FLORIDA HOUSING FINANCE CORPORATION
Board Meeting
October 23, 2009
Action Items

Florida Housing
Finance Corporation
we make housing affordable

I. GUARANTEE PROGRAM

A. Delegation of Authority for Liquidity Support or Replacement on the 1993 Series A, 1999 Series A and2000 Series A Capitalizing Bonds

1. <u>Background</u>

a) Since its inception 16 years ago, the Guarantee Program ("Guarantee Program" or "Program") has guaranteed 120 transactions and helped facilitate the construction of over 28,000 housing units in Florida.

b) As of September 30, 2009, the portfolio contained 102 guarantees totaling $770 million of risk-in-force; 99% in credit-enhanced multifamily transactions and 1% in well-seasoned, insured single-family mortgage pools.

c) The Legislature authorized the Corporation to issue up to $400,000,000 in revenue bonds to capitalize the Guarantee Fund ("Fund" or "Corpus"). To date, four series of FHFC (taxable) revenue bonds (the "Bonds") have been issued for the purpose of capitalizing the Fund and are described below:

(1) Florida Housing Finance Agency Affordable Housing Guarantee Revenue Bonds (Taxable) 1993 Series A, $75,000,000 (original par), $49,000,000 (outstanding)[1]
Remarketing Agent: Jefferies & Company, Inc.
Insured by: MBIA
Liquidity Facility by: DEPFA BANK plc, acting through its New York Branch

(2) Florida Housing Finance Corporation Affordable Housing Guarantee Revenue Bonds (Taxable) 1999 Series A, $50,000,000 (original par), $46,250,000 (outstanding)[1]
Remarketing Agent: Jefferies & Company, Inc.
Insured by: MBIA
Liquidity Facility by: DEPFA BANK plc, acting through its New York Branch

(3) Florida Housing Finance Corporation Affordable Housing Guarantee Revenue Bonds (Taxable) 2000 Series A, $75,000,000 (original par), $60,950,000 (outstanding)[1]
Remarketing Agent: Jefferies & Company, Inc.
Insured by: Ambac
Liquidity Facility by: DEPFA BANK plc, acting through its New York Branch

[1] After July 1, 2009 scheduled sinking fund redemptions.

(4) Florida Housing Finance Corporation Affordable Housing Guarantee Revenue Bonds (Taxable) 2002 Series A, $100,000,000 (original par), $0 (outstanding)[2]
Remarketing Agent: Citigroup
Insured by: Ambac
Liquidity Facility by: DEPFA BANK plc, acting through its New York Branch

d) In addition to the net proceeds of the Bonds, the Corpus is also funded by accumulated "Net Guarantee Fund Revenues" (commitment fees and premiums, program fees from guarantees issued, and investment earnings less payment of claims and operating expenses) of approximately $80,000,000.

e) The Corpus does not secure the Bonds. Pursuant to the Indenture, the Bonds are secured by (i) "Net Guarantee Fund Revenues", (ii) a pledge of money and investments held by the Bond Trustee and (iii) a pledge of the first documentary stamp revenues paid to the State Housing Trust Fund in the event of (and in the amount of) a "certified deficiency" in the Debt Service Reserve Fund (held by the Bond Trustee). A "deficiency" is calculated based on the largest aggregate amount of annual principal installments and interest payments coming due on the Bonds at an assumed interest rate of 12% (while the Bonds are in a variable rate mode) in any state fiscal year. Historically, the Corporation has used funds appropriated from the State Housing Trust Fund to make principal payments on the Bonds, which alleviated the need to "certify" a deficiency. The current ratings on the Corporation's capitalizing Bonds, 1993 Series A, 1999 Series A and 2000 Series A are "BBB" with a ratings watch negative (Fitch) and A+ outlook stable (S&P). Moody's does not rate the Bonds. S&P is currently conducting its annual review of the Fund and Bonds and their analysis and corresponding ratings action is anticipated in the near future.

f) The current ratings on the claims-paying ability of the Guarantee Fund are A- with a negative rating outlook (Fitch) and A+ outlook stable (S&P). Moody's does not rate the Guarantee Fund. In the event that, due to claims obligations, the Guarantee Fund is rated less than in the top 3 claims paying ratings by any nationally recognized rating agency, the State CFO is directed to transfer to the Corpus the amount necessary to maintain the minimum claims paying rating in an amount not to exceed 50% of the amounts distributed to the State Housing Trust Fund during the preceding state fiscal year from taxes distributed to the State Housing Trust Fund during the ensuing state fiscal year. Any transfer of documentary stamp deposits are subordinate to any transfer required to maintain the annual debt service reserve for any series of outstanding bonds. Such transferred documentary stamp tax revenues do not secure the Bonds.

g) Any future rating agency actions on the claims-paying rating of the Guarantee Fund are likely to take into consideration no less than the following: the counterparty risk, leveraging ratio, claims paid and projected, financial capacity and the projected and current performance of state documentary stamp tax revenues which are the key credit support on which the rating agencies ultimately rely.

[2] Pursuant to the March 13, 2009 Board direction, staff utilized excess Corpus capacity not expected to be needed in the reasonably foreseeable future to redeem in full the 2002 Series A bonds ($89,925,000 par) on May 1, 2009, reducing negative arbitrage in the Fund for the purpose of maintaining a risk-to-net capital leveraging ratio below 5:1.

h) The Bonds are weekly reset taxable variable rate demand obligations (VRDO). With the current and ongoing financial market crisis, weekly attempts to remarket the Bonds over the last 15 months have been substantially unsuccessful, resulting in most of the Bonds being "put" to the corresponding liquidity facilities provided by, but recently suspended by Depfa Bank plc (Depfa). The liquidity facilities act as a backstop to ensure sufficient liquidity is on hand at all times to support the "put" feature. In the case of the Bonds, each liquidity facility is evidenced by a separate Standby Bond Purchase Agreement (SBPA) for the corresponding series of the Bonds.

i) On June 5, 2009, following a downgrade of Ambac Assurance Corporation (Ambac) below investment grade, Depfa sent a 30-day notice of termination of liquidity support on the 2000A capitalizing Bonds. The 2000 Series A Bonds are insured by Ambac. Depfa exercised authority provided by the Bond Insurer Adverse Change provision within the supporting SBPA. Term-out is triggered upon termination, calling for repayment of the 2000 Series A Bonds ($60,000,000 par) over an accelerated term of five (5) years in equal semi-annual installments of principal plus accrued interest.

2. <u>Present Situation</u>

a) On September 29, 2009, Standard & Poor's (S&P) downgraded the financial strength rating of MBIA Insurance Corp (MBIA), the bond insurer on the 1993 Series A and 1999 Series A capitalizing Bonds, from "BBB" to "BB+" with a negative outlook. This downgrade triggered a Bond Insurer Event of Default under the SBPAs for the 1993 Series A and 1999 Series A Bonds. On October 1, Depfa sent a notice of suspension of liquidity support, suspending the available commitment and Depfa's obligation to purchase optionally-tendered 1993 Series A and 1999 Series A capitalizing Bonds under the SBPAs. At the time of the suspension, the bond balances were:

Bond Series	Par Balance	(Depfa) Bank Bonds	"street" Bonds
1993A	$49,000,000	$23,505,000	$25,495,000
1999A	$46,250,000	$14,405,000	$31,845,000
2000A	$60,950,000	$60,950,000	$0

b) Under the terms of the 1993 Series A and 1999 Series A SBPAs, if one or more of the financial strength ratings of the Bond Insurer is not reinstated to Investment Grade or higher, within 120 days following the suspension, the liquidity support on the 1993 Series A and 1999 Series A capitalizing Bonds shall terminate.

c) Earlier this year, MBIA established National Public Finance Guarantee Corporation (National), a new public finance bond insurance unit within MBIA. National reinsured MBIA's obligations under various bond insurance policies, including the 1993 Series A and 1999 Series A capitalizing bonds. National's reinsurance permits policyholders to make claims directly against National as the primary insurer. In S&P's recent MBIA downgrade, they affirmed National's "A" financial strength rating with a developing outlook. However, Depfa has taken the position under the 1993 Series A and 1999 Series A SBPAs that such documents only contemplate the MBIA policies (and MBIA's ratings).

Action

d) On October 5, Florida Housing formally requested Depfa's consent to National's reinsurance of the MBIA policies as "additional insurance or other credit enhancement" as provided under the SBPAs to address any concerns Depfa may have initially had with MBIA's downgrade. We further requested Depfa withdraw the suspension notice and reinstate the available commitment and Depfa's obligation to continue purchasing the bonds under the SBPAs; however, we do not expect favorable action on these requests.

e) On October 8, 2009, staff received a telephone call from Depfa asserting their interpretation of the SBPAs supporting the 1993A, 1999A and 2000 Series A bonds suggesting that all of the $98.86 million Bank Bonds are due and payable immediately based upon the Bond Insurer Event of Default. Although Florida Housing has not received formal written notice of Depfa's assertions on this matter, Guarantee Fund counsel is reviewing the SBPAs to prepare for a response, defenses or remedies should we receive such notice.

f) Absent an action by Florida Housing to invest in all of the Guarantee Fund bonds held by Depfa or other actions by the Guarantee Fund, if Depfa does not immediately demand payment of all of the Bank Bonds and the 120 day suspension lapses without withdrawal of the suspension notice, the $37,910,000 of 1993 Series A and 1999 Series A bank bonds at Depfa would go into term-out, calling for repayment over an accelerated term of five (5) years in equal semi-annual installments of principal plus accrued interest. The first term-out payments would be due in July 2010. Payments due under the term-out provisions would total approximately $3.8 million in principal plus interest for the 1993 Series A and 1999 Series A bonds. Should efforts to replace liquidity on the 2000 Series A bonds not be successful, the first term-out payment on the 2000 Series A bonds (already in term out), of approximately $6 million plus interest, will be due in January 2010.

g) As a result of Depfa's suspension, Florida Housing provided notice of its intent to purchase a portion of the 1993 Series A bonds and 1999 Series A bonds, either directly from investors in the open market, or as a purchaser in a remarketing of the Bonds. Florida Housing intends to hold any Bonds purchased as investments until such time as Florida Housing determines they are to be remarketed, redeemed or otherwise sold or cancelled. Florida Housing expects to invest up to $60 million while enhancing the rate of return when compared to current investments. Florida Housing may invest in all bonds held by Depfa to take advantage of the rate of return in the bonds and to reduce the negative arbitrage currently experienced by the Guarantee Fund.

h) Staff continues to seek options for replacing liquidity and/or capitalizing bonds for one, two or all three series of bonds whether through an irrevocable direct-pay letter of credit (LOC), replacing the existing Bonds in whole or in part with a term loan or other financial instrument(s), as well as reviewing other solutions including but not limited to, FHFC purchasing capitalizing bonds to hold as an investment, or the Guarantee Fund redeeming or cancelling the bonds, replacing and/or terminating the bond insurance providers, recapitalizing the guarantee fund, restructuring the capitalizing bonds to a fixed interest mode to eliminate the need for a liquidity facility, effecting any desirable amendment to the Bonds, selling portions or all of the portfolio, securing potential investors that will commit to holding the capitalizing bonds for a certain term, seeking sources of additional guarantees to provide security for liquidity and/or new financing, and monitoring solutions that may become available through federal legislation providing liquidity through the GSEs, Federal Home Loan Banks or other sources.

3. <u>Recommendation – Need Authorization to Purchase Bonds</u>

Ratify staff's decision to purchase a portion of the 1993 Series A bonds and 1999 Series A bonds, either directly from investors in the open market, or as a purchaser in a remarketing of the bonds, following Depfa's suspension of the available commitment and obligation to purchase optionally tendered 1993 Series A and 1999 Series A capitalizing bonds under the SBPAs. Given staff's prospective efforts to be fully prepared, and the possibility of the need to remedy a liquidity situation arising in between Board meetings and their associated deadlines, staff is requesting specific delegation of authority to the Chair, and in the Chair's absence, to the Vice Chair to act on behalf of the board, if in the judgment of the Chair, or Vice Chair, upon recommendation of staff and the Executive Director, with the advice of the Guarantee Fund's counsel and financial advisor, it would be in the best interest of the Fund to provide any necessary approvals for any of the actions contemplated above, as necessary, to maintain or improve the financial integrity of the Guarantee Fund, specifically including the purchase of additional Bonds, including all Bonds held by Depfa, and the incurrence of debt to refund all or part of such Bonds. Staff would bring the issue before the Board for ratification at the earliest regularly scheduled Board meeting following such decision.

B. Approval for the Removal of $10 Million Surety from the Debt Service Reserve Fund

1. <u>Background/Present Situation</u>

The Debt Service Reserve Fund (DSRF) includes a $10 million surety bond from Ambac, expiring in 2013. Ambac is currently rated below investment grade by the rating agencies Moody's and Standard & Poor's (S&P). Fitch withdrew its rating in 2008. Ambac has not been deemed insolvent or failed to pay claims to date, and there are no Indenture provisions requiring the surety's replacement. Nevertheless, Fitch Ratings (Fitch), in its most recent annual review of the Fund, assigned zero value to the surety, citing it as a point of concern in supporting its decision to downgrade the Fund's insurer financial strength rating.

2. <u>Recommendation</u>

Staff recommends that the Board approve the termination of the $10 million Ambac surety from any available moneys (Guarantee Fund or FHFC), replacing it with cash or any other acceptable replacement, if in the judgment of staff, with the advice of the Guarantee Fund's counsel and financial advisor, it would be in the best interest of the Fund.

C. Update Regarding the Sale of Riverfront Apartments

1. <u>Background</u>

a) Worthwhile Development, Ltd. d/b/a Riverfront Apartments ("Riverfront") is a 356 unit multifamily development located approximately 12 miles east of downtown Orlando, near Union Park in Orange County, Florida. The property was financed with FHFC bonds, 1997 Series A, and an allocation of 4% housing credits. The Guarantee Program and HUD (through a Risk-Sharing agreement) guaranteed the first mortgage.

b) On December 12, 2008, the Guarantee Program filed an Application for Initial Claim Payment for $14,205,415 with HUD on Riverfront Apartments and on February 10, 2009, filed for foreclosure in the 9th Circuit Court in Orange County, case number 2009-CA-004089-O.

c) On April 20, 2009, Worthwhile Development, Ltd. filed an amended answer to the foreclosure complaint essentially consenting to summary judgment. On May 26th, summary judgment was granted and a foreclosure sale date was set for June 26th. FHFC was the winning bidder at the foreclosure sale and a certificate of title was issued to FHFC II, Inc. on July 24, 2009.

d) As part of staff's ongoing efforts to be fully prepared for managing troubled assets, unremedied borrower defaults, and the eventual management and disposition of multifamily housing developments, we have established protocols and procedures balancing Florida Housing's mission while protecting the financial interests of the Florida Affordable Housing Guarantee program.

e) Florida Housing, through an independent contractor will manage, conserve, protect (including making capital expenditures as needed to repair or restore the property or to cover operating budget shortfalls and stabilize the property's operations) and operate foreclosed properties in accordance with customary practices of prudent lenders in servicing and administering similar multifamily mortgage loans for their own account, consistent with applicable laws and regulations. In the case of mortgage loans additionally guaranteed through the HUD Risk-Sharing Program, the requirements of HUD regulations are also followed. In accordance with HUD guidelines, Florida Housing was recently able to commence the process of the disposition of Riverfront immediately after Florida Housing was the winning bidder at the foreclosure sale. With the assistance of a real estate broker within the pool of brokers approved by the Board and selected through the issuance of a Request for Proposals, a marketing and disposition plan is prepared outlining the strategy for the disposition at the earliest practicable, commercially reasonable time, on commercially reasonable terms taking into account market conditions, the condition of the asset, the total claim, and the Guarantee program's share of that liability, any rating agency consequences, the appraised value, recent economic affects on that value, and the legal and regulatory requirements.

2. <u>Present Situation</u>

a) Following the established protocol, Riverfront Apartments was listed for sale via a competitive bid process with Marcus & Millichap. A total of 37 bids were received. On October 7, 2009, after Marcus & Millichap vetted the offerors, Marcus & Millichap submitted the best and final offers from the following offerors:

(1) Eastwind Development,

(2) Gator Investments,

(3) JLC Southeast,

(4) LeCesse Development Corp.,

(5) Midwest Diversified,

(6) Southern Investment Group a/k/a Atlantic Housing, and

(7) Stoneleigh Companies

b) Staff met October 9, 2009 to select top bidders and formulate a recommendation to the board for approval of the sale. On October 14, staff entered into a purchase and sale agreement with a due diligence period that ends November 2, 2009 and a projected closing of the transaction on December 1, 2009.

c) Based upon JLC Southeast's $12.1 million offer including a total of $750,000 in earnest money deposits, November 2 deadline for due diligence and projected December 1 deadline to close, confirmation of cash on hand to close the transaction without financing, capital partner's ability to timely close the deal, and Marcus & Millichap's favorable recommendation, staff negotiated a purchase and sale agreement for the sale of Riverfront Apartments to JLC Southeast. At the December FHFC II board meeting, staff will request the ratification of the execution of the purchase and sale agreement and recommend the Board direct staff to proceed with the closing on the sale of Riverfront.

II. HOMEOWNERSHIP POOL ("HOP") PROGRAM

A. Request Authorization to Commence Rule Amendment Process

1. <u>Background</u>

The Homeownership Pool ("HOP") Program, governed by Rule 67-57, Florida Administrative Code, establishes the procedures by which the Corporation provides purchase assistance to Eligible Homebuyers through HOP Members.

2. <u>Present Situation</u>

Recognizing the need to make some changes to the Program, Staff plans to conduct workshops throughout the state to solicit input from the public.

3. <u>Recommendation</u>

Authorize staff to commence the rule amendment process for the HOP Program.

III. PROFESSIONAL SERVICES SELECTION (PSS)

A. Real Estate Brokerage Services Request for Proposals (RFP)

1. Background

At its July 24, 2009 meeting Florida Housing's Board of Directors authorized staff to begin the RFP process for Real Estate Brokerage services and establish a review committee. Florida Housing expects to engage the services of a pool of brokers that propose to provide services specified in the RFQ.

2. Present Situation

a) An RFP process was initiated and RFP 2000-05 was issued on Friday, August 21, 2009. Proposals were due on or before 2:00 p.m., Friday, September 18, 2009.

b) Six proposals were received: Marcus & Millichap Real Estate Investment Brokerage Company of Seattle; CB Richard Ellis, Colliers Arnold, Florida Acquisition & Appraisal, Incorporated, Smith & Associates Real Estate and Titan Land Company, Inc., d/b/a Accord Affordable Housing Advisors.

c) The Review Committee members, designated by the Executive Director, were Laura Cox, Director of Asset Management & Guarantee Program, Todd Fowler, Special Assets Director, Kevin Pichard, Assistant Director Guarantee Program, Elissa Fiedler, Special Assets Manager, Lindsay Lockhart, Guarantee Program Asset Manager and Nyankor Matthew, Single Family Manager.

d) Each member of the Review Committee individually reviewed the proposal prior to convening for the Review Committee meetings. The Review Committee meetings were held at 2 p.m. on September 21, 2009 and at 10:00 a.m., on October 5, 2009. Results of the Review Committee's evaluation of the scored items is attached as Exhibit A.

3. Recommendation

The Review Committee recommends that the Board accept Marcus & Millichap, CB Richard Ellis and Colliers Arnolds to provide real estate brokerage services and authorize staff to enter into contract negotiations with the Offerors conditioned on the following:

(1) Marcus & Millichap to provide satisfactory evidence of: 1) certification that they are qualified to do business in the State of Florida, and 2) current professional liability errors and omissions insurance.

(2) CB Richard Ellis to provide satisfactory evidence of their ability to fund the payment of losses and guarantee defense costs resulting from the $2 million self-insured retention within the Errors and Omissions insurance policy.

(3) Colliers Arnolds to provide satisfactory evidence of: 1) certification that they are qualified to do business in the State of Florida, and 2) current professional liability errors and omissions insurance.

I. SINGLE FAMILY BONDS

A. Single Family Homebuyer Program

1. Background

a) Florida Housing received notice by the U.S. Treasury, the U.S. Department of Housing and Urban Development and the Federal Housing Finance Agency on October 19, 2009 of their new Initiative for State and Local Housing Finance Agencies (New Bond Issuance Program).

b) Staff submitted a request for approval to issue up to $525,000,000 of bonds prior to the October 19, 2009 announcement. The New Bond Issuance Program will provide financing assistance for bonds issued by state and local housing agencies so that such agencies can borrow money in larger amounts and at lower rates than otherwise would be possible. Under the New Bond Issuance Program, Treasury will purchase up to 60% of the bonds combined with 40% of bonds sold to investors in the public market. Although the financing parameters have not been finalized, staff believes it is prudent to increase our request for approval from $525,000,000 to $900,000,000. Staff has analyzed the amount Florida Housing can request under the New Bond Issuance Program and projected home buyer demand for Florida Housing bond proceeds in 2010, based on home buyer past performances. From that analysis, staff has determined that a bond issue of $900,000,000 will allow Florida Housing to meet projected demand, maximize savings from participation in the New Bonds Issuance Program and (using Florida Housing's established objectives for issuance of its homeowner mortgage revenue bonds) provide the benefits of the New Bond Issuance Program to the largest number of first time home buyers in Florida.

c) Florida Housing sold $100,000,000 of bonds identified as 2009 Series 2 Bonds on September 16, 2009 (prior to announcement of the New Bond Issuance Program). The 2009 Series 2 bond issue is now over 83% reserved as of October 21, 2009.

d) Staff is requesting approval to issue up to $900,000,000 million of single family bonds and/or notes to fund mortgages from what will be designated as 2009 Phase Two Bonds (multiple series to be determined) and if an acceptable level of savings can be achieved, to refund a portion or all of the following outstanding bonds: 1996 Series 1-2, 1996 Series 3, 1997 Series 1-3, 1998 Series 1-3, 1999 Series 1-3, 1999 Series 6-9 and 2000 Series 3-6.

e) The 2009 Phase Two Bonds are expected to be rated "AA+" by Standard & Poor's Ratings Services, "Aa1" by Moody's Investors Service and "AA+" by Fitch Ratings. Any notes or convertible option bonds, if issued, are expected to be rated "SP-1+" by Standard & Poor's Ratings Services, "MIG1" by Moody's Investors Service and "F-1+" by Fitch Ratings. It is anticipated that the 2009 Phase Two Bonds and any additional new money bonds issued under Florida Housing's Homeowner Mortgage Revenue Bonds Indenture, as amended and supplemented (collectively, the "1995 Indenture") will, for the foreseeable future, be secured by mortgage backed securities.

f) The investment banking team, bond counsel, financial advisor and special counsel will be selected from the board approved list. The investment banking team, bond counsel, financial advisor and special counsel lists have been approved by the board pursuant a RFP/RFQ process. It is expected that (i) RBC Capital Markets, Citigroup Global Markets, Inc. and Morgan Stanley & Co. Incorporated (collectively, the "Investment Banking Team") will respectively serve as senior and co-senior managing investment bankers for the negotiated sale of the first issuance of the 2009 Phase Two Bonds; (ii) Nabors, Giblin & Nickerson P.A. will serve as special counsel for the first issuance of the 2009 Phase Two Bonds; (iii) Bryant Miller Olive P.A. jointly with the Law Offices of Steve E. Bullock P.A., will serve as bond counsel for the first issuance of the 2009 Phase Two Bonds and (iv) that Tibor Partners Inc. will serve as financial advisor for the first issuance of the 2009 Phase Two Bonds.

2. <u>Present Situation</u>

a) Authorization necessary to issue the 2009 Phase Two Bonds requires (1) adoption of an authorizing resolution by Florida Housing's Board and (2) approval of fiscal determination by the State Board of Administration. To work within the constraints of regularly scheduled public meetings and maintain Florida Housing's goal of providing continuously available single family mortgage funding and to take full advantage of the New Bond Issuance Program, the authorizing resolution for the 2009 Phase Two Bonds is being presented for consideration at Florida Housing's October 23, 2009 meeting.

b) Current market conditions render it difficult to predict the precise rate of reservation for proceeds of the 2009 Series 2 Bonds; however, to insure sufficient time for obtaining required approvals for the 2009 Phase Two Bonds, authorization is hereby requested to commit up to $50,000,000 of the 1995 Indenture assets and/or other funds available to Florida Housing to provide interim funding for single family mortgage backed securities. Florida Housing may also request that the Master Servicer sell loans directly to Fannie Mae or sell Mortgage Backed Securities via the TBA (To Be Announced) market as previously approved by the Board.

c) Final size, structure, timing, conversion dates and other decisions relating to the 2009 Phase Two Bonds will be made based on Treasury approval, production levels, program changes and market conditions with the advice of the Investment Banking Team and Florida Housing's financial advisor closer to the time of the anticipated transaction. Issuance costs and capitalized interest for the 2009 Phase Two Bonds will be funded with assets available under the 1995 Indenture and/or by a contribution from Florida Housing's general funds. In the past, actual negative reinvestment costs have been reduced or eliminated by shortening origination schedules and by investing bond proceeds in a Municipal Backed Money Market or Guaranteed Investment Contract or State Treasurer's fund. Under current market conditions, it may be financially advantageous to Florida Housing to use the State Treasurer's fund to invest the 2009 Phase Two Bond proceeds. Based on current market conditions, we do expect there to be negative arbitrage on invested bond proceeds to be used to acquire mortgage backed securities, noting however, that negative arbitrage under the New Bond Issuance Program will be reduced or eliminated upon initial issuance due to the expected lower borrowing cost related to such portion. Under current market conditions, weighing both risk and benefit are paramount. Therefore, Florida

Housing will continue to monitor the market, to include a risk/benefit analysis in determining the investment of these bond funds.

d) Summary of Proposed 2009 Phase Two Bonds:

(1) Principal Amount: Not to exceed $900,000,000 in short and long term taxable and tax-exempt bonds and/or notes in one or more series to finance new mortgage loans and, if acceptable levels of savings can be achieved, to refund all or a portion of Florida Housing's 1996 Series 1-2, 1996 Series 3, 1997 Series 1-3, 1998 Series 1-3, 1999 Series 1-3, 1999 Series 6-9 and 2000 Series 3-6 bonds (a total of $84,341,203.44 of such bonds is still outstanding as of October 1, 2009). Florida Housing may issue the 2009 Phase Two Bonds in multiple series, at various times, if doing so is deemed advantageous based upon prevailing market conditions.

(2) Florida Housing funds: 1) interim funding, not to exceed $50,000,000 from 1995 Indenture resources and/or other funds available to Florida Housing with the expectation that any funds committed will be reimbursed with proceeds of the 2009 Phase Two Bonds and 2) issuance costs and any capitalized interest, not to exceed $30,000,000 from 1995 Indenture resources and/or other funds available to Florida Housing.

(3) Mortgage Rates: Not to exceed a weighted average mortgage loan rate of 7.50% for the 2009 Phase Two portfolio.

(4) Origination & Delivery Period: Expect a twelve month with up to a forty-two month origination/delivery period for each issuance.

(5) Maximum Combined Loan-To-Value: Per the guidelines of Fannie Mae, Freddie Mac FHA, VA and USDA/RD.

(6) Loan Types: Conventional, VA, Rural Development and FHA.

(7) Second Mortgages: Florida Assist and Homeowner Assistance for Moderate Income (HAMI).

(8) Guaranteed Mortgage Securities: Ginnie Mae, Fannie Mae and Freddie Mac.

(9) Private Activity Tax-Exempt Bond Resources Available:

(a) $533,366,420.12 carry forward private activity bond allocation

(b) $388,012,650.00 2009 Private Activity Bond Allocation

(c) Recycled bond proceeds of $2,800,000.00

e) Exhibit A – Resolution

f) Exhibit B - Method of Sale Letter

g) Exhibit C – Announcement of the Initiative for State and Local Housing Finance Agencies

3. Recommendation

Staff recommends the Board approve the necessary funding (including reimbursable amounts to provide program funding between bond issues), staff actions and the resolution to permit the issuance of the proposed 2009 Phase Two Homeowner Mortgage Revenue Bonds.

V. SUBORDINATE MORTGAGE INITIATIVE

A. Request Approval Of Subordinate Financing in an Amount Not to Exceed $425,000 Through the Subordinate Mortgage Initiative

Development Name: The Villas at Lake Smart Apartments ("Development")	**Location: Polk**
Developer/Principal: The Carlisle Group, Inc. ("Developer" or "Principal")	**Set-Aside: 40% @ 60% AMI (MMRB) 100% @ 60% AMI (HC)**
Funding Sources: MMRB 2002 Series P1 & P2	**Amounts: $7,975,000 Tax-Exempt Bonds $1,000,000 Taxable Bonds**
Number of Units: 220	**Type: Rental**
Subordinated Mortgage amount not to exceed:	**$425,000**
TOTAL Subordinated Mortgage amount not to exceed:	**$425,000**

1. Background

Florida Housing financed the construction of the above referenced Development in the year 2002 with $7,975,000 in tax-exempt bonds and $1,000,000 in taxable bonds. The bond issues were secured by mortgages guaranteed by the Florida Affordable Housing Guarantee Program (Guarantee Program) as well as being additionally guaranteed through the HUD Risk-Sharing Program.

2. Present Situation

a) The Developer has requested subordinate financing on its development that is credit enhanced by the Guarantee Program. The purpose of which is to provide temporary assistance in funding its mortgage debt service obligations for a period of up to twenty-four (24) months. It has been determined that the development submitted for financing is currently in financial distress and, as a result, is eligible for financing through the Subordinate Mortgage Initiative. Florida Housing will provide funding for one mortgage payment per each three month period. The Developer will be required to make the following two payments. This process will be repeated for up to twenty-four (24) months, with Florida Housing potentially making a total of eight mortgage payments and the Developer making a total of sixteen mortgage payments during this period.

b) Seltzer Management Group has reviewed the information and data submitted by the Developer and by letter, dated October 7, 2009, attached as Exhibit A, has confirmed the need for financial assistance for this Development.

3. Recommendation

Staff recommends that the Board approve the requested subordinate financing in an amount not to exceed $425,000 subject to further approvals and verifications by Bond Counsel, Special Counsel and Florida Housing staff.

B. Request Approval of Subordinate Financing in an Amount Not to Exceed $990,000 Through the Subordinate Mortgage Initiative

Development Name: Heritage Apartments (“Development”)	**Location: Collier**
Developer/Principal: Worthwhile Development III, Inc. (“Developer” or “Principal”)	**Set-Aside: 50% @ 60% AMI (MMRB) 100% @ 60% AMI (HC)**
Funding Sources: MMRB 2001 Series E1 & E2	**Amounts: $13,500,000 Tax-Exempt Bonds $6,210,000 Taxable Bonds**
Number of Units: 320	**Type: Rental**
Subordinated Mortgage amount not to exceed:	**$990,000**
TOTAL Subordinated Mortgage amount not to exceed:	**$990,000**

1. Background

Florida Housing financed the construction of the above referenced Development in the year 2001 with $13,500,000 in tax-exempt bonds and $6,210,000 in taxable bonds. The bond issues were secured by mortgages guaranteed by the Florida Affordable Housing Guarantee Program (Guarantee Program) as well as being additionally guaranteed through the HUD Risk-Sharing Program.

2. Present Situation

a) The Developer has requested subordinate financing on its development that is credit enhanced by the Guarantee Program. The purpose of which is to provide temporary assistance in funding its mortgage debt service obligations for a period of up to twenty- four (24) months. It has been determined that the development submitted for financing is currently in financial distress and, as a result, is eligible for financing through the Subordinate Mortgage Initiative. Florida Housing will provide funding for one mortgage payment per each three month period. The Developer will be required to make the following two payments. This process will be repeated for up to twenty-four (24) months with Florida Housing potentially making a total of eight mortgage payments and the Developer making a total of sixteen mortgage payments during this period.

b) It should be noted that, although Worthwhile Development was not the General Partner at the time, Worthwhile was the original owner/developer for the two most recent claims, and a total of three to date, incurred by the Guarantee Program.

c) Seltzer Management Group has reviewed the information and data submitted by the Developer and by letter, dated October 7, 2009, attached as Exhibit B, has confirmed the need for financial assistance for this Development.

3. Recommendation

Staff recommends that the Board approve the requested subordinate financing in an amount not to exceed $990,000 subject to further approvals and verifications by Bond Counsel, Special Counsel and Florida Housing staff.

Action Supplement

I. LOW INCOME HOUSING TAX CREDITS

A. Market Study for Plata Lago (2009045X)

1. <u>Background/Present Situation</u>

a) 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 August 21, 2009 staff issued an invitation to enter credit underwriting. Staff has received a market study letter for Plata Lago containing a negative recommendation due to the submarket not meeting the requirement of having an average occupancy rate of 92 percent or greater (Exhibit A). 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.

2. <u>Recommendation</u>

Rescind and return the Exchange funding, Housing Credit award and TCAP funding to Florida Housing Finance Corporation.

I. MISCELLANEOUS

A. Request by Atlantic Housing for Commitment of State Apartment Incentive Loan (SAIL) Funding

1. <u>Background</u>

a) During the January 2009 Special Session, the Florida Legislature passed Senate Bills 2-A and 4-A to address the revenue shortfall of the 2008-2009 fiscal year and granted the Corporation emergency rulemaking authority to implement the provisions. The legislation was signed into law on January 27, 2009 as Chapters 2009-1 and 2009-2, Laws of Florida.

b) At its March 13, 2009 meeting, the Board approved Emergency Rule Nos. 67ER09-1 through 67ER09-5. Upon approval, the rule was filed for adoption with the Department of State and became effective immediately upon filing.

c) At its April 24, 2009 meeting, the Board approved the proposed de-obligation listing and directed staff to proceed with the implementation of the de-obligation provisions as outlined in 67ER09-3, F.A.C.

d) In May 2009, Atlantic Housing formally requested a binding commitment of future State Apartment Incentive Loan (SAIL) funding for their four developments that had their SAIL funding de-obligated pursuant to the Legislature's budget cuts in January and that were in the position of having closed on tax exempt bonds that were issued through a local housing finance authority and that were constructed by Atlantic Housing, at their own risk, prior to closing on their SAIL loans.

e) Unlike many of our other de-obligated SAIL developments that were eligible for the 9%, or "competitive", Low Income Housing Tax Credits (LIHTC) that Florida Housing offered as replacement financing along with federal stimulus funding through a series of Requests for Proposals, these Atlantic Housing properties are ineligible for those LIHTC due to the fact that they've already closed on tax exempt bond financing.

f) Due mostly to the unresolved legal issues regarding Florida Housing's actions to de-obligate funding to pay the $190 million to the state which, if resolved in favor of the petitioners, may result in further commitments for state funding, the Board denied Atlantic Housing's request for a binding commitment of future SAIL funding at its meeting on June 5, 2009. The Board did, however, direct staff to bring this issue back to the Board for further consideration as the funding landscape continued to change and as the dust settled from the legal issues regarding the budget cuts and required de-obligation of funding.

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

a) Earlier this month, Florida Housing went to trial at the Division of Administrative Hearings (DOAH) regarding the petitions challenging the de-obligation of funding that the Board approved in April pursuant to our emergency rule for the purpose of paying back the $190 million that we owe the state as a result of the January budget cuts. At this time, the issue remains unresolved as the recommended order from the Administrative Law Judge is still outstanding.

b) In an email dated September 2, 2009 (Exhibit A), Atlantic Housing is asking that Florida Housing reconsider Atlantic Housing's request for a commitment of SAIL funding with particular emphasis on two of the four transactions: Spring Lake Cove – Phase I, which had an original SAIL request amount of $5,000,000, and Marbella Cove, which had an original SAIL amount of $4,500,000.

c) Through its annual SAIL interest billing process, Florida Housing billed just over $8.1 million with over 90% of that amount collected to date. Florida Housing anticipates collecting the remaining unpaid SAIL interest over the course of the next few months. Total SAIL collections for 2009 through September, including the annual interest billings, payments on amortizing SAIL loans and other payments received, are just over $8.6 million.

3. **<u>Recommendation</u>**

a) Staff recommends that the Board preliminarily commit up to $9,500,000 of SAIL funding to Spring Lake Cove – Phase I and Marbella Cove and direct staff to issue invitations into credit underwriting for these two SAIL loans.

b) Furthermore, Staff recommends that no further action be taken by the Board regarding future commitments to the other two transactions included in Atlantic Housing's original request prior to the resolution of the legal issues regarding Florida Housing's actions to de-obligate funding to pay the $190 million to the state which may result in further commitments for state funding.