FLORIDA HOUSING FINANCE CORPORATION

HTG Harbor Village, Ltd.,

Petitioner,

v. **Case No:** 2010-0726 GA

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

PETITION FOR ADMINISTRATIVE HEARING

Pursuant to sections 120.569 and 120.57(1), Florida Statutes, and rule 28-106.201, Florida Administrative Code, Petitioner HTG Harbor Village, Ltd. ("HTG") files this Petition for Administrative Hearing to contest the decision by Respondent Florida Housing Finance Corporation ("Florida Housing") to rescind the awards of federal Housing Credits and federal Exchange Funding to a proposed development of HTG's called Crestwood Apartments.

I. Agency Affected

1. The agency affected is the Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 500, Tallahassee, Florida 32301-1329. The telephone number is 850-488-4197. The agency's relevant identification numbers are: Crestwood Apartments (2009-223C), 2009 Universal Application Cycle and Request for Proposal ("RFP") 2010-04.

II. Petitioner and Petitioner's Representative

2. The Petitioner is HTG Harbor Village, Ltd 3250 Mary Street, Suite 500, Miami, Florida 33133; 305-856-8700 (phone); 305-856-1475 (facsimile).[1] HTG submitted an original application in Florida Housing's 2009 Universal Application Cycle for nine-percent Low-Income Housing Tax Credits ("Housing Credits") for a development called Crestwood Apartments ("Crestwood"), a proposed 114-unit complex in West Palm Beach that would primarily serve low-income elderly persons. On February 26, 2010, HTG was awarded an annual Housing Credit allocation of $1,561,000, and Florida Housing invited HTG to enter Florida Housing's credit underwriting process. Also, on February 26, 2010, Florida Housing issued RFP 2010-04 to award federal Tax Credit Exchange Program Funding ("Exchange Funding") to applicants that had an active award of Housing Credits. On March 17, 2010, Florida Housing approved the award list for RFP 2010-04, which included HTG's Crestwood. HTG was awarded an Exchange Funding loan of $5 million (amounting to a $588,235 annual Housing Credit allocation) and was invited to enter credit underwriting for RFP 2010-04.

3. HTG's legal representative is Donna E. Blanton, Radey Thomas Yon & Clark, P.A., 301 S. Bronough Street, Suite 200, Tallahassee, Florida 32301.

---

[1] HTG is moving effective August 1, 2010. The new address is 3225 Aviation Avenue, Suite 602, Miami, Florida 33133.

Counsel's telephone number is 850-425-6654, and her facsimile number is 850-425-6694.

III. Background Information

4. Florida Housing is a public corporation organized under Chapter 420, Florida Statutes, to provide and promote the public welfare by administering the governmental function of financing and refinancing houses and related facilities in Florida in order to provide decent, safe, and affordable housing to persons and families of low, moderate, and middle income. Florida Housing is governed by a Board of Directors consisting of nine individuals appointed by the Governor and confirmed by the Florida Senate.

5. Florida Housing provides funding through a number of different federal and state programs to assist in the development of affordable housing in this state. As required by the federal government, the state each year adopts a Qualified Allocation Plan ("QAP"), which is incorporated into Florida Housing's rules. The QAP sets forth the selection criteria and the preferences for developments that will be awarded Housing Credits each year. *See* Rule 67-48.002(95), Fla Admin. Code. Each year Florida Housing conducts a "Universal Cycle," through which applicants for certain Florida Housing multi-family programs submit a single application (the "Universal Cycle Application") by

which projects are evaluated, scored, and competitively ranked. *See* Ch. 67-48, Fla. Admin. Code.

6. Among the programs included in the Universal Cycle is the Housing Credit program, which was created by the federal government in 1986. Housing Credits (also called tax credits) come in two varieties: competitively awarded nine percent credits and non-competitively awarded four percent credits. For the nine percent credits, the federal government annually allocates to each state a specific amount of credits using a population-based formula. Housing Credits are a dollar-for-dollar offset to federal income tax liability over a 10-year period. A developer awarded Housing Credits often sells the future stream of credits to a syndicator, which in turn sells the credits to investors seeking to shelter income from federal income taxes. The developer receives cash equity for the credits with no associated debt.

7. With the recent economic downturn, the market for Housing Credits dropped significantly. A number of development projects awarded funding in recent Universal Cycles have been unable to close on such funding because of the poor market for Housing Credits.

8. In recognition of the Housing Credit market collapse, the federal government, as part of its economic stimulus efforts, established mechanisms to assist in the development of affordable housing. On February 17, 2009, President

Obama signed the American Recovery and Reinvestment Act ("ARRA"), which includes provisions relating to the Low Income Housing Tax Credit Program ("LIHTC"). Among those provisions are the Tax Credit Exchange Program, which allows agencies that allocate Housing Credits (such as Florida Housing) to "exchange" a portion of their 2009 Housing Credit ceiling, as well as previously awarded and returned housing credits, for cash grants from the U.S. Treasury that can be used to make "sub-awards" to finance the construction of, or acquisition and rehabilitation of, qualified low-income buildings.

9. Following the enactment of ARRA, Florida Housing issued several RFPs to take advantage of the federal stimulus funds. RFP 2010-04, issued on February 26, 2010, anticipated that $150 million in Exchange Funding would be available through the RFP. In order to be eligible for funding under RFP 2010-04, applicants were required to have an active award of nine percent Housing Credits. RFP 2010-04 provided that proposed developments receiving Exchange Funding would be governed by the same rules that govern the Universal Cycle's Housing Credit Program, including credit underwriting requirements in rule 67-48.0072. *See* RFP 2010-04, p. 7.

IV. HTG's Substantial Interests

10. HTG's Crestwood complied with all applicable Florida Housing Universal Cycle application rules, the QAP, and all applicable federal laws and

was awarded Housing Credits on February 26, 2010, when Florida Housing's Board of Directors approved final rankings for the 2009 Universal Cycle. HTG was then invited into the credit underwriting process and directed to pay a Housing Credit underwriting fee of $10,719 to Seltzer Management Group, Inc. ("Seltzer"), the credit underwriter assigned to HTG's proposed development. *See* Letter from Candice Allbaugh, Housing Credits Administrator, to Shawn Wilson, February 26, 2010.

11. On March 17, 2010, Florida Housing's Board of Directors accepted the recommendations of a review committee for Exchange Funding pursuant to RFP 2010-04. HTG's Crestwood was included in the ranked list of proposed developments that were awarded Exchange Funding and invited into credit underwriting. *See* Notice of Award for Request for Proposals (RFP) #2010-04, Tax Credit Exchange Program (Exchange) Funding Only.

12. The credit underwriting process for both the Housing Credit allocation and the Exchange Funding were conducted simultaneously by Seltzer. HTG was required to expend considerable time and effort in seeking credit underwriting approval for its proposed Crestwood development. In addition to paying the $10,719 credit underwriting fee to Seltzer, HTG was required to pay Seltzer $6,800 for a market study and $3,813 for an "ARRA Exchange Funds Underwriting Fee." Other non-recoverable project costs incurred by HTG in connection with the

Crestwood project total almost $540,000. These expenditures include full construction drawings for the buildings and site work (required by Seltzer), deposits related to land acquisition, and other expenses relating to permitting. Such expenses were unavoidable, necessary, and encouraged by Florida Housing and Seltzer, in order to comply with Florida Housing's requirement that construction had to begin by November 1, 2010, in order to avoid the loss of federal funding.

13. According to Florida Housing's rules, credit underwriting review of a development selected for funding includes "a comprehensive analysis of the Applicant, the real estate, the economics of the Development, the ability of the Applicant and the Development team to proceed, [and] the evidence of need for affordable housing in order to determine that the Development meets the program requirements . . . ." R. 67-48.0072, Fla. Admin. Code. The rule also provides that funding will be based on "appraisals of comparable developments, cost benefit analysis, and other documents evidencing justification of costs." *Id.*

14. Florida Housing selects a credit underwriter for each development that has been invited to enter credit underwriting. R. 67-48.0072(1). The underwriting process is governed by rule 67-48.0072. In particular, rule 67-48.0072(10) provides:

> (10) A full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice and a separate market

study shall be ordered by the Credit Underwriter, at the Applicant's expense, from an appraiser qualified for the geographic area and product type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the proposed property's financial feasibility. Appraisals which have been ordered and submitted by third party credit enhancers, first mortgagors or Housing Credit Syndicators and which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal referenced above. The market study must be completed by a disinterested party who is approved by the Credit Underwriter. The Credit Underwriter shall consider the market study, the Development's financial impact on Developments in the area previously funded by the Corporation, and other documentation when making its recommendation of whether to approve or disapprove a SAIL or HOME loan, a Housing Credit Allocation, or a combined SAIL loan and Housing Credit Allocation or Housing Credit Allocation and HOME loan. The Credit Underwriter must review and determine whether there will be a negative impact to Guarantee Fund Developments within the primary market area or five (5) miles of the proposed Development, whichever is greater. The Credit Underwriter shall also review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application. For the Credit Underwriter to make a favorable recommendation, the submarket of the proposed Development must have an average occupancy rate of 90 percent or greater.

(Emphasis supplied).

15. Pursuant to section 420.5092, Florida Statutes, Florida Housing has obligated itself to satisfy the mortgages of certain affordable housing developments through the Florida Affordable Housing Guarantee Program ("Guarantee Fund"). Since the economic downtown began in 2008, Florida Housing has had several claims on the Guarantee Fund. As a result of those claims, Florida Housing amended rule 67-48.0072(10) before the 2009 Universal Cycle to require its credit

underwriter to "review and determine whether there will be a negative impact to Guarantee Fund Developments within the primary market area or five (5) miles of the proposed Development, whichever is greater."

16. In accordance with rule 67-48.0072(10), Seltzer engaged Clobus, McLemore & Duke, Inc. ("CMD") of Fort Lauderdale to conduct a market study for Crestwood. All of the findings and conclusions of CMD, which were prepared in conformance with the Uniform Standards of Professional Appraisal Practice, were favorable, and the requirements of rule 67-48.0072 were met. Significantly, CMD stated three times in its market study report that Crestwood would have no negative impact on any Guarantee Fund development:

- "It is CMD's opinion that the subject's units will not have a negative impact on one or any of the Guarantee Fund developments." *See* Summary of Conclusions and Recommendations section of the Cover Letter from Walter B. Duke, III and Lori J. Spence of CMD to John A. Elsasser of Seltzer, April 6, 2010, at p. 2 (transmitting Market Study).
- "Provided the subject does not start delivering units until September 2011, the impact on the existing affordable housing within like (elderly) properties and/or Guarantee Fund Developments with the PMA [Primary Market Area] will not have a negative impact on one or any of the

Guarantee Fund Developments." *See* Introduction to Market Study, April 6, 2010, at p. 7.[2]

- "It is CMD's opinion that the subject's units will not have a negative impact [on] any Guarantee Fund Developments." *See* Market Study, Competitive Analysis, April 6, 2010, at p. 58.

17. After receipt of the CMD market study and after engaging in other duties relevant to its credit underwriting responsibilities pursuant to rule 67-48.0072, John Elsasser of Seltzer prepared and signed a Preliminary Recommendation Letter ("PRL") concerning Crestwood that was emailed to Florida Housing on May 3, 2010. The May 3, 2010 PRL discusses the market study, noting specifically that CMD's opinion is that Crestwood "will not have a long-term negative impact" on Guarantee Fund properties near the proposed development.[3] *See* Letter to Candice Allbaugh (of Florida Housing) from John A.

---

[2] CMD determined that the "primary market area" for Crestwood consisted of a 10-mile radius of the proposed development. *See* Market Study, Demographic Analysis, April 6, 2010, at p. 46.

[3] In fact, CMD's market study actually states that "i]t is CMD's opinion that the subject's units will not have a negative impact on one or any of the Guarantee Fund developments." CMD does not state that Crestwood will cause either a short-term or long-term negative impact on Guarantee Fund properties near the proposed development. *See* Market Study, Competitive Analysis, at p. 58.

The Market Study does contain some "boilerplate" language regarding potential short-term impact during lease-up that appears in many PRLs that result in credit underwriting approval. For example, on page 7 of the Market Study, the

Elsasser (of Seltzer), May 3, 2010. Seltzer concludes the May 3, 2010 PRL by recommending that Crestwood receive both Exchange Funding and Housing Credits.

18. Three days later, on May 6, 2010, an employee of Florida Housing sent an email to Ben Johnson, the President of Seltzer, providing additional information on one of Guarantee Fund developments referenced in the May 3, 2010 PRL, Windsor Park Apartments ("Windsor"). Windsor is 1.4 miles northeast of the proposed Crestwood site. The email, from Lindsay Lockhart, Florida Housing's Guarantee Program Asset Manager, discussed occupancy figures for Windsor, as well as rent concession policies, and marketing strategies of Windsor Park.

19. On May 13, 2010, Mr. Elsasser signed and sent a second PRL to Florida Housing concerning Crestwood. His cover email states: "Revised Preliminary Recommendation Letter for Crestwood, with expanded discussion of Windsor Park and Pinnacle Palms (the two Guarantee Fund transactions within

---

following language appears: "Historically, low-income properties are not significantly affected by new developments other than during lease-up. Occupancy is lower now primarily due to the current economic conditions, not over-improvement. There has always been a demand for low-income housing and the impact on additional properties, including Guarantee Fund Developments may be on occupancy during lease-up." Similar language concerning a potential short-term impact during lease-up appears in PRLs for Mirabella Apartments (2009-030CT), September 30, 2009; Magnolia Landing (2009-055X), September 30, 2009; and Parkview Gardens (2009-024C), October 21, 2009. Credit underwriting was approved for all of these developments.

Crestwood's submarket)." This May 12, 2010 PRL again notes that CMD does not anticipate "a long-term negative impact" on any Guarantee Fund properties. However, the letter states that Seltzer has some "concerns" regarding Windsor Park: "Crestwood will provide potential Windsor Park residents an additional choice when looking for rental housing – an option that will be newer and with a better unit mix. CMDuke suggests, and it is reasonable to conclude, that Occupancy at Windsor Park may drop during Crestwood's lease-up.[4] *It is difficult, however, to quantify the number of units lost or how long Crestwood will impact Windsor Park."* *See* Letter to Candice Allbaugh from John A. Elsasser, May 13, 010, at p. 2.[5] Seltzer again concludes its May 13, 2010 PRL by recommending that Crestwood receive both Exchange Funding and Housing Credits.[6]

---

[4] Seltzer mischaracterizes CMD's analysis. As previously noted, CMD uses a standard "boilerplate" statement: "Historically, low-income properties are not significantly affected by new developments other than during lease-up.There has always been a demand for low-income housing and the impact on additional properties, including Guarantee Fund Developments may be on occupancy during lease-up." CMD never says that "Occupancy at Windsor Park may drop during Crestwood's lease-up." Plainly, this boilerplate language in CMD's market study did not affect CMD's ultimate decision that Crestwood would have no negative impact on any Guarantee Fund development.

[5] The letter also addressed the Pinnacle Palms Guarantee Fund development, but states that "SMG believes the negative impact, if any, on Pinnacle Palms during the Crestwood lease up will be less than that experienced by Windsor Park. Windsor Park is much closer to Crestwood than is Pinnacle Palms (1.4 miles vs. 7.9 miles). In addition, Windsor Park's location and unit mix are generally believed to be inferior to Pinnacle Palms. Just as with Windsor Park, however, a

20. Two days after the second PRL was sent by Seltzer to Florida Housing, Kevin Tatreau, Florida Housing's Director of Multifamily Development Programs, emailed Mr. Johnson, the Seltzer president, asking if he and others from Florida Housing could *call* Mr. Johnson the following day to discuss several proposed developments under review by Seltzer that have Guarantee Fund developments nearby. One of the proposed developments listed in Mr. Tatreau's email was Crestwood Apartments. Mr. Johnson agreed to be available for the phone call at 11 a.m. the following day, May 19, 2010.

21. On May 26, 2010, following the May 19, 2010, call between Florida Housing and Mr. Johnson, Mr. Elsasser of Seltzer sent a third PRL to Florida Housing concerning Crestwood. This May 26, 2010 PRL, unlike the first two, was signed both by Mr. Elsasser and Mr. Johnson. This May 26, 2010 PRL includes an expanded discussion of CMD's market study and states that Seltzer "performed independent Due Diligence related to the underlying data utilized by CMDuke in its Crestwood Market Study." *See* Letter from John A. Elsasser and Benjamin S.

---

decrease in Occupancy and Rental Revenue could result in Operating Deficits for Pinnacle Palms." *Id.* at p. 3.

[6] Coincidentally, approximately two hours after Mr. Elsasser sent the second draft PRL to Florida Housing, Mr. Elsasser had the following exchange with a HTG employee:

Shawn Wilson (of HTG), May 13, 2010, 1:07 p.m. : Ok thanks. Any good news on the Market Review?

John Elsasser: May 13, 2010, 2:19 p.m.: It's in the hands of FHFC.

Johnson to Candice Allbaugh, May 26, 2010, at p. 2. The May 26, 2010 PRL states that "*Seltzer's review and Due Diligence findings are consistent with those presented in the Crestwood Market Study, which indicates the underlying data relied upon by CMDuke and the conclusions rendered by it are reasonable and logical.*" *Id.* (emphasis supplied).[7] Nonetheless, the May 26, 2010 PRL concludes as follows:

> Based upon the information presented in CMDuke's Market Study and its own Due Diligence, SMG concludes that the average occupancy rate within the Subject's submarket meets the minimum requirement of 90%. In accordance with the RFP 2010-04, however, SMG finds its concerns with regard to historical and current occupancy rates for the Elderly at prior and existing Guarantee Fund Properties within the Subject's submarket leads it to recommend FHFC rescind Applicant's tentative award of Exchange Program Funding. Construction of the Subject Development has the potential to negatively impact Affordable Housing Properties previously funded by FHFC in the area, especially the two Guarantee Fund Properties located within Crestwood's submarket.

Id. at p. 4 (emphasis supplied).

22. Seltzer subsequently sent a fourth PRL to Florida Housing on June 1, 2010, and another PRL to Florida Housing on June 3, 2010, that was included in the package that was submitted to the Board of Directors at its meeting on June 18, 2010, when the Crestwood credit underwriting report was considered. The

---

[7] Seltzer, for the first time, adds this statement to the May 26, 2010 PRL, acknowledging that its own due diligence findings are consistent with the CMD market study and that the "conclusions rendered by it are reasonable and logical." Nevertheless, for the first time, Seltzer reaches a conclusion in direct opposition to the CMD market study.

negative recommendations remain in both letters, though the language is slightly different than the language used in the previous PRLs. The June 3, 2010 PRL recommends not only that Crestwood's Exchange Funding be rescinded, but that its Housing Credit allocation also be taken back. Additionally, the recommendation is based only on an alleged negative impact on Windsor Park, not on any other Guarantee Fund development in the area:

> Information presented by CMDuke's Market Study and developed through its own Due Diligence leads SMG to conclude the average occupancy rate within the Subject's submarket meets the minimum requirement of 90% for the same demographic population. RFP 2010-04, however, also requires consideration of the potential impact of the Subject Development on existing Guarantee Fund Properties. Based upon marginal occupancy rates and resulting Operating Deficits, SMG has serious concerns regarding the potential negative impact of the Subject Development on Windsor Park. SMG therefore recommends FHFC rescind Applicant's HC allocation award and its Exchange Program Funding.

Letter to Candice Allbaugh from John A. Elsasser and Benjamin S. Johnson, June 3, 2010, at p. 4. Meanwhile, the June 3, 2010 PRL again states that Seltzer's due diligence findings are consistent with the CMD market study and that the underlying data and conclusions of CMD in its market study "are reasonable and logical." *Id.* at p. 2.

23. The June 3, 2010 PRL from Seltzer was the subject of Staff Recommendation from the Florida Housing staff to the Board of Directors concerning Crestwood. The Staff Recommendation states:

> Staff has received a preliminary recommendation letter for Crestwood Apartments (Exhibit A) containing a negative recommendation because the Development would cause a negative impact on a Guarantee Fund transaction in the area.[8] 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 2010-04 to be approved for further credit underwriting consideration.[9]

The Staff Recommendation concluded by recommending that the Board "[r]escind and return the nine-percent Low-Income Housing Tax Credit award and Exchange Funding to Florida Housing Finance Corporation."

24. On June 18, 2010, the Board considered the Staff Recommendation and voted to accept it, despite the repeated requests of HTG to delay the item for one month so that a way might be found to approve the proposed development while protecting Windsor Park against any negative impact, even though the CMD market study states that there will be no negative impact and in spite of the credit underwriter's statement that their own findings are consistent with those of the CMD market study. Staff had already rejected efforts by HTG to establish a developer-funded reserve for the benefit of Windsor Park in case of any negative impact on that development during Crestwood's lease-up. Additionally, Florida

---

[8] Again, this is not what the CMD market study concludes and this conclusion is not reached in any of the five PRLs that Seltzer submitted to Florida Housing.

[9] Kevin Tatreau, Florida Housing Staff, stated at the June 18, 2010, Florida Housing Board meeting that Crestwood meets the "90 percent test," but that it fails the "negative impact test." *See* Transcript excerpt of June 18, 2010, Board of Directors meeting at p. 20, lines 6-9

Housing staff had declined HTG's request to modify its targeted demographic group so as to minimize any negative impact on Windsor Park, and Florida Housing staff had declined HTG's request to reduce the amount of competitive units between Crestwood and Windsor Park by increasing the amount of Extremely Low Income units at Crestwood.

25. Mr. Johnson, the president of Seltzer, stated at the Board meeting that the information in the market study "just doesn't match what's happening on the ground" and that he found it "prudent" to protect the Windsor Park development.[10] Transcript excerpt of June 18, 2010, Board of Directors meeting at p. 12, lines 3, 16. Mr. Johnson was not asked about his company's first two recommendations to recommend the Housing Credit award and Exchange Funding for Crestwood, and it is unlikely that Board members were aware of those initial recommendations. HTG did not learn of the initial recommendations from Seltzer until they were produced in response to a public records request following the Board's decision.

26. Steve Auger, executive director of Florida Housing, conceded at the Board meeting that he did not know whether Crestwood would have any negative impact on Windsor Park, but said he could not take the chance:

---

[10] Rule 67-48.0072(10) requires that "[t]he market study must be completed by a disinterested party who is approved by the Credit Underwriter." It does not state that the market study can be performed by the Credit Underwriter itself, nor that the Credit Underwriter has the authority to override the definitive conclusion of the independent market study professional.

> And, Mr. Chair, if I may, just one thing, potential impact is all we've got. You know, we're talking about a development that's not built and we're talking about guessing about people's behavior. So potential – we will never have anything other than potential when we're talking about, you know, the possibilities there.

Id. at p. 27, lines 22-25; p. 28, lines 1-3.

27. The Board's vote was unanimous to support its staff and rescind the award of Housing Credits and Exchange Funding for Crestwood. Florida Housing and Seltzer failed to properly consider other less onerous approaches that would address or alleviate any concerns about the potential impact of Crestwood on Windsor Park. Thus, HTG's substantial interests are affected by the Board's decision, as HTG has invested more than a half million dollars into the Crestwood development that cannot be recovered.

Notice

28. HTG received formal notice of Florida Housing's decision to rescind the Housing Credit and Exchange Program funding awarded to Crestwood on June 25, 2010, by Federal Express. A copy of that notice, along with documents attached to it (Staff Recommendation, June 3, 2010 PRL Letter from Seltzer and Notice of Rights), is included as **Exhibit A.**

Disputed Issues of Material Fact and Law

29. Disputed issues of material fact and law include:

a. Whether the Credit Underwriting Report was prepared in accordance with Florida Housing's rules;

b. Whether Florida Housing ignored the findings of its professional market study analysts concerning the impact of Crestwood on nearby Guarantee Fund developments;

c. Whether Florida Housing's actions in ignoring the findings of its professional market study analysts concerning the impact of Crestwood on nearby Guarantee Fund developments were arbitrary and capricious;

d. Whether Florida Housing's actions in ignoring the findings of its professional market study analysts concerning the impact of Crestwood on nearby Guarantee Fund developments were clearly erroneous;

e. Whether Florida Housing abused its discretion by ignoring the findings of its professional market study analysts concerning the impact of Crestwood on nearby Guarantee Fund developments;

f. Whether Florida Housing staff persuaded its professional credit underwriter, Seltzer, to change its Preliminary Recommendation Letter to recommend rescinding Housing Credits and Exchange Funding that had been preliminarily awarded to Crestwood;

g. Whether, by persuading Seltzer to change its recommendation concerning an award of Housing Credits and Exchange Funding to Crestwood, Florida Housing acted arbitrarily and capriciously;

h. Whether, by persuading Seltzer to change its recommendation concerning an award of Housing Credits and Exchange Funding to Crestwood, Florida Housing abused its discretion;

i. Whether, by persuading Seltzer to change its recommendation concerning an award of Housing Credits and Exchange Funding to Crestwood, Florida Housing ignored the findings of its professional credit underwriter and thereby acted in a clearly erroneous manner;

j. Whether Florida Housing's action to rescind Crestwood's award of Housing Credits and Exchange Funding is consistent with the intent and purpose of Florida Housing's statutory and federal government mandates;

k. Whether Florida Housing's action to rescind Crestwood's award of Housing Credits and Exchange Funding was based on unqualified speculation as to any potential impact of Crestwood on Windsor Park and, therefore, arbitrary and capricious.

l. Whether Florida Housing's action to rescind Crestwood's award of Housing Credits and Exchange Funding was based on unqualified speculation as to

any potential impact of Crestwood on Windsor Park and, therefore, an abuse of discretion.

m. Whether Florida Housing's refusal to consider HTG's proposals of less onerous means of protecting Windsor Park from any potential negative impact from Crestwood was arbitrary or capricious;

n. Whether Florida Housing's refusal to consider HTG's proposals of a less onerous means of protecting Windsor Park from any potential negative impact from Crestwood was an abuse of discretion.

Ultimate Facts and Law

30. The ultimate facts and law are that Florida Housing acted arbitrarily and capriciously and abused its discretion by rescinding the Housing Credit and Exchange Funding awards to HTG. Additionally, by failing to rely on the findings of its professional analysts and credit underwriters concerning the potential impact of Crestwood on other Guarantee Fund developments, Florida Housing acted clearly erroneously.

Rules and Statutes

31. Rules and statutes entitling HTG to relief are sections 120.569 and 120.57, Florida Statutes; part V of chapter 420, Florida Statutes; and chapter 67-48, Florida Administrative Code, including rule 67-48.0072. The relationship of

the alleged facts to these statutes and rules has been discussed earlier in this petition.

Relief Requested

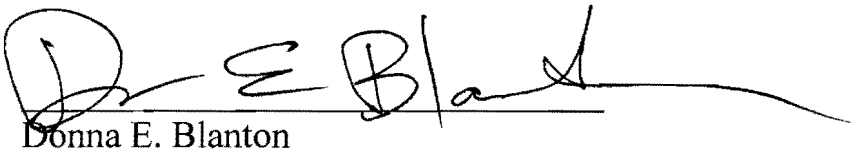
32. For the reasons expressed, HTG requests the following:

- That Florida Housing forward this petition to the Division of Administrative Hearings ("DOAH") to conduct a hearing in accordance with sections 120.569 and 120.57(1), Florida Statutes;
- That Florida Housing reserve and protect the Housing Credit and Exchange Funding previously awarded to HTG while this petition is considered by DOAH, in accordance with section 120.569(2)(a), Florida Statutes;
- That the Administrative Law Judge ("ALJ") enter a recommended order finding that Florida Housing acted arbitrarily and capriciously by rescinding HTG's Housing Credits and Exchange Funding awards;
- That the ALJ enter a recommended order finding that Florida Housing abused its discretion by rescinding HTG's Housing Credits and Exchange Funding awards;
- That the ALJ enter a recommended order finding that Florida Housing's refusal to rely on the findings of its market study analysts and credit underwriter concerning the impact of Crestwood on nearby Guarantee Fund developments was clearly erroneous;

- That the ALJ enter a recommended order directing Florida Housing to reinstate the Housing Credit and Exchange Funding awards to HTG (or if Exchange Funding awards are unavailable, direct Florida Housing to provide similar funding from another source); and
- That Florida Housing enter a final order adopting the ALJ's recommendations, as described above.

33. HTG reserves the right to amend this petition if additional disputed issues or material fact or law become known during the course of discovery.

Respectfully submitted on July 12 2010,



Donna E. Blanton
Florida Bar No. 948500
Radey Thomas Yon & Clark, P.A.
301 S. Bronough Street, Suite 200
Tallahassee, Florida 32301
Tel: 850-425-6654/ Fax: 850-425-6694
Attorney for Petitioner

we make housing affordable™
Florida Housing
Finance Corporation
227 North Bronough Street, Suite 5000 • Tallahassee, Florida 32301
850.488.4197 • Fax 850.488.9809 • www.floridahousing.org

June 24, 2010 Via Federal Express

Mr. Shawn Wilson
HTG Harbor Village, Ltd.
3250 Mary Street, Ste. 500
Coconut Grove, Florida 33133

Re: Final Action and Notice of Rights
Crestwood Apartments/2009-223C
2009 Universal Application Cycle and RFP 2010-04

Dear Mr. Wilson:

As you know, at its meeting on June 18, 2010, Florida Housing's Board rescinded the Housing Credit award and Exchange funding awarded to the Crestwood Apartments 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 June 3, 2010 preliminary recommendation letter issued by the Credit Underwriter. A copy of the Florida Housing staff recommendation and the preliminary recommendation letter as they appeared in the Board agenda are attached to this letter.

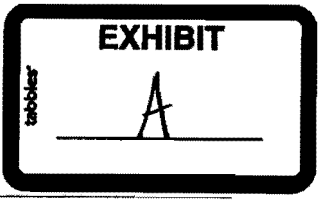
If you wish to contest the action taken by Florida Housing in this matter, you may request a hearing as provided in the Notice of Rights attached to this letter.

Sincerely,

Stephen P. Auger
Executive Director

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

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



I. LOW INCOME HOUSING TAX CREDITS

A. Preliminary Recommendation Letter for Crestwood Apartments (2009-223C/2011-017CX)

1. Background/Present Situation

a) The Applicant submitted an original application for nine-percent Low-Income Housing Tax Credits during the 2009 Universal Application Cycle. The Board approved final ranking of the 2009 Universal Application Cycle on February 26, 2010. The applicant was awarded nine-percent Low-Income Housing Tax Credits, and staff issued an invitation to enter credit underwriting on February 26, 2010.

b) On February 26, 2010, Florida Housing staff issued RFP 2010-04 to award Tax Credit Exchange Program (Exchange) Funding for Applicants that submitted an original application that has an active award of nine-percent Low-Income Housing Tax Credits. On March 17, 2010 the Board approved the award list of the Request for Proposals (RFP) 2010-04 and directed staff to proceed with all necessary credit underwriting activities. Staff issued an invitation to enter credit underwriting for RFP 2010-04 on March 17, 2010.

c) Staff has received a preliminary recommendation letter for Crestwood Apartments (Exhibit A) containing a negative recommendation because 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 2010-04 to be approved for further credit underwriting consideration.

2. Recommendation

Rescind and return the nine-percent Low-Income Housing Tax Credit award and Exchange funding to Florida Housing Finance Corporation.

SELTZER MANAGEMENT GROUP, INC.

17633 ASHLEY DRIVE
PANAMA CITY BEACH, FL 32413
TEL: (850) 233-3616
FAX: (850) 233-1429

June 3, 2010

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

Re: Crestwood Apartments (2009-223C)

Dear Ms. Allbaugh:

HTG Harbor Village, Ltd. ("Applicant"), has applied to Florida Housing Finance Corporation ("FHFC" or "Florida Housing") for an annual Housing Credits ("HC") allocation of $1,561,000 and for a Tax Credit Exchange Program ("Exchange Program") Loan under RFP 2010-04 (the "RFP") in the amount of $5,000,000, which equates to a $588,235 annual HC Allocation to finance Crestwood Apartments. The Subject Development will be located at 5350 Purdy Lane, West Palm Beach, Palm Beach County, Florida 33414. It is within a Difficult Development Area ("DDA"). As proposed, Crestwood Apartments will consist of 78 One-Bedroom/One-Bath units, 27 Two-Bedroom/Two-Bath units and 9 Three-Bedroom/Two-Bath units, a total of 114 garden-style units, in 3 Residential Buildings. The Subject Development has an "Elderly" Demographic Commitment, with 50-year HC Set-Asides of 10% (12 units designated as Extremely Low Income or "ELI") at 28% or less of Area Median Income ("AMI"), and 90% (102 units) at 60% or less of AMI, for a total Set-Aside of 100%. In addition, Applicant has a reserved a minimum of 50% of the ELI units (6 units) for Special Needs Households.

Initial consideration for funding is conditioned upon the Subject Development's submarket having an average occupancy rate of 90% or greater for the same demographic population. FHFC requested Seltzer Management Group, Inc. ("SMG" or "Seltzer") to determine the average occupancy rate for Crestwood's submarket. SMG engaged Clobus, McLemore and Duke, Inc. ("CMDuke), Fort Lauderdale, Florida, to perform a Market Study in accordance with industry guidelines and the requirements of RFP 2010-04. SMG received and reviewed CMDuke's report dated April 6, 2010.

CMDuke identified a 10-mile ring within Palm Beach County as Crestwood's Primary Market Area ("PMA"), which in this instance is also the submarket. CMDuke states there are 99 Affordable Properties within the submarket representing 9,984 units, of which 6 Affordable Properties representing 1,239 units have Elderly demographic commitments. The 6 Elderly Affordable Developments are Windsor Park (240 units), Pinnacle Palms (152 units) and Mangonia Residence (252 units) in West Palm Beach, Lake Worth Towers (195 units) and Riverview House (160 units) in Lake Worth and Boynton Bay (240 units) in Boynton Beach.

CMDuke reported occupancy as of March 2010 to be 87.6% for the 6 Elderly Comparables. It's calculation of Weighted Average Occupancy is based upon the total of occupied units divided by the total of available rentable units. Occupancy ranged from a low of 75% at Mangonia Residence to 95% at Lake Worth Towers. CMDuke noted that the weighted average would be 90.8% if Mangonia Residence is excluded from the calculation. At 530 sq. ft., its 252 one-bedroom/one-bath units are significantly smaller than the average of 700 sq. ft., for typical one-bedroom units within HC developments. Mangonia Residence has been a consistently poor performer over a number of years.

SMG performed independent Due Diligence related to the underlying data utilized by CMDuke in its Crestwood Market Study. Seltzer's Due Diligence included a comparison of CMDuke's property description to that in Applicant's RFP and HC Application, the identification of Affordable Properties in the vicinity of the Subject and comparison of the Subject to Affordable Properties in its submarket, a review of Florida Housing's Occupancy Reports and SMG internal monitoring sources, the comparison of that data with occupancy data utilized by CMDuke and the testing of various occupancy calculations in CMDuke's Market Study. Seltzer's review and Due Diligence findings are consistent with those presented in the Crestwood Market Study, which indicates the underlying data relied upon by CMDuke and the conclusions rendered by it are reasonable and logical. Accordingly, SMG finds CMDuke's Market Study to be satisfactory for purposes of establishing the average occupancy of Crestwood's submarket.

Of CMDuke's 6 Elderly Comparables, Windsor Park and Pinnacle Palms were partially financed by Multifamily Mortgage Revenue Bonds ("MMRB") credit enhanced by Florida Housing's Guarantee Program. Windsor Park is 1.4 miles northeast of Crestwood's Development Site. Pinnacle Palms is 7.9 miles to the northeast. In the opinion of CMDuke, the Subject Development may have a short-term impact on the two Guarantee Fund Properties during lease-up, however it will not have a long-term negative impact. Nevertheless, SMG has the following concerns with these Elderly Guarantee Fund Properties:

Windsor Park

Windsor Park's 240 Elderly units were completed in December 1999. Initial lease up lagged significantly behind underwriting projections. "Breakeven Operations" as defined in the Limited Partnership Agreement was not met until April 2006. Average occupancy for 2006 was reported at 95%, however it began to decline in 2007 and has yet to rebound. Occupancy has remained relatively flat (high 80% to low 90%) in recent years despite no new units introduced to the submarket and despite an increase in the number of income-qualified households. April 2010 occupancy is 89.6%. Windsor Park currently offers a Concession of a half month free rent plus washer/dryer discounts.

Under Windsor Park's Limited Partnership Agreement, the General Partner is obligated to fund Operating Deficits incurred by the Partnership. There is no limitation on the funding requirement for prior to achieving Breakeven. The obligation to fund Operating Deficits following Breakeven extends for a period of 3 years and is limited to $500,000. The General Partner of Windsor Park has reportedly funded Operating Deficits totaling approximately $3.7 million as of December 31, 2009, which figure does not include accrued interest. Operating Deficits at Windsor Park have been such that FHFC approved a Subordinate Mortgage Initiative ("SMI") Program Loan for Windsor Park in the amount of $595,187. Funding to date totals approximately $199,000.

Windsor Park's Operating Deficits are generally believed to be the result of a less-than-optimal unit mix (i.e., too many two and three-bedroom units) together with greater-than-anticipated insurance premiums and ad valorem real estate taxes. Increases to operating expenses have outpaced increases to rental rates, resulting in less-than-anticipated Cash Flow for a transaction that was underwritten to a 1.10 to 1.00 Debt Service Coverage ("DSC") ratio.

Crestwood will provide potential Windsor Park residents an additional choice when they look for rental housing – an option that will be newer and with a better unit mix. CMDuke suggests, and it is reasonable to conclude, that occupancy at Windsor Park may drop during Crestwood's lease-up. It is difficult, however, to quantify the number of units lost or how long Crestwood will impact Windsor Park. For a property operating at or below Breakeven, a decrease in occupancy and corresponding decrease in rental revenue would result in increased Operating Deficits.

Pinnacle Palms

Pinnacle Palms is a 152-unit Elderly Affordable Development completed in early 2003. Its lease up was slower than projected. Pinnacle Palms did not reach "Rental Achievement" (as defined in the Limited Partnership Agreement) to permit Permanent Loan Conversion until 2008. Its General Partner funded, and ultimately forgave, $243,000 in advances to cover Operating Deficits incurred by Pinnacle Palms during the period prior to Permanent Loan Conversion.

Following Rental Achievement, occupancy at Pinnacle Palms was consistently strong at 95% plus through June 2009. The economic downturn, however, appears to have had an adverse impact on Pinnacle Palms. With the exception of an uptick in September 2009, occupancy has declined to 88% as of April 30, 2010. Pinnacle Palms is currently offering one month of free rent as a Concession.

SMG believes the negative impact, if any, on Pinnacle Palms during Crestwood's lease up will be less than that experienced by Windsor Park. Pinnacle Palms is more distant from Crestwood than is Windsor Park (7.9 miles vs. 1.4 miles). In addition, Pinnacle Palms' location and unit mix are generally believed to be superior to Windsor Park. The Developer of Pinnacle Palms states the property is currently operating at Breakeven, however a decrease in occupancy rates and rental revenue could result in Operating Deficits for Pinnacle Palms.

In addition to the Elderly Guarantee Fund Properties (above), the history of Marina Bay, a Family Guarantee Fund Property, provides additional insight into Crestwood's submarket.

Marina Bay

Completed in 2001, Marina Bay is a 192-unit Affordable Housing development located within Crestwood's submarket. Marina Bay lies approximately 7.0 miles southeast of the Subject. It was financed in part by MMRB credit enhanced by Florida Housing's Guarantee Program. Marina Bay was developed by Marina Clinton, Inc. ("MCI"). The original shareholders of MCI were Stewart Marcus and Randolph E. (Randy) Rieger. Mr Rieger is also a principal to the Crestwood transaction.

The original Demographic Commitment for Marina Bay was Elderly. MCI, however, requested and received FHFC approval in April 2004 for a reduction in the Elderly Commitment from 100% to 80%. In April 2007, MCI withdrew as General Partner and was replaced by Shelter Marina Bay, L.L.C. ("Shelter GP"). Occupancy at Marina Bay in 2006 and early 2007 was relatively strong at 95% plus. It began to decrease in May 2007 and was reported at 90% for December 2007. Occupancy ranged from 89% to 91% at Marina Bay through 2008, but it began to decline

once again in 2009. Cash Flow problems resulted in Shelter GP seeking FHFC approval to drop the Elderly Set-Aside altogether. Shelter GP's request was approved in June 2009; Marina Bay's Demographic Commitment was changed to "Family". At that same June 2009 FHFC Board Meeting, Marina Bay was approved for a SMI Loan of $265,754. To date, draws against the SMI Loan total $132,877.

The change in the Demographic Commitment and subsequent re-tenanting efforts appear to have been successful. From June 2009 to December 2009, Marina Bay's occupancy increased from 85% to 99%. Occupancy has remained at that 99%-100% thus far in 2010. The population shift from Elderly to Family has been gradual. There are currently 96 units (50% of total units) with at least one Elderly resident (55 years or older). SMG is unable to predict how many Elderly will reside at Marina Bay when Crestwood is projected to be in lease up or what impact (if any) the Subject would have on Marina Bay. Marina Bay's inability to operate successfully as an Elderly Property, however, indicates a historically limited Elderly demand component to Crestwood's submarket.

Information presented by CMDuke's Market Study and developed through its own Due Diligence leads SMG to conclude the average occupancy rate within the Subject's submarket meets the minimum requirement of 90% for the same demographic population. RFP 2010-04, however, also requires consideration of the potential impact of the Subject Development on existing Guarantee Fund Properties. Based upon marginal occupancy rates and resulting Operating Deficits, SMG has serious concerns regarding the potential negative impact of the Subject Development on Windsor Park. SMG therefore recommends FHFC rescind Applicant's HC allocation award and its Exchange Program Funding.

If you have any questions or comment regarding this Preliminary Credit Underwriting Letter, please call me at (850) 233-3616, ext. 240.

Sincerely,

SELTZER MANAGEMENT GROUP, INC.

John A. Elsasser
Credit Underwriter

Benjamin S. Johnson
President

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.