicant. The Proposal that is the original must clearly indicate “Original” on that Proposal. Florida Housing shall not accept a faxed or e-mailed Proposal. Florida Housing must receive any Proposal on or before 2:00 p.m., Eastern Time, on March 12 , 2010. Proposals shall be opened at that time and consecutively numbered. A Lottery number will then be assigned to each Proposal by having Florida Housing’s internal auditors run the total number of Proposals through a random number generator program. Proposals must be addressed to:

Sherry Green  
Contracts Administrator  
Florida Housing Finance Corporation  
227 N. Bronough Street, Suite 5000  
Tallahassee, FL 32301  
850-488-4197



B. This RFP does not commit Florida Housing to award any funding to any Applicant or to pay any costs incurred in the preparation or mailing of a Proposal.

C. Florida Housing reserves the right to:

1. Waive minor deficiencies and informalities;
2. Accept or reject any or all Proposals received as a result of this RFP;
3. Obtain information concerning any or all Applicants from any source;
4. To select for award of Proposal based on evaluation standards described in this RFP.

D. Any Interested Party may submit any inquiry regarding this RFP in writing via mail, fax or e-mail to Sherry Green at the address given in Section Three, paragraph A. All inquiries are due by 5:00 p.m., Eastern Time, on March 3, 2010. Phone calls will not be accepted. Florida Housing expects to respond to all inquiries by 5:00 p.m., Eastern Time, on March 5, 2010. Florida Housing will post a copy of all inquiries received, and their answers, on Florida Housing's Website at: [http://apps.floridahousing.org/StandAlone/FHFC\\_ECM/AppPage\\_LegalRFPs.aspx](http://apps.floridahousing.org/StandAlone/FHFC_ECM/AppPage_LegalRFPs.aspx). Florida Housing will also send a copy of those inquiries and answers in writing to any Interested Party that requests a copy. Florida Housing will determine the method of sending its answers, which may include regular United States mail, overnight delivery, fax, e-mail, or any combination of the above. Only written responses from Sherry Green, or her designee, to inquiries raised by Interested Parties that are posted on Florida Housing's Website or sent to Interested Parties shall bind Florida Housing. No other means of communication, whether oral or written, shall be construed as an official response or statement from Florida Housing.

E. Any person who wishes to protest the specifications of this RFP must file a protest in compliance with Section 120.57(3), Fla. Stat., and Rule Chapter 28-110, F.A.C. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

F. Florida Housing expects to select one or more Applicants to award the funding contemplated by this RFP. Any such Applicants will be selected through Florida Housing's review of each Proposal, considering the factors identified in this RFP.

#### **SECTION FOUR OBJECTIVES AND SCOPE OF SERVICES**

By submitting this Proposal, each Applicant agrees to the following terms and conditions.

A. The Applicant affirms that the information and commitments made by the Applicant in its Original Application are still in effect, subject to Rule Chapter 67-48, F.A.C., effective August 6, 2009.

B. If awarded funding under this RFP, the Applicant understands and agrees that any withdrawal or return of the Applicant's nine percent Housing Credits award from the 2009 Universal Application Cycle means the automatic withdrawal and return of any Exchange funding awarded under this RFP.

C. Funding Eligibility:

1. This Request for Proposal is open to any Applicant that submitted an Original Application that has an Active Award of nine percent Housing Credits.
2. A Proposal will not be considered if, as of the due date for this RFP, the Applicant has withdrawn the Original Application that had the Active Award of Housing Credits.

D. Fees:

1. Asset Management Fees:

A separate asset management fee of \$3,000 will be charged by Florida Housing for its asset management activities.

Note: This fee is provided for estimation purposes only and is not the fee that will actually be charged. The actual fee will be determined based on the current contract for services between Florida Housing and the Servicer(s).

2. Construction Inspection Fees:

- a. On-site construction inspection - \$155 per hour, not to exceed \$1,549 per inspection.
- b. In-house reviews - \$155 per hour, not to exceed \$1,906 per review.
- c. Extraordinary services - \$155 per hour

Note: This fee is provided for estimation purposes only and is not the fee that will actually be charged. The actual fee will be determined based on the current contract for services between Florida Housing and the Servicer(s).

3. Permanent Loan Servicing Fees (only for services that relate to asset management activities as determined by Florida Housing):

- a. An annual fee of 25 basis points on the outstanding balance of the Exchange loan, with an annual minimum fee of \$2,228 and an annual maximum fee not to exceed \$8,910.

- b. Extraordinary services - \$155 per hour.

Note: This fee is provided for estimation purposes only and is not the fee that will actually be charged. The actual fee will be determined based on the current contract for services between Florida Housing and the Servicer(s).

4. Additional Fees:

Funding recipients will be responsible for all fees associated with Florida Housing's legal counsel related to the Exchange Program.

### **SECTION FIVE CERTIFICATION**

By inclusion and execution of Exhibit A each Applicant certifies that:

A. Any material submitted in response to this RFP is a public record pursuant to Chapter 119, Fla. Stat., and subject to examination upon request, after Florida Housing provides a notice of decision pursuant to Section 120.57(3), Fla. Stat., or within 10 Days after the Proposal is opened, whichever is earlier.

B. **Noninterference.** At no time during the review and evaluation process, commencing with filing the Proposal and continuing until the Board renders a final decision on the RFP, may Applicants or their representatives contact Board members or Florida Housing staff concerning their own or any other Applicant's response to the RFP. If an Applicant or its representative does contact a Board or staff member in violation of this section, the Board shall, upon a determination that such contact was made in an attempt to influence the selection process, disqualify the Proposal.

C. Proposed Developments funded with Exchange will be subject to the credit underwriting and Housing Credit Program requirements of Rule Chapter 67-48, F.A.C., the Compliance requirements of Rule Chapter 67-53, F.A.C., this RFP, Section 42 of the IRC, and the Tax Credit Exchange Program provisions.

- 1. Credit Underwriting Review, Carryover Allocation Agreement, and Terms and Conditions of the Exchange Grant
  - a. Upon Board approval of the selected Proposals, the Applicants will be invited to enter credit underwriting for the Exchange funding. The invitations must be executed and returned within seven (7) Days of the date of the invitation letter, along with any additional credit underwriting fee referenced in the invitation letter.

- b. Upon issuance of a positive preliminary recommendation letter by the Credit Underwriter, Florida Housing will issue the Carryover Allocation Agreement for (i) the nine percent Housing Credits awarded pursuant to the Applicant's Original Application and the Exchange funding awarded pursuant to this RFP or (ii) the nine percent Housing Credits and any Exchange funding awarded as a result of a final order issued on or before June 18, 2010, as outlined in Section One above.
- c. Florida Housing shall hold periodic telephonic Board meetings, as necessary, so that completed credit underwriting reports may be submitted for Board approval. The Board's approval at such telephonic meetings shall then be presented for ratification at the next regularly scheduled Board meeting.

The amount of Exchange and nine percent Housing Credits will be reflected in the credit underwriting report submitted to the Board for approval. Upon approval of the credit underwriting report, the firm loan commitment letter for the Exchange funding will be issued and, if necessary, the Carryover Allocation Agreement for the Exchange funding and Housing Credits will be revised.

If the Board does not approve the completed credit underwriting report, the Exchange funding shall be rescinded and returned to Florida Housing.

- d. Replacement Reserves (RR) shall be a minimum of \$300/unit with a requirement to maintain a minimum amount of \$1,500 per unit at all times, allowing for an initial period to accumulate this minimum. Allowed uses for RR in order to fall below the minimum amount: life safety, structural and systems as determined by Florida Housing and its Servicers. Traditional RR draws shall be limited to items which can be depreciated. Applicants awarded financing through the pool of funds identified in Section One of this RFP may be requested by Florida Housing to perform capital needs assessments up to once every five (5) years throughout the affordability period, based on standards approved by Florida Housing at the time of each request, at the Applicant's expense, with resulting revisions to replacement reserves as necessary. These assessments will be performed by a firm acceptable to Florida Housing and/or its Servicer.

- e. Any amount of Exchange funding to be awarded will be sized during credit underwriting. The following parameters shall be used:
  - (1) For any Homeless Development, the amount of the Developer fee shall be 21 percent of eligible costs with an amount equal to 5 percent being set-aside in an operating reserve.
  - (2) Proposed Development will be limited to an Exchange amount of up to the lesser of (a) the amount requested in the response to this RFP; (b) \$5,000,000 per Development, (c) \$50,000 per unit, (d) the amount calculated by taking Total Development Costs and deducting the Housing Credit equity, the first mortgage, any other Florida Housing resources, the deferred Developer fee, any Local Government subsidy funds, and any other committed resources, subject to maximum limitations provided herein, or (e) 85 percent of the amount of the Development's eligible basis as determined at the end of the first year of the credit period (as defined in Section 42(f)(1) of the Internal Revenue Code) and which shall be estimated during credit underwriting. Eligible basis, for this purpose, includes any increase for buildings located in high cost areas under Section 42(d)(5)(B).
- f. An analysis of the Sponsor shall be completed with more in-depth consideration to key topics than typically completed by Florida Housing, including liquidity, net worth, unrestricted assets, and contingent liabilities.
- g. An analysis of the credit worthiness of the Developer shall be completed with more in-depth review than typically considered, including areas of past performance, default history, failed conversions, guarantor performance, and outstanding contingencies.
- h. Exchange funds shall be a Subaward grant, to be used to fill the financing gap for costs that are included in the eligible costs of a Proposed Development, and are subject to the Housing Credit rent, income, use restrictions and compliance monitoring requirements, all as required under Section 42 of the IRC and Rule Chapter 67-53, F.A.C. The grant will be in the form of a forgivable loan.

- i. Timely expenditure shall be mandated for the Exchange funding. Treasury requires that the subawardee has, by December 31, 2010, paid or incurred at least 30 percent of its total adjusted basis in land and depreciable property that is reasonably expected to be part of the low-income housing project.

If timely expenditure cannot be met, Florida Housing may withdraw any future Exchange funding, based on the facts and circumstances as presented to staff. Unless the Treasury changes their current ruling, Florida Housing cannot request any Exchange funding from the Treasury past December 31, 2011.

- j. Exchange Documentation shall include a Carryover Allocation Agreement, Extended Use Agreement, Final Cost Certification Allocation, and the standard closing documentation, including, but not limited to, a Promissory Note, Mortgage and Security Agreement, Compliance, Financial Monitoring and Servicing Agreement, Construction Loan Agreement, Completion and Operating Deficit Guaranty, Continuing, Absolute and Unconditional Guaranty of Recourse Obligations, and Environmental Indemnity Agreement.
- k. All Proposed Developments must have a minimum of six (6) months Debt Service and Operating Expenses Reserves, with no releases during the 15 year federal compliance period. Any reserves required in excess of the minimum of six (6) months shall be allocated as a sub-set of the Developer fee.
- l. The Applicant requesting Exchange funds must demonstrate a Good Faith Effort to obtain investment commitments for its HC Allocation during the credit underwriting process.
- m. Florida Housing shall require the Applicant to certify that it owns the land on which the Proposed Development is to be built or that the Applicant is the Lessee under a lease of the land on which the Proposed Development is to be built and which has a term that does not expire prior to the expiration of the Extended Use Period. Such certification must be demonstrated on or before November 1, 2010.
- n. Florida Housing shall require the Applicant to certify that it has incurred at least 10 percent of the reasonably expected basis (10 percent test) of the Proposed Development. Such certification must be demonstrated on or before November 1, 2010.

- o. Florida Housing shall require the Applicant to acknowledge and agree to commence construction and close on its tax credit partnership on or before November 1, 2010. As proof of construction commencement and closure of the tax credit partnership agreement, the Applicant shall deliver to Florida Housing (i) a copy of the recorded Notice of Commencement from the Official Records of the applicable jurisdiction(s) relative to the Proposed Development and (ii) a copy of the closed and executed partnership agreement.
- p. Florida Housing shall require the Applicant to acknowledge and agree to close on the Exchange funding by November 1, 2010.

2. Exchange Funding Reporting

a. Quarterly Progress Report

No later than seven (7) Days following the receipt of the firm loan commitment letter, each Applicant awarded Exchange funding must submit the Section 1602 Quarterly Progress Report along with the signed Acceptance of Commitment. Any quarterly report that is not received by the due date will be assessed a late fee of \$1,000, with no grace period.

To provide the following information, Applicants must use the Exchange Quarterly Reporting form found on the Website at

[http://apps.floridahousing.org/StandAlone/FHFC\\_ECM/ContentPage.aspx?PAGE=0042](http://apps.floridahousing.org/StandAlone/FHFC_ECM/ContentPage.aspx?PAGE=0042).

- (1) Name of the recipient entity
- (2) Name of the Development
- (3) Brief description of the Development
- (4) Location of the Development: city/county, State, zip code
- (5) Number of construction jobs created
- (6) Number of construction jobs retained
- (7) Number of non-construction jobs created
- (8) Number of non-construction jobs retained
- (9) Number of total housing units newly constructed
- (10) Number of total housing units rehabilitated
- (11) Number of low-income housing units newly constructed
- (12) Number of low-income housing units rehabilitated

As part of its acceptance of the Exchange funding, the Applicant agrees to provide any additional information which the Treasury deems necessary to comply with Section 1602 of the Act and American Recovery and Reinvestment Act guidance.

b. Bimonthly Progress Report

Every two (2) months through completion of construction, each Applicant awarded Exchange funds under this RFP will be required to submit to Florida Housing a written progress report evidencing the progress of the Development. To provide the required information, Applicants must use the HC Bimonthly Reporting form found on the Website at [http://apps.floridahousing.org/StandAlone/FHFC\\_ECM/ContentPage.aspx?PAGE=0042](http://apps.floridahousing.org/StandAlone/FHFC_ECM/ContentPage.aspx?PAGE=0042).

3. Federal Requirements

Exchange funds are subject to Fair Housing Act and other federal requirements that apply to Developments funded under the Housing Credit Program.

4. Compliance and Asset Management

a. Asset Management

Florida Housing shall perform asset management functions so as to ensure compliance with Section 42 of the IRC and the regulations there under (including Title 26 Code of Federal Regulations section 1.42.9), and the long-term viability of the buildings funded by an Exchange Subaward under the Act in accordance with Section 1602 (c)(3) of the Act.

b. Compliance

All Applicants receiving an award of Exchange funding will be required to comply with the compliance requirements of Rule Chapter 67-53, F.A.C.

5. Recapture of Exchange Funds

Each EUA will include a requirement providing for recapture to assure that the building remains a qualified low-income building during the 15-year federal compliance period. As part of its acceptance of the Exchange funding, the Subaward Applicant



understands that any amount subject to recapture becomes a debt owed to the United States payable to the General Fund of the Treasury and enforceable by all available means against any assets of the Subaward Applicant.

6. **Written Agreements (EUA) and Disbursement of Exchange Funding**

All Applicants must execute a legally binding EUA with Florida Housing, which shall be recorded in the county where the Proposed Development is located and be binding on all owners and successors, e.g., a covenant.

The EUA will set forth all Exchange Program requirements, including the requirements of Section 42 of the IRC applicable to the Subaward, and shall impose conditions or restrictions, including a requirement providing for recapture, so as to assure that the qualified low-income building remains a qualified low-income building during the 15-year federal compliance period.

The EUA shall also include a requirement for the Subawardee to provide sufficient information to Florida Housing to report on the use of the Exchange funds as required by Treasury.

The EUA must be signed and dated by the Applicant and Florida Housing before any Exchange funds can be disbursed to the Subawardee.

**SECTION SIX  
INFORMATION TO BE PROVIDED IN PROPOSAL**

The Applicant must provide a completed and executed Exhibit A to RFP 2010-04, which includes the following information:

- A. **Threshold Items:**
  - 1. **Name of Proposed Development.**
  - 2. **Application Number of the Original Application.**
  - 3. **Amount of Exchange Funding Requested.** The Exchange funding amount stated in the Applicant's Proposal may be different from the ARRA funding amount stated in the Applicant's Original Application.

If the information stated by the Applicant at Question No. 1 on Exhibit A is inconsistent with the information stated by the Applicant at Question No. 2

on Exhibit A, Florida Housing reserves the right to verify the information during the scoring of this RFP.

The amount of Exchange funding awarded to an Applicant will be limited as outlined in Section Five, C.l.e. of this RFP. If the amount of Exchange funding requested at Question No. 3 on Exhibit A exceeds this limit, the Applicant's Proposal will still be eligible for funding and the Exchange amount will be adjusted during credit underwriting. However, the Exchange funding requested at Question No. 3 on Exhibit A will be used for leveraging purposes of this RFP.

**B. Ranking Preference**

**1. Leveraging**

The Proposals will be listed in ascending order beginning with the Proposal that has requested the lowest amount of Exchange funding per set-aside unit and ending with the Proposal that has requested the highest amount of Exchange funding per set-aside unit. The total number of set-aside units for each Proposal will be computed by multiplying the total number of units stated at Part III.A.6. of the Original Application by the highest Total Set-Aside Percentage the Applicant committed to as stated in the last row of the set-aside breakdown chart at Part III.E.1.b.(3)(a) of the Original Application. Results that are not a whole number will be rounded up to the next whole number. Proposals with a lower amount of Exchange funding per set-aside unit will receive preference over Proposals with a higher amount of Exchange funding per set-aside unit.

**2. Tie-Breaker**

In the event that two (2) or more Proposals have the same amount of Exchange funding per set-aside unit, preference will be given to the Proposal with the lowest lottery number.

**SECTION SEVEN  
EVALUATION PROCESS**

Individual Committee members shall evaluate the Proposals independently. The individual Committee members shall evaluate the Proposals by reviewing the answers to determine if threshold is met for each Proposal. The Committee shall conduct one public meeting during which the Committee may discuss their evaluations, select Applicants most likely to be considered for award, make any adjustments deemed necessary to best serve the interests of Florida Housing's mission, and develop a recommendation or series of recommendations to the Board. The Committee will then rank the Proposals deemed eligible for funding in order of the Applicant's requested Exchange funding per set-aside unit, with preference given to Proposals that are requesting the lower amount of Exchange

funding per set-aside unit, applying the lottery tie-breaker as needed. The Board may use the Proposals, the Committee's scoring, any other information or recommendation provided by the Committee or Staff, and any other information the Board deems relevant in its selection of Applicants to whom to award funding.

## **SECTION EIGHT AWARD PROCESS**

Florida Housing shall provide notice of its decision, or intended decision, for this RFP on Florida Housing's Website the next business day after the applicable Board vote. After posting, an unsuccessful Applicant may file a notice of protest and a formal written protest in accordance with Section 120.57(3), Fla. Stat., et. al. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., et. al. or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

**Exhibit A to RFP 2010-04 - Request for Exchange Funding**

1. Name of Proposed Development : \_\_\_\_\_

2. Original Application No.: 2009-\_\_\_\_\_

3. Amount of Exchange Funding requested: \$ \_\_\_\_\_

The undersigned agrees to abide by all conditions of RFP 2010-04 and certifies that (i) all information provided in this Proposal is true and correct, (ii) that I am authorized to sign this Proposal for the Applicant, and (iii) that the Applicant is in compliance with all requirements of the RFP.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Name (typed or printed)

\_\_\_\_\_  
Title (typed or printed)

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ELMWOOD TERRACE LIMITED )  
PARTNERSHIP, )  
 )  
Petitioner, )  
 )  
and )  
 )  
RST FRUITLAND HOUSING, L.P., )  
 )  
Intervenor, )  
 )  
vs. ) Case No. 09-4682BID  
 )  
FLORIDA HOUSING FINANCE )  
CORPORATION, )  
 )  
Respondent, )  
 )  
and )  
 )  
BROWNSVILLE VILLAGE, II, LTD., )  
 )  
Intervenor. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on September 23 through 25, 2009, in Tallahassee, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: J. Stephen Menton, Esquire  
Rutledge, Ecenia, & Purnell, P.A.  
119 South Monroe Street, Suite 202  
Post Office Box 551  
Tallahassee, Florida 32302



For Intervenor RST Fruitland Housing, L.P.:

Michael P. Donaldson, Esquire  
Carlton Fields, P.A.  
215 South Monroe Street, Suite 500  
Post Office Drawer 190  
Tallahassee, Florida 32302-0190

For Respondent: Wellington Meffert, Esquire  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329

For Intervenor Brownsville Village II, Ltd.:

Donna E. Blanton, Esquire  
Radey, Thomas, Yon & Clark, P.A.  
301 South Bronough Street, Suite 200  
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue in this case is whether the specifications, terms, and conditions of the Request for Proposals 2009-04 issued by Respondent are contrary to Respondent's governing statutes, rules, or policies.

PRELIMINARY STATEMENT

On July 31, 2009, Respondent, Florida Housing Finance Corporation (Florida Housing), issued Request for Proposals 2009-04 (the RFP), which solicited proposals from developers seeking funding for affordable housing projects in Florida. On August 5, 2009, Petitioner, Elmwood Terrace Limited Partnership (Elmwood), timely submitted a notice of intent to protest certain specifications in the RFP. Elmwood timely filed a Formal Written Protest and Petition for Administrative Hearing

(the Petition) on August 17, 2009.

The Petition was forwarded to the Division of Administrative Hearings on August 26, 2009. RST Fruitland Housing, L.P. (Fruitland), filed a Petition for Leave to Intervene on September 9, 2009. Brownsville Village II, Ltd. (Brownsville), filed a Petition for Leave to Intervene on September 10, 2009. By Order dated September 17, 2009, the petitions to intervene were granted.

At the commencement of the final hearing, Elmwood submitted a Motion to Amend Petition. The motion was orally granted at the final hearing. The parties submitted an executed Joint Pre-hearing Stipulation at the commencement of the final hearing. The Joint Pre-hearing Stipulation contained admitted facts on pages 8 through 19. To the extent relevant, those admitted facts have been incorporated into this Recommended Order.

At the final hearing, Elmwood called the following witnesses: Donald Paxton, Kevin Tatreau, and Rob Vogt. Fruitland called Michael Hartman as its witness. Florida Housing called Steve Auger as its witness and submitted the deposition of Laura Cox. Brownsville did not present any witnesses at the final hearing, but submitted the deposition of Lloyd Boggio.

Joint Exhibits 1 through 35 were admitted in evidence. Elmwood's Exhibits 1, 2, 3, 6, and 7 were admitted in evidence.

Fruitland's Exhibits 1 through 4 were admitted in evidence. Florida Housing's and Brownsville's Joint Exhibits 1 through 8 were admitted in evidence.

The four-volume Transcript was filed on October 12, 2009. On October 21, 2009, Elmwood and Fruitland filed an Unopposed Motion for Leave to Exceed Page Limitation. The motion was granted by Order dated October 21, 2009. The parties timely filed their proposed recommended orders on October 22, 2006. The proposed recommended orders have been given consideration in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Elmwood is a Florida limited partnership and is engaged in the development of affordable housing in Florida.

2. RST is a Florida limited partnership authorized to do business in Florida and is in the business of providing affordable housing.

3. Florida Housing is a public corporation created by Section 420.504, Florida Statutes (2009),<sup>1</sup> to administer the governmental function of financing or refinancing of affordable housing and related facilities in Florida. Florida Housing's statutory authority and mandates are contained in Chapter 420, Part IV, Florida Statutes. Florida Housing is governed by a Board of Directors (Board), consisting of nine individuals appointed by the Governor and confirmed by the Senate.



4. On July 31, 2009, Florida Housing issued the RFP, setting forth criteria and qualifications for developers to seek funding for affordable housing projects from funds that Florida has received through the American Recovery and Reinvestment Act of 2009, PL 111-5 (ARRA). ARRA was enacted in 2009 by Congress as part of the federal economic stimulus efforts and was signed into law on February 17, 2009.

5. Elmwood and RST received notice of the RFP through e-mail notification on July 31, 2009. The RFP required applicants to submit proposals to Florida Housing no later than 2:00 p.m. on August 14, 2009. Elmwood and RST are "applicants" as defined in the RFP. Elmwood and RST submitted separate applications, intending to seek financing for their affordable housing projects by applying for funding from the sources that are proposed to be allocated through the RFP.

6. On August 5, 2009, Elmwood timely submitted notice of its intent to protest the RFP, and, on August 17, 2009, timely filed its Formal Written Protest and Petition for Administrative Hearing, in accordance with the provisions of Subsection 120.57(3)(b), Florida Statutes, and Florida Administrative Code Rule 28-110.004. As an interested developer, who intended to, and did, seek funding from the sources being allocated through the RFP, Elmwood's substantial interests are affected by the terms of the RFP.

7. On August 18, 2009, Florida Housing issued its RFP 2009-04 Statement of Necessity to Continue RFP Process After Bid Protest is Filed (Statement of Necessity), pursuant to Subsection 120.57(3)(c), Florida Statutes. The Statement of Necessity was not challenged. On August 20, 2009, Florida Housing proceeded with making determinations of eligibility for funding under the RFP.

8. Both RST and Brownsville were selected for funding and invited into credit underwriting as provided in the RFP. Elmwood was not selected for funding.

9. On September 9, 2009, RST filed its Petition for Leave to Intervene on behalf of Elmwood to challenge the minimum occupancy standard of 92% required in the RFP. On September 10, 2009, Brownsville filed its Petition for Leave to Intervene on behalf of Florida Housing.

10. Florida Housing administers several programs aimed at assisting developers to build affordable multi-family rental housing in an attempt to protect financially marginalized citizens in Florida from excessive housing costs. The programs through which Florida Housing allocates resources to fund such affordable housing in Florida include: a federally funded multi-family mortgage revenue bond program (MMRB), established under Section 420.509, et. seq., Florida Statutes; the State Apartment Incentive Loan Program (SAIL), created pursuant to

Section 420.5087, et seq., Florida Statutes; and the federal Low Income Housing Tax Credit Program (the Tax Credit Program), established in Florida pursuant to Section 420.5099, Florida Statutes.

11. These funding sources are allocated by Florida Housing to finance the construction or substantial rehabilitation of affordable housing. A portion of the units constructed based on funding from these programs must be set aside for residents earning a certain percentage of area median income (AMI). Generally, the units are targeted to tenants earning 60% of AMI or below. The primary program at issue in this proceeding is the Tax Credit Program.

12. The Tax Credit Program was created by the Federal Income Tax Reconciliation Act of 1986, as a means to induce the private sector to construct and manage affordable housing projects. The Tax Credit Program is governed by the Internal Revenue Code, 26 U.S.C. Section 42.

13. Low income housing tax credits (Tax Credits) come in two varieties: competitively awarded "9%" Tax Credits and non-competitively awarded "4%" Tax Credits. For the 9% Tax Credits, the federal government annually allocates a specific amount of Tax Credits to each state using a population-based formula.

14. Tax Credits are a dollar-for-dollar offset to federal income tax liability. Developers awarded the Tax Credits get

the credit amount every year for ten years. The developer will often sell the future stream of Tax Credits to a syndicator, who, in turn, sells them to investors seeking to shelter income from federal income taxes. For example, a developer who receives a \$1,000,000 award of Tax Credits is entitled to that amount of tax credit paid each year for ten years, for a face value of \$10,000,000. The developer sells the Tax Credits to a syndicator or investor who has tax liability sufficient to absorb the amount of credits. If the selling price is 85 cents on the dollar, the sale of the Tax Credits would generate \$8,500,000 cash.

15. Unlike a loan or the proceeds from issuance of bonds, a developer who is awarded Tax Credits and syndicates those Tax Credits receives cash equity with no debt associated with it. Thus, Tax Credits provide an attractive subsidy and, consequently, are a highly sought-after funding source.

16. Florida Housing is the designated agency in Florida to allocate Tax Credits to developers of affordable housing, pursuant to Section 420.5099, Florida Statutes. Every year since 1986, Florida has received an allocation of Tax Credits to be used to fund construction of affordable housing.

17. As required by Section 42 of the Internal Revenue Code, each year Florida Housing adopts a Qualified Allocation Plan (QAP), which sets forth the allocation methodology for the

competitive 9% Tax Credits. The QAP must be approved by the Governor each year. The QAP is also adopted and incorporated by reference into Florida Housing's rules. See Fla. Admin. Code R. 67-48.002(95).

18. The 2009 QAP includes the following provision:

In order for the Corporation to implement the provisions of the Recovery and Reinvestment Act of 2009 (the "2009 Stimulus Act"), any funds received pursuant to 2009 Stimulus Act may be allocated by a competitive request for proposal or competitive application process as approved by the Board. Any such process will be governed by Section 42, IRC, and Chapter 67-48, F.A.C., as applicable, or, an emergency rule authorized by the Florida Legislature specifically for the 2009 Stimulus Act, if any.

The 2009 QAP was adopted as part of the 2009 Universal Cycle rules by Florida Housing's Board on March 13, 2009. At that time, Florida Housing had not yet received guidance from the federal government as to how the ARRA funds should be allocated.

19. The Florida Affordable Housing Guarantee Program was created in Section 420.5092, Florida Statutes, for the purposes of stimulating creative private section lending activities to increase the supply and lower the cost of financing or refinancing eligible housing, creating security mechanisms to allow lenders to sell affordable housing loans in the secondary market, and encouraging affordable housing lending activities that would not have taken place or that serve persons who would

not have been served but for the creation of this program. Florida Housing has accomplished these goals by issuing capitalizing bonds to create the Guarantee Fund, which lowers the interest paid on the MMRB bond debt by serving as a credit enhancer.

20. Since 2002, Florida Housing has allocated funding from the MMRB, SAIL, and Tax Credit Programs through a single annual competitive application process known as the "Universal Cycle," in which the applicants compete against one another for funding. The Universal Cycle and the attendant complex application review process are intended to equitably and reasonably distribute affordable housing throughout Florida.

21. Florida Housing has adopted rules which incorporate by reference the application forms and instructions for the Universal Cycle to govern the allocation of funds from the various programs it administers. Florida Housing amends its Universal Cycle rules, forms, and instructions every year. Following the completion of the Universal Cycle, Florida Housing engages in an extensive public comment process through which it solicits feedback and comments from developers for the next year's cycle. Any new amendments are adopted to take effect prior to an established Application Deadline for the ensuing year.

22. The process used by Florida Housing to review and approve the Universal Cycle applications is set forth in Florida Administrative Code Rule 67-48.004. Florida Housing reviews all timely-filed applications to determine if threshold requirements are met and scores each application based on factors such as programs for tenants, amenities of the development as a whole and of the tenants' units, local government contributions to the specific development, and local government ordinances and planning efforts that support affordable housing in general. The process includes a series of tiebreakers to choose among applications with otherwise equal scores.

23. After the initial review and scoring by Florida Housing, all applications and included exhibits, along with the scores for the applications, are posted on Florida Housing's website. Applicants are given a specific time period to alert Florida Housing of any errors they believe Florida Housing made in its initial scoring. Florida Administrative Code Rule 67-48.005 sets forth an appeal procedure for challenging the scores.

24. After any appeal proceedings, Florida Housing publishes final rankings which determine which applications are preliminarily selected for funding. The applicants for those applications selected are invited to participate in the credit underwriting process, which is governed by Florida

Administrative Code Rule 67-48.0072. A third party financial consultant, who is selected by Florida Housing but paid for by the individual applicant, determines whether the proposed project is financially sound. The credit underwriter reviews all aspects of the proposed development, including financing sources, plans and specifications, cost analysis, zoning, site control, environmental reports, construction contracts, and engineering and architectural contracts. Florida Administrative Code Rule 67-48.0072(10) requires an appraisal and market study. The credit underwriter is required to consider the market study, as well as the development's financial impact on other developments in the area previously funded by Florida Housing, and make a recommendation for approval or disapproval of funding.

25. Each year the Universal Cycle provides a mechanism for selecting applications to meet statutory geographic requirements; for certain targeting goals that address housing needs of particular demographic groups, such as farm workers, commercial fishery workers, the homeless, or the elderly; for specific set-asides or targeting goals aimed at addressing identified needs, such as the Florida Keys, inner city areas, or rural development; and for the preservation of existing affordable housing complexes. Each set-aside group essentially



has its own separate funding from its share of the funds distributed by Florida Housing.

26. After the set-aside goals are addressed, Florida Housing then uses the final rankings to try to achieve a distribution of affordable housing units among the county groupings (small, medium, and large, based on population) in accordance with the adopted percentages. Each of the three groups must receive at least 10% of the funds. Within the county size groups, Florida Housing uses a formula called SAUL, which is an acronym for Set-Aside Unit Limitation. The formula is set forth in the application instructions and incorporated by reference into the rules for each Universal Cycle in an attempt to evenly distribute the units.

27. As part of the Universal Cycle process, Florida Housing designates certain geographic areas of the state that are considered soft markets as "Location A" areas. Florida Housing first began incorporating into its application process a mechanism for identifying weak markets, known as "Location A" in 2003. The Location A designations are included in the Universal Cycle Application Instructions, which are incorporated by reference in the rules of Florida Housing.

28. Elmwood timely filed an application in the 2007 Universal Cycle, seeking an award of Tax Credits and a supplemental loan to construct a 116-unit family apartment

complex, Elmwood Terrace, in Fort Myers, Lee County, Florida. Elmwood's application received a perfect score and maximum tiebreaker points. As a result, Elmwood was allocated \$1,498,680 in Tax Credits. During the credit underwriting process, Elmwood committed to set aside more than the required units for Extremely Low-Income (ELI) households.

29. Based on the final ranking of its application, Elmwood was invited into the credit underwriting process. The credit underwriter designated by Florida Housing conducted the analysis required under Florida Housing's rules and issued a favorable recommendation for funding. The Credit Underwriting Report for Elmwood Terrace was accepted by the Florida Housing Board on September 22, 2008.

30. By the fall of 2008, significant changes were taking place in the economic environment and the housing market in particular, and it became evident that the market for Tax Credits had precipitously dropped. Tax credits had typically sold in the range of 85 to 95-cents on the dollar in recent years, but the value of Tax Credits had plummeted in the last two years. Sales, when a buyer can be found, are currently in the low 60-cents on the dollar range. Shortly before Elmwood was scheduled to close on its Tax Credits in the fall of 2008, the syndicator who had originally expressed its intent to

purchase Elmwood's Tax Credits informed Elmwood that it would not go forward with the syndication.

31. Many other projects that were awarded Tax Credits during the 2007 and 2008 Universal Cycles similarly experienced difficulty in finding syndicators to purchase the awarded Tax Credits and, thus, were unable to proceed to closing.

32. In order to accomplish the legislative mandate to pay, Florida Housing attempted to assist these troubled projects by granting extensions of time to meet various benchmarks in the Tax Credit program.

33. In January 2009, the Florida Legislature met in special session to address budget revenue shortfalls for the 2008-2009 fiscal year. Legislation was adopted and signed into law on January 27, 2009, which swept trust fund balances, transferred \$30 million from multi-family housing programs to the State Housing Initiative Partnership (SHIP) program, and required Florida Housing to pay \$190 million in previously appropriated funds to the treasury by June 1, 2009. These funds were to be taken first from developments that would provide new construction.

34. In order to accomplish the legislative mandate to pay \$190 million to the treasury, Florida Housing had to deobligate approximately \$80 to \$90 million of funds preliminarily committed to SAIL-funded projects and from funds preliminarily

committed to the Community Workforce Housing Innovation Pilot Program (CWHIP) projects. For the first time in Florida Housing's history, it was compelled to take money away from people at the Legislature's direction.

35. In early 2009, in recognition of the collapse of the housing market and the difficulty in marketing Tax Credits, the federal government, as part of its economic stimulus efforts, established mechanisms to assist in the development of affordable housing and offset some of the economic devastation to developers. Congress included specific provisions in ARRA intended to address the condition of the Tax Credit market.

36. Section 1602 of ARRA allows the state Tax Credit allocating agencies to return up to 40% of the state's annual Tax Credit allocation, as well as Tax Credits awarded in 2007 and 2008 to the federal government, to be exchanged for a cash distribution of 85 cents for each tax credit dollar returned. The exchange of Tax Credits generated a pool of \$578,701,964 for the State of Florida.

37. The Tax Credit Assistance Program (TCAP), a separate provision in ARRA, includes a direct allocation of funds to state housing finance agencies from the Department of Housing and Urban Development to provide gap financing for affordable housing projects that have been affected by the economic downturn. These funds were allocated to the states to "resume

funding of affordable rental housing projects across the nation while stimulating job creation in the hard-hat construction industry.”

38. Florida Housing issued the RFP as the method for allocating the Exchange Funds and to provide an opportunity for applicants to request TCAP funds. The RFP solicits proposals from applicants with an “Active Award” of Tax Credits who were unable to close and are seeking alternate funding to construct affordable housing utilizing Exchange Funds from the Tax Credit Exchange Program authorized under Section 1602 of ARRA.

39. Section 4D.2 of the RFP provides:

2. Proposed Developments located within a 2009 Location A Area are eligible to apply only under the following circumstances:

a. Developments where the original Application for the Proposed Development was funded under the Housing Credit Hope VI goal.

b. Developments where the Original Application for the Proposed Development reflects the Housing Credit Preservation Designation.

c. Proposed Developments that are located in a 2009 Location A Area that **does not** have a Guarantee Fund Development with the same Demographic category located in the same county. (Emphasis in original)

40. The Location A areas in the RFP are the Location A areas in the rules adopted for the 2009 Universal Cycle. The Elmwood Terrace project is located in Lee County, which was not

designated as a part of Location A in the 2007 Universal Cycle. The rules for the 2008 Universal Cycle provided that Location A included that part of Lee County lying south of State Road 80 and the Calcoosahatchee River. The 2008 Location A for Lee County did not specify demographic categories. For the 2009 Universal Cycle, all of Lee County was designated Location A for both the family and elderly designations.

41. The Universal Application Package, which is incorporated by reference in Florida Administrative Code Rule 67-48.004(1)(a), provides:

(1) Set-Aside Location A Development  
(Threshold)

A proposed Development qualifies as a Set-Aside Location A Development if the location of the proposed Development is within a Set-Aside Location A Area and the Applicant selected the applicable Demographic Commitment (Elderly or Family) at Part III.D of the Application. The only exception to this provision is if the proposed Development also qualifies as a HOPE VI Development at Part III.A.2.d. of the Application.

Applicants with a Set-Aside Location A Development must meet the following set-aside requirements:

(a) Applicants requesting Competitive HC must commit to set aside 100 percent of the Development's residential units at 50 percent AMI or less; or

(b) Applicants requesting MMRB must commit to set aside at least 85 percent of the Development's residential units at 50 percent AMI or less.

(c) All Applicants must meet the minimum ELI Set-Aside threshold set out in Part III E.1.b.(2)(a)(iii) of these instructions.

42. Because Elmwood's proposed development is located in Lee County, Florida, the specifications of the RFP prohibit Elmwood from being considered for the allocation of funds in exchange for its Tax Credits.

43. The RFP provides that any project that receives an allocation of Exchange Funds and/or TCAP Funds will be required to go through the credit underwriting process, including an assessment of market need and impact.

44. Section 5B.1b of the RFP states that a tentative funding award under the RFP will be rescinded "if the submarket of the Proposed Development does not have an average occupancy rate of 92% or greater for the same Demographic population, as determined by a market study ordered by the Credit Underwriter, and analyzed by the Credit Underwriter and Florida Housing staff, as well as approved by the Board."

45. The term "submarket" is used in Florida Housing's credit underwriting rules in Florida Administrative Code Rule 67-48.0072. "Submarket" and "primary market area" are synonymous terms. Determining a submarket or primary area market is very subjective; even two adjacent sites may have different submarkets. Determination of a submarket is an art that involves making judgments. The market analysis, which is

required to be done as part of the credit underwriting process, will delineate the primary market area or submarket area of the proposed project. Such delineation will be based on criteria which may be unique to that proposed site. Thus, it is not practical to specify what criteria are used to establish the primary market area or submarket area of a proposed project.

46. The RFP provides that the demographic grouping submitted in the original application cannot be changed. The RFP allows applicants to change other aspects of their original proposal, including that an applicant may increase the number of proposed units.

47. Subsequent to the withdrawal of its anticipated equity syndicator in September 2008, Elmwood explored other options that could potentially enable it to proceed to closing. One option that Elmwood proposed to Florida Housing was to change the demographic grouping of Elmwood Terrace to an elderly project. Elmwood formally requested a change to its demographic grouping in a letter from Elmwood's attorney, Warren Husband, to Florida Housing's deputy development officer, Deborah Blinderman, dated January 26, 2009. That request was not approved.

48. Elmwood contends that the prohibition on changing a development's demographic grouping is contrary to Florida Housing's policy of allowing other developers to change their



demographic groupings. Florida Housing did allow two developments to change their demographic groupings.

49. On April 24, 2009, the Board granted River Trace Senior Apartments' request to change its demographic grouping from elderly to family. River Trace Senior Apartments was a development which had been funded in 2000 as an elderly development. It operated for eight years as an elderly development without achieving satisfactory occupancy in its 178 units. Based on the development's history, the Board allowed a demographic grouping change in hopes of achieving satisfactory occupancy levels. Unlike Elmwood's proposed development, River Trace Senior Apartments was a housing development, which was already built and in operation.

50. In October 2008, Florida Housing approved a request for a change in demographic grouping in a proposed project. The proposed development, Bradenton Village II, was the third phase of a large HOPE VI redevelopment project and consisted of 36 units designated as family units. During the permitting process, the City of Bradenton informed the developer that the proposed site could not accommodate the number of parking spaces required for a family development, but the required parking could be provided if 32 of the units were designated as elderly units. Bradenton Village had an investor who was willing to

remain in and go forward with the project redesignated as elderly.

51. Florida Housing did not allow changes in pending deals after the Legislature's special session budget action in January 2009 because of the large number of projects that had lost their funding and proposed changing the scope of their projects to qualify for ARRA funds. These included a number of CWHIP projects. The director for Florida Housing felt that he could not justify allowing Elmwood to change its demographic designation while refusing to allow the deobligated CWHIP developers to change their target markets.

52. The evaluation process for the RFP is set forth in Section 7 of the RFP and provides that the Florida Housing Review Committee will:

[S]elect Applicants most likely to be considered for award, make any adjustments deemed necessary to best serve the interest of Florida Housing's mission, and develop a recommendation or series of recommendations to the Board. The Committee will then rank the Applications deemed eligible for funding with preference given to Applications that are Shovel-Ready. The Board may use the Proposals, the Committee's scoring, and any other information or recommendation provided by the Committee or staff, and any other information the Board deems relevant in the selection of Applicants to whom to award funding.

#### CONCLUSIONS OF LAW

53. The Division of Administrative Hearings has

jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat.

54. Florida Housing has challenged Fruitland's standing to intervene in this bid protest. Fruitland's substantial interests are affected by the specifications that deal with the 92% occupancy requirement. Although Fruitland has moved to the credit underwriting process, it is still affected by this requirement. Therefore, Fruitland has standing to intervene.

55. Brownsville also has standing to intervene. Like Fruitland, Brownsville has moved into the credit underwriting process, and a change in the specifications could affect its ability to continue in the process.

56. As the party protesting the specifications of the RFP, Elmwood has the burden of proof. See State Contracting and Engineering Corp. v. Dept. of Transportation, 709 So. 2d (Fla. 1st DCA 1998). Subsection 120.57(3)(f), Florida Statutes, provides:

Unless otherwise provided by statute, the burden of proof shall rest with the party protesting the proposed agency action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge shall conduct a de novo proceeding to determine whether the agency's proposed action is contrary to the agency's governing statutes, the agency's rules or policies, or the solicitation specifications. The standard of proof for such proceedings shall be whether the proposed agency action was

clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended agency action to reject all bids, proposals, or replies, the standard of review by an administrative law judge shall be whether the agency's intended action is illegal, arbitrary, dishonest, or fraudulent.

57. Elmwood is contesting certain terms, conditions, and specifications of the RFP. Thus, the issue is whether those terms, conditions, and specifications are contrary to Florida Housing's governing statutes, rules, or policies. Section 420.5099, Florida Statutes, designates Florida Housing as the housing credit agency for Florida within the meaning of Subsection 42(h)(7)(A) of the Internal Revenue Code of 1986 and gives Florida Housing "the responsibility and authority to establish procedures necessary for proper allocation and distribution of low-income housing tax credits and [to] exercise all powers necessary to administer the allocation of such credits." Subsection 420.507(10), Florida Statutes, gives Florida Housing the authority to accept grants from the United States government.

58. Pursuant to ARRA, Florida Housing is the recipient of a Grant to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009 (Grant) in which Tax Credits are exchanged for cash. Florida Housing is required to use the Grant to make subawards to finance the construction or

acquisition and rehabilitation of qualified low-income buildings. Subsection 1602(c)(2) of ARRA further requires that "[a]ny such subaward with respect to any qualified low-income building shall be made in the same manner and shall be subject to the same limitations (including rent, income, and use restrictions on such building) as an allocation of housing credit dollar amount allocated by such State housing credit agency under section 42 of the Internal Revenue Code of 1986."

59. Subsection 42(m)(1)(C) of the Internal Revenue Code of 1986 requires that Florida Housing set forth its selection criteria for the allocation of Tax Credits in a qualified allocation plan. Florida Housing has adopted rules which establish the criteria to be used for the allocation of Tax Credits. Those rules are contained in Florida Administrative Code Chapter 67-48. The QAP, which sets out the allocation for the competitive award of Tax Credits, is incorporated by reference in Florida Administrative Code Rule 67-48.002(95). The QAP provides that any funds received pursuant to ARRA will be allocated by a competitive request for proposal or competitive allocation process as approved by the Board. It further provides that the selection process will be governed by Section 42 of the Internal Revenue Code and Florida Administrative Code Chapter 67-48, as applicable,<sup>2</sup> or an emergency rule authorized by the Florida Legislature for ARRA,

if any. There were no emergency rules authorized by the Legislature, and none were adopted by Florida Housing.

60. Subsection 420.507(41), Florida Statutes, provides that Florida Housing has the authority "[t]o conduct and fund, solely from funds derived from amounts other than those deposited into the State Housing Trust Fund, demonstration programs and projects which further the statutory purposes of the corporation, including the power to establish selection criteria by rule or by means of requests for proposals." No evidence was presented to definitively establish that the Grant funds are not deposited in the State Housing Trust Fund. Based on the terms and conditions of the Grant, Florida Housing is required to "open a new account (Grant Account) with a financial institution for the purpose of receiving grant elections amounts, for making distributions of grant election amounts to other agencies within the State, and for making subawards." It appears that the monies received from the Grant are not funds that are deposited in the State Housing Trust Fund. Additionally, any interest earned in the Grant Account above \$200 must be returned to the United States Treasury.

61. The Grant is not a demonstration program and is not a project; thus, the provisions of Subsection 420.507(41), Florida Statutes, are not applicable to the RFP at issue. Assuming, arguendo, that the Grant is a demonstration program or a

project, Florida Housing elected to establish the selection criteria by rule when it included the allocation of ARRA in the 2009 QAP, which was incorporated by reference in Florida Administrative Code Rule 67-48.002(95).

62. Based on the requirement of Subsection 1602(c)(2) of ARRA that the allocation of the Grant funds be allocated in the same manner and subject to the same limitations as an allocation of Tax Credits and the requirement in the 2009 QAP that the selection process will be governed by Section 42 of the Internal Revenue Code and Florida Administrative Code Chapter 67-48 that are applicable to the allocation of Tax Credits, it is concluded that the RFP specifications are governed by Florida Administrative Code Chapter 67-48, as applicable to the allocation of Tax Credits, and Section 42 of the Internal Revenue Code.

63. Florida Administrative Code Rule 67-48.004(1)(a) incorporates by reference the Universal Application Package, which is Form UA1016 and which includes the Universal Cycle Application Instructions.

64. Elmwood challenges the RFP specification that prohibits the consideration of developments located in a Location A area. The RFP specifications relating to Location A developments are contrary to the rules which govern Florida Housing's allocation of ARRA funds. The Universal Application

Package does not prohibit an applicant from being considered for Tax Credits if the applicant commits to set aside 100% of its residential units at 50% AMI or less. The RFP uses the Location A areas as a bar to being considered without consideration of whether the applicant is willing to commit to setting aside 100% of the residential units at 50% AMI or less and includes criteria not set forth in the Universal Application Package such as precluding consideration of developments in a Location A area that contains a Guarantee Fund Development.

65. The RFP specifications precluding consideration of developments located in a Location A area without consideration of whether the applicant is willing to set aside 100% of its units at 50% AMI or less is clearly erroneous because it is contrary to the Universal Application Package.

66. Elmwood challenges the RFP requirement that the submarket of the development proposed by an applicant must have a 92% or greater occupancy rate for the same demographic population. Florida Administrative Code Rule 67-48.0072(10) provides that, in order for the credit underwriter to make a favorable recommendation, the submarket of the proposed development must have an average occupancy rate of 90% or greater. The RFP requirement for the 92% occupancy rate is clearly erroneous because it is contrary to Florida Housing's governing rules.



67. Elmwood has also challenged the 92% occupancy requirement because the term "submarket" is not defined. Florida Administrative Code Chapter 67-48 uses, but does not define, the term "submarket." Elmwood has not established that the lack of criteria for determining a submarket in the market study is arbitrary, capricious, clearly erroneous, or contrary to competition. The market studies are site specific, and the results of the market study can be challenged.

68. The Universal Application Package, which is incorporated by reference in Florida Administrative Code Rule 67-48.004, provides detailed evaluation criteria for the applications that are submitted for Tax Credit developments. Section 7 of the RFP sets forth the evaluation process that is to be used in allocation of funds for the Tax Credit Exchange Program. The RFP provides that the review committee will select applicants "most likely to be considered for award, make any adjustments deemed necessary to best serve the interests of Florida Housing's mission and develop a recommendation or series of recommendations to the Board." The review committee will rank the applications deemed eligible for funding and give preference to applications that are shovel ready. The Board then makes an award using the "Proposals, the Committee's scoring, and any other information or recommendation provided by the Committee or Staff, and any other information the Board

deems relevant in its selection of Applicants to whom to award funding." The RFP is contrary to the Florida Housing's governing rules as set forth in Florida Administrative Code Rule 67-48.004, which incorporates by reference the evaluation process that is to be used in the selection of applications for awards of Tax Credits.

69. In a competitive bidding process, it is important to have uniform standards for evaluating the proposals and for such standards to be published at the outset of the process. Otherwise, there is no way to determine whether each proposal is being measured by the same yardstick. The principle was succinctly summarized in Deloitte & Touche LLP v. Dept. of Health and Rehabilitative Services, Case No. 95-0727BID (DOAH May 12, 1995) (citations omitted) (quoting Courtenay v. Dept. of Health and Rehabilitative Services, 12 F.A.L.R. 2226 (1990)).

Part of the reciprocity achieved under the competitive bidding process is achieved in the bid specifications and weighted criteria. Potential bidders are advised in advance of the requirements to be met in order to receive the contract award, as well as the standards by which each bid will be evaluated by the agency and each standard's relative importance to the agency. . . . Therefore, central to the integrity and reciprocity of the competitive bidding process is the requirement that an agency's action on a bid can be expressed within the bid specifications and evaluation criteria which it created.

70. The QAP provides that the Board's determination of funding for applications must be consistent with the provisions of the QAP. Section 7 of the RFP gives the reviewing committee and the Board unbridled discretion in determining which applicants will be allocated funds. The method of selection is not clearly stated. No criteria are set forth for the ranking of the applications. No criteria are given for how the applications will be scored. Such discretion is contrary to competition, arbitrary, and clearly erroneous.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding:

1. The specifications of the RFP which exclude consideration of funding for projects located in a Location A area without regard to whether the applicant is willing to lower the AMI for its units to 50% or less are contrary to Florida Housing's governing statutes.

2. The provision in the RFP which precludes the applicant from changing its demographic grouping is not contrary to Florida Housing's policies.

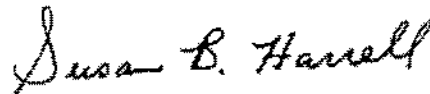
3. The provision of the RFP which requires 92% occupancy is contrary to Florida Housing's governing statutes.

4. The lack of a definition of "submarket" in the RFP is not arbitrary, capricious, clearly erroneous, or contrary to competition.

5. The provisions of the RFP which eliminate from consideration for funding any project in a county with a Guarantee Fund development is contrary to Florida Housing's governing statutes.

6. The evaluation criteria in Section 7 of the RFP which sets forth the evaluation procedure is contrary to the Florida Housing's governing rules and statutes.

DONE AND ENTERED this 12th day of November, 2009, in Tallahassee, Leon County, Florida.



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SUSAN B. HARRELL  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
[www.doah.state.fl.us](http://www.doah.state.fl.us)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 12th day of November, 2009.

ENDNOTES

<sup>1/</sup> Unless otherwise indicated, all references to the Florida Statutes are to the 2009 version.

27 Florida Administrative Code Chapter 67-48 deals with other programs in addition to Tax Credit. Therefore, only those provisions of Florida Administrative Code Chapter 67-48 dealing with Tax Credits would be applicable.

COPIES FURNISHED:

J. Stephen Menton, Esquire  
Rutledge, Ecenia, & Purnell, P.A.  
119 South Monroe Street, Suite 202  
Post Office Box 551  
Tallahassee, Florida 32302

Donna E. Blanton, Esquire  
Radey, Thomas, Yon & Clark, P.A.  
301 South Bronough Street, Suite 200  
Tallahassee, Florida 32301

Michael P. Donaldson, Esquire  
Carlton Fields, P.A.  
215 South Monroe Street, Suite 500  
Post Office Drawer 190  
Tallahassee, Florida 32302-0190

Frederick J. Springer, Esquire  
Bryant, Miller & Olive, P.A.  
101 North Monroe Street, Suite 900  
Tallahassee, Florida 32301

Wellington Meffert, Esquire  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329

Della Harrell, Corporation Clerk  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**ELMWOOD TERRACE LIMITED PARTNERSHIP,**

**Petitioner,**

**and**

**RST FRUITLAND HOUSING, LP,**

**Intervenor,**

**vs.**

**DOAH CASE NO.: 09-4682BID  
FHFC Case No. 2009-027GA**

**FLORIDA HOUSING FINANCE CORPORATION,**

**Respondent,**

**and**

**BROWNSVILLE VILLAGE II, LTD.,**

**Intervenor.**

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**FINAL ORDER**

This cause came before the Board of Directors of the Florida Housing Finance Corporation ("Board") for consideration and final agency action on December 4, 2009. After review of the record hearing argument of counsel, and being fully advised in this matter, the Board finds and orders as follows:



FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*Della M. Harris* DATE: 12/7/09

1. On August 17, 2009, Elmwood Terrace Apartments, Ltd., ("Elmwood") filed a petition challenging the specifications of RFP 2009-04, issued on July 31, 2009, by Florida Housing. RFP 2009-04 was issued to allocate funds made available through the Tax Credit exchange Program and the Tax Credit Assistance Program, both created in the American Recovery and Reinvestment Act of 2009.

2. 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.

3. On August 26, 2009, Florida Housing forwarded Elmwood's petition to the Division of Administrative Hearings ("DOAH"). On September 9, 2009, Intervenor RST Fruitland Housing, LP, ("RST") filed a petition for leave to intervene in support of Elmwood. On September 10, 2009, Intervenor Brownsville Village II, Ltd., ("Brownsville") filed a petition for leave to intervene in support of Florida Housing. Both petitions were granted.

4. 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”). A Recommended Order was filed in this case on November 12, 2009.

5. Petitioner filed its Exceptions to the Recommended Order on November 23, 2009 (A copy is attached hereto as Exhibit “B”); and Florida Housing filed its Response to Exceptions on December 2, 2009 (A copy is attached as Exhibit “C”).

6. The Statement of Necessity has not been challenged, so the RFP credit underwriting and funding process has continued, and is continuing. The Recommended Order does not invalidate the RFP nor does it require that Florida Housing start the funding process over.

7. 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 finds the terms of the selection review process are arbitrary and capricious.

8. The RO finds the terms of the RFP are appropriate, *inter alia*, where they do not include a specific definition of “submarket,” and where the terms prohibit changing the demographic commitment.



### **RULING ON EXCEPTIONS**

9. 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.

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

### **RULING ON THE RECOMMENDED ORDER**

A true and correct copy of the Recommended Order is attached hereto as Exhibit "A." The findings and conclusions of the Recommended Order are supported by competent substantial evidence.

### **ORDER**

In accordance with the foregoing, it is hereby **ORDERED**:

1. Petitioner's Exceptions to the Recommended Order are hereby **DENIED**.

2. The findings of fact of the Recommended Order are adopted as Florida Housing's findings of fact and incorporated by reference as though fully set forth in this Order.

3. The conclusions of law of the Recommended Order are adopted as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Order.

3. The Recommendations contained in the Recommended Order are adopted.

IT IS HEREBY ORDERED that:

1. Elmwood Terrace Apartments, Ltd.'s response is not excluded based on the project's location in a Location A area;

2. No response to the RFP may be excluded from further consideration by the selection process employed by the review committee;

3. The physical occupancy requirement for all Respondent's projects shall be 90 percent within the project's submarket.

DONE and ORDERED this 4<sup>th</sup> day of December, 2009.



FLORIDA HOUSING FINANCE  
CORPORATION

By: Michael Schaefer  
Chair

**Copies to:**

**Wellington H. Meffert II**  
**General Counsel**  
**Florida Housing Finance Corporation**  
**337 North Bronough Street, Suite 5000**  
**Tallahassee, FL 32301**

**Kevin Tatreau**  
**Director of Multifamily Development Programs**  
**Florida Housing Finance Corporation**  
**337 North Bronough Street, Suite 5000**  
**Tallahassee, FL 32301**

**J. Stephen Menton, Esquire, Rutledge Ecenia & Purnell,**  
**119 South Monroe Street, Suite 202,**  
**Tallahassee, Florida 32301**

**Donna E. Blanton, Esquire**  
**Radey, Thomas, Yon & Clark, P.A.**  
**301 South Bronough Street, Suite 200**  
**Tallahassee, Florida 32301**

**Michael P. Donaldson, Esquire**  
**Carlton & Fields, P.A.**  
**215 South Monroe, Street, Suite 500**  
**Tallahassee, Florida 32301**