

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ELMWOOD TERRACE LIMITED PARTNERSHIP,

Petitioner,

CASE NO.: 2009-027GA

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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**FORMAL WRITTEN PROTEST AND PETITION FOR ADMINISTRATIVE HEARING**

Elmwood Terrace Limited Partnership (“Elmwood” or the “Petitioner”) hereby files this formal written protest challenging Request for Proposals 2009-04 (the “RFP”) released on July 31, 2009, by Respondent, Florida Housing Finance Corporation. In support of this written Formal Protest and Petition for Administrative Hearing, Elmwood states as follows:

1. This is a formal written protest filed pursuant to Sections 120.57(1) and 120.57(3), Florida Statutes,<sup>1</sup> and Rule 28-110.004, Florida Administrative Code. The Division of Administrative Hearings has jurisdiction over the subject matter and parties to this proceeding. See, Sections 120.569, 120.57(1), 120.57(3), Fla. Stat.

**Parties**

2. Elmwood is a Florida Limited Partnership. Elmwood’s address is 2206 Jo-Ann Drive, Sarasota, Florida 34231. For purposes of this proceeding, the Petitioner’s address is that of its undersigned counsel.

3. Petitioner is engaged in the development of affordable housing in this state.

Petitioner is a “Developer” as defined by Florida Housing in Rule 67-48.002(29), Fla. Admin

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<sup>1</sup> All citations contained herein are to the official version of the 2008 Florida Statutes unless otherwise noted.

Code. Petitioner possesses the requisite skill, experience and credit-worthiness to successfully produce affordable housing. Through its General Partner and affiliated entities, Petitioner regularly submits applications for public financing of affordable housing developments. Petitioner's General Partner and its affiliated entities have successfully completed the construction of eleven affordable housing developments and in excess of 1,100 units of affordable housing in Florida from funds distributed by Florida Housing Finance Corporation.

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

5. Florida Housing is a public corporation created by Section 420.504, Florida Statutes, to administer the governmental function of financing or refinancing affordable housing and related facilities in Florida. Florida Housing's statutory authority and mandates appear in Part V of Chapter 420, Florida Statutes. See Sections 420.501-420.55, Florida Statutes. Florida Housing is governed by a Board of Directors consisting of nine individuals who govern its operations.

6. On July 31, 2009, Florida Housing issued RFP 2009-04<sup>2</sup> (the "RFP") setting forth criteria and qualifications for developers to seek funding for affordable housing projects from money that has been allotted to Florida by the federal government as part of economic stimulus efforts. Petitioner received notice of the RFP through e-mail notification on July 31, 2009. The RFP requires applicants to submit proposals to Florida Housing by no later than 2:00 p.m. on August 14, 2009. As discussed below, Elmwood has submitted an application

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<sup>2</sup> A true and correct copy of the notice issued by Florida Housing on Friday afternoon, July 31, announcing release of the RFP is attached hereto as Exhibit A. A true and correct copy of the RFP is attached hereto as Exhibit B.

and intends to seek financing for its affordable housing project by applying for funding from the sources that are proposed to be allocated through the RFP.

7. On August 5, 2009, Elmwood timely submitted notice of its intent to protest the RFP.<sup>3</sup> This Formal Written Protest and Petition for Administrative Hearing is timely filed in accordance with the provisions of Section 120.57(3)(b), Florida Statutes, and Rule 28-110.004, Fla. Admin. Code.

8. As an interested developer who intends to seek funding from the sources being allocated through the RFP, Elmwood is substantially affected by the terms of the RFP and, consequently, has standing to initiate and participate in this proceeding.

#### Florida Housing's Programs

9. Florida Housing administers several programs aimed at assisting developers to build affordable housing in an attempt to protect financially marginalized citizens in the state from excessive housing costs.

10. The programs through which Florida Housing allocates resources to fund affordable housing in this state include: a federally funded multi-family mortgage revenue bond program established under Section 420.509, *et. seq.*, Fla. Stat.<sup>4</sup>; the State Apartment Incentive Loan Program ("SAIL") created pursuant to Section 420.5087, *et. seq.*, Fla. Stat.<sup>5</sup>; and the federal low income housing tax credit program (the "Tax Credit program") established in Florida under the authority of Section 420.5093, Fla. Stat. These funding sources are allocated by Florida Housing to finance the construction or substantial

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<sup>3</sup> A true and correct copy of the Petitioner's Notice of Intent to Protest is attached hereto as Exhibit C.

<sup>4</sup> Each year, Florida Housing receives a portion of the state's tax exempt bond allocation, some of which it issues to finance the construction of affordable multi-family rental housing. The tax exempt bond proceeds are loaned to developers to finance the construction of a development. The cash flow generated from rental income pays back those bonds over time.

<sup>5</sup> SAIL Funds are primarily available through a portion of documentary stamp tax revenues collected on real estate transactions in Florida. For state fiscal year 2009-2010, the Legislature did not appropriate any money for SAIL due to the state's current budget crisis.

rehabilitation of affordable housing. A portion of the units constructed based upon funding from these programs must be set aside for residents earning a certain percentage of area median income (“AMI”). Generally, the units are targeted to tenants earning 60 percent of AMI or below. For purposes of this Petition, the primary program of interest is the Tax Credit program which is described briefly below.

### Tax Credits

11. The Tax Credit program was created in 1986 by the federal government.

12. Low income housing tax credits come in two varieties: competitively awarded “9%” tax credits, and non-competitively awarded “4%” tax credits.<sup>6</sup> For the 9% Credits the federal government annually allocates to each state a specific amount of Tax Credits using a population-based formula. Tax Credits are a dollar for dollar offset to federal income tax liability. Developers awarded Tax Credits get the credit amount every year for ten years. The developer will often sell the future stream of tax credits to a syndicator, who, in turn, sells them to investors seeking to shelter income from federal income taxes.

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

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<sup>6</sup> The “9%” and “4%” designations relate to the approximate percentage of a development’s eligible cost basis that is awarded in annual tax credits. The four percent tax credits are “non-competitive” tax credits that get paired with tax exempt mortgage revenue bonds. As long as more than half of the total development cost of an affordable rental development is financed through the issuance of tax exempt bonds, the developer is eligible for an award of four percent tax credits. As with the nine percent credits, four percent credits are awarded every year for ten years, and the developers then syndicate these credits.

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

15. As required by the federal government, the state each year adopts a Qualified Allocation Plan (“QAP”), which is adopted and incorporated by reference into Florida Housing’s rules. The QAP sets forth the selection criteria and the preferences for developments that will receive Tax Credits. Sec., Rule 67-48.002(88), Fla. Admin. Code.

#### The Universal Cycle

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

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

18. The Universal Cycle and the attendant complex application review process are intended to equitably and reasonably distribute affordable housing throughout the state.

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

- Developers submit applications by a specified date.
- Respondent reviews all applications to determine if certain threshold requirements are met. A score is assigned to each application. Applications receive points towards a numerical score, based on such features as programs for tenants, amenities of the development as a whole and of the tenants' units, local government contributions to the specific development, and local government ordinances and planning efforts that support affordable housing in general.
- Florida Housing has built into its scoring and ranking process a series of "tiebreakers" to bring certainty to the selection process. The tiebreakers are written into the Application Instructions which, as indicated above, are incorporated by reference into Florida Housing's rules.
- After the initial review and scoring, a list of all applications, along with their scores, is published by Respondent on its website. The applicants are then given a specific period of time to alert Respondent of any errors they believe Respondent made in its initial review of the applications. An appeal procedure for challenging the scores assigned by Florida Housing is set forth in Rule 67-48.005, Fla. Admin Code.

- Following the completion of the appeal proceedings, Florida Housing publishes final rankings which delineate the applications that are within the “funding range” for the various programs. In other words, the final rankings to determine which applications are preliminarily selected for funding. The applicants ranked in the funding range are then invited into the “credit underwriting” process. Credit Underwriting review of a development selected for funding is governed by Rule 67-48.0072, Fla. Admin. Code. In the Credit Underwriting process, third party financial consultants (selected by Respondent, but paid for by the individual applicants) determine whether the project proposed in the application is financially sound. The independent third party looks at every aspect of the proposed development, including the financing sources, plans and specifications, cost analysis, zoning verification, site control, environmental reports, construction contracts, and engineering and architectural contracts.
- Subsection (10) of Rule 67-48.0072 expressly requires that an appraisal (as defined by the Uniform Standards of Professional Appraisal Practice), and a market study be ordered by the Credit Underwriter, at the Applicant’s expense. The Credit Underwriter is required to consider the market study, as well as the Development’s financial impact on other developments in the area previously funded by Florida Housing, and make a recommendation as to whether to approve or disapprove a funding allocation.

19. Each year, the Universal Cycle provides a mechanism for selecting applications to meet certain targeting goals that address housing needs of particular demographic groups (such as farm workers, commercial fishery workers, the homeless, or the elderly). The

specific set asides or targeting goals are aimed at addressing identified needs (such as the Florida Keys or inner city areas). There are commonly set-asides each year for the preservation of existing affordable housing complexes and set-asides for rural development as well. Each set-aside group essentially has its own separate funding from its share of the funds distributed by Florida Housing.<sup>7</sup>

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

21. As part of each Universal Cycle process, Florida designates certain geographic areas of the state which are potentially saturated with affordable housing units as "Location A" areas. Florida Housing first began incorporating into its application process a mechanism for identifying weak markets, known as "Location A" areas, approximately 6 years ago. The Location A areas are designated in advance of the Universal Cycle so that developers are alerted as to those areas where Florida Housing has concluded that the market is potentially

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<sup>7</sup> Set-Asides are an important component of the application review and approval process. Every three years a study is performed for each county within the state to determine how many renter households within the county are earning 60 percent or less of the AMI and paying more than 40 percent of their annual income for rent. These are referred to as "cost-burden" households. The cost-burden households are broken down into the following groups: families, the elderly, farmworkers and commercial fishermen. The study also assesses needs for persons who are homeless.



too weak to support another affordable housing project. The Location A designations for the Universal Cycle are included in the application instructions which are incorporated by reference into the rules of Florida Housing.

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

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

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

24. At the time that Elmwood submitted its application in the 2007 Universal Cycle, the location of its proposed project site was not in a Location A area as designated by Florida Housing.

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

26. After the award of the Tax Credits, Elmwood was required to pay a reservation fee of over \$100,000 to Florida Housing by December 31, 2007. Elmwood paid numerous other required fees -- including underwriting fees (for the original and supplemental loan),

credit reporting fees, appraisal fee, and plan and cost analysis fee -- and expended considerable time and resources in seeking the credit underwriting approval. Elmwood also incurred considerable costs for architectural, engineering, environmental and legal services. In total, Elmwood has invested over \$2 million into the Elmwood Terrace project. Much of this expenditure was required by Florida Housing in order for Elmwood to preserve its allocation of Tax Credits.

### **Economic Downturn and ARRA**

27. By the fall of 2008, significant changes were taking place in the economic environment and the housing market in particular. Many of the projects that had been awarded funding through the Florida Housing allocation process were encountering difficulties and in many instances were unable to close. By the later part of 2008, it became evident that the market for Tax Credits had precipitously dropped as a result of the changed economic environment.

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

29. Many other projects that were awarded Tax Credits during the 2007 and 2008 (and later the 2009) Universal Cycles similarly experienced difficulty in finding syndicators to purchase the awarded Tax Credits and, thus, were unable to proceed to closing.

30. In early 2009, in recognition of the collapse of the housing market and the difficulty in marketing Tax Credits, the federal government, as part of its economic stimulus efforts, established mechanisms to assist in the development of affordable housing and offset

some of the economic devastation to developers. The American Recovery and Reinvestment Act of 2009 (“ARRA”) enacted by the U.S. Congress included specific provisions intended to address the collapse of the Tax Credit market. ARRA gives states the ability to return to the federal government previously awarded Tax Credits that had not been utilized. These Tax Credits are exchanged for a cash distribution of 85 cents for each tax credit dollar returned. The money that is awarded to the states for the return Tax Credits (the “Exchange Funds”) is supposed to be used by the state allocating authority (Florida Housing) to fund developers who were unable to syndicate their Tax Credits due to the economic downturn. In other words, the Tax Credits that had not been utilized as a result of the declining economic conditions were allowed to be converted into cash from the federal government to be allocated to developers who were ready to proceed with their affordable housing projects but for the inability to syndicate their Tax Credits. As discussed below, the Tax Credits allocated to Elmwood were apparently utilized to create the pool of Exchange Funds. Nonetheless, the RFP effectively precludes Elmwood from seeking an allocation of Exchange Funds.

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

### **The RFP**

32. The RFP was developed by Florida Housing as a method for allocating the Exchange Funds received by Florida Housing as a result of the return of Tax Credits to the federal government. The RFP also sets forth a method for applicants to request TCAP Funds.

33. The RFP solicits proposals from applicants with an “Active Award” of Tax Credits who were unable to close and are seeking alternate funding to construct affordable housing utilizing Exchange Funds from the Tax Credit Exchange Program authorized under Section 1602 of the ARRA. See Exhibit A, Section 2, p. 3-4.

34. The RFP provides a general description of the type of projects that will be considered eligible for this alternate funding. See Exhibit A, Section 4, D. The RFP also sets forth eligibility criteria that are a precondition to award of an allocation of Exchange Funds and also specifies that projects allocated Exchange Funds will be required to meet new Credit Underwriting standards.

### **Problems With The RFP**

#### **Overview**

35. There is no specific statutory or rule authority cited in the RFP as the basis for its issuance. As discussed below, there are provisions in the RFP which modify prior precedent and/or rules of Florida Housing. Indeed, the RFP explicitly and illegally states that the terms of the RFP take precedence over Florida Housing’s adopted rules. See Exhibit A, Section 5, B. Such changes in interpretation and policy cannot properly be implemented through the RFP, but, instead, can only be implemented through the rulemaking process.

36. The RFP effectively limits the pool of eligible applicants in a manner that is arbitrary and capricious and contrary to competition. If the RFP proceeds in its current form, Elmwood would effectively be precluded from competing with similarly situated developers of affordable housing for an award of the limited Exchange Funds and/or TCAP Funds. Based upon information and belief, Elmwood's proposed project is at least as financially viable and will provide affordable housing in a market that is at least as needy as the locations for other projects that are able to meet the RFP requirements.

37. The Tax Credits awarded to Elmwood have apparently been returned by Florida Housing to the federal government for purposes of developing the pool of funds to be allocated through the RFP. However, unlike other developers who were not able to close on their projects due to the collapse in the real estate market, the terms of the RFP effectively determines in advance of any submittal that Elmwood is ineligible to compete for the Exchange Funds and/or TCAP Funds.

38. The RFP fails to utilize a "system of uniform procedures" in a manner that demonstrates "fair and open competition." Moreover, the RFP contains no criteria or basis for a fair and meaningful comparison or evaluation of the proposals and provides no identifiable criteria for the scoring or ranking of proposals. See, Exhibit A, Section 7. The RFP vests unbridled discretion in Florida Housing to make funding decisions involving hundreds of millions of dollars based on undisclosed and potentially inconsistent criteria.

Eligibility Criteria Limits The Pool of Applicants

39. Section 4. D of the RFP sets forth the funding eligibility criteria and provides that any applicant with an Active Award of Tax Credits as of the February 17, 2009, is

eligible to apply except that proposed developments located within a 2009 Location A area are only eligible under certain specific conditions.

40. The RFP purports to adopt new Location A designations which are different than the Location A areas in the rules adopted for the prior Universal Cycles. See, Exhibit A, Section 4, D. The RFP expressly provides that, unless exempted, projects located in the newly designated Location A areas are not eligible for funding from the RFP. See, Exhibit A, Section 4, D. For many projects that were unable to close as a result of the economic downturn, the new Location A designations have no effect on their ability to obtain an award of Exchange Funds. However, the new Location A designations include all of Lee County as a Location A. This designation did not exist at the time that Elmwood submitted its original Application, but would effectively preclude it from an award of Exchange Funds.

41. As set forth above, the Elmwood Terrace project is located in Lee County which was not designated as a Location A in the 2007 Universal Cycle. The Florida Housing Board expressly approved the Credit Underwriting Report for the Elmwood Terrace project in September 2008 confirming that it was economically viable and consistent with the Credit Underwriting Cycle. As late as February 2009, the location of the Elmwood Terrace project was still not listed in the draft Location A designations circulated by Florida Housing staff in preparation for the RFP. Nonetheless, because the RFP expressly indicates that all of Lee County is now designated as a Location A, Elmwood is excluded from consideration for an allocation of Exchange Funds, notwithstanding the significant expenditures that it has incurred.

42. The basis and assumptions upon which this redesignation has been made have not been presented to Elmwood nor has Elmwood been allowed an opportunity to respond or

rebut the assumptions that went into this reclassification which would effectively preclude Elmwood from obtaining an award of Exchange Funds.

41. Based upon information and belief, Elmwood asserts that the criteria for determining which locations would be eligible for funding under the RFP have not been consistently applied and are based on erroneous or faulty assumptions or conclusions.

43. The new Location A designations incorporated into the RFP are tailored to allow only a limited number of applicants to qualify for consideration of the Exchange Funds.

44. The Location A areas listed in the RFP were specifically structured by Florida Housing around the location of projects that were anticipated to submit proposals for funding under the RFP. In other words, Florida Housing knew who the potential applicants were for the RFP and effectively decided in advance which projects would be able to apply for funding. Applications for projects that are located in the newly designated Location A areas were not provided with an opportunity to understand the basis for the inclusion of their project site within a Location A area and were not given an opportunity to challenge any of the assumptions or conclusions that resulted in their exclusion from the RFP.

41. In some, but not all, instances, the new Location A areas were designated on a countywide basis. For example, all of Lee County was designated as Location A without any consideration of submarkets. However, other counties were considered on a submarket basis. This lack of consistency in approach is arbitrary and capricious, contrary to competition and inconsistent with the existing statutes and rules.

42. While the new Location A designations may be appropriate for new applicants seeking funding in the 2009 Universal Cycle, incorporating them into the RFP is contrary to

competition because it effectively determines in advance that certain applicants who were unable to proceed with their projects due to the downturn in economic conditions are not allowed to compete for the Exchange Funds and TCAP funds. There is no legal authority or basis for Florida Housing to incorporate the new Location A designations as part of the RFP. Unlike potential applicants in the 2009 Universal Cycle, who have ample opportunity to structure their proposed projects and applications with full knowledge of Florida Housing's concerns as embodied in the Location A designation, potential applicants for the Exchange Funds and TCAP Funds made significant investments based upon the designations in place at the time their Applications were submitted.

43. Many of the projects that are eligible for funding under the criteria in the RFP are in markets that are similar, if not more distressed than, the proposed market for Elmwood. The provisions in the RFP effectively preclude Elmwood from demonstrating the merits of its proposed project vis-à-vis the merits of other projects proposed by competing developers who have been similarly impacted by the downturn in the economic climate.

44. Any project that receives an allocation of Exchange Funds and/or TCAP Funds, would be required to go through the Credit Underwriting process, including an assessment of market need and impact. Any such study will be more up to date than the information utilized in determining the Location A designations and would also be more specific to the location at issue.

45. The provisions in the RFP which effectively exclude any project in Lee County from eligibility under the RFP are arbitrary, capricious and contrary to competition. Moreover, the provisions that exclude any project that is located within five miles of a Guarantee Fund deal are arbitrary, capricious, contrary to competition and inconsistent with



prior Florida Housing interpretations of the rules and policies regarding the Credit Underwriting process and Guarantee Fund projects.

#### New Occupancy Standards

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

47. The 92% average occupancy requirement is not limited to affordable housing developments. Thus, it incorporates numerous extraneous and irrelevant factors that could impact the results. Moreover, it fails to take into account unique factors that could skew the average occupancy percentages in an area such as the number of projects in a particular location, and/or projects that have unusually low occupancy as a result of factors such as poor management that are irrelevant to the question of whether there is a need for additional affordable housing within the market.

48. This 92% average occupancy provision is over-broad and an artificial barrier that limits the pool of eligible applicants and precludes an evaluation of the actual market conditions in the area.

#### The Evaluation Process

49. The purpose of a competitive bidding process is to ensure that public entities do not arbitrarily or capriciously discriminate between bidders or make award of a public contract or expend public funds on the basis of personal preference. See, Engineering

Contractors Ass'n of S. Fla., Inc. v. Broward County, 789 So. 2d 445, 450 (Fla. 4th DCA 2001). The RFP effectively determines in advance which of similarly situated applicants will be eligible to compete for the Exchange Funds and TCAP Funds. By limiting in advance the pool of potential applicants for an allocation, the RFP is contrary to competition and contrary to the goals of a competitive bidding process.

50. The process established by Florida Housing in the RFP fails to include any mechanisms to guard against favoritism or impropriety in deciding which projects will be allocated funding. The allocation of hundreds of millions of dollars of public funds should not be predicated on the opaque and ill-defined approach and the new underwriting criteria set forth in the RFP.

51. The evaluation process for the RFP responses is set forth in Section 7 of the RFP. This provision states that the Florida Housing Review Committee will

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

This provision provides unbridled discretion to both the Committee in reaching preliminary recommendations, and to the Board in making final funding determinations under the RFP. It is arbitrary and capricious, contrary to competition and fails to establish adequate guidelines for ensuring that the public funds being allocated are spent in the best interest of the state. This deficiency is compounded by the provisions discussed above which effectively limit the pool of applicants who are eligible for funding under the RFP.

### Prohibition on Change in Demographic Grouping

52. Certain designated demographic categories are exempted from the Location A disqualification in the RFP. However, the RFP explicitly provides that the demographic grouping submitted in the original application cannot be changed. See, Exhibit A, Section 4, B.4. This provisions in the RFP prohibiting a change in the demographic grouping is contrary to prior Florida Housing policy and cannot be implemented without going through the rulemaking process. It is also contrary to competition.

53. The RFP allows applicants to change other aspects of their original proposal, including the number of units. There is no basis to treat the demographic grouping any differently. This provision prohibiting a change in demographic grouping is contrary to competition because it effectively limits the pool of eligible applicants without justification and precludes a fair and complete evaluation of which projects offer the best value.

54. This new policy interpretation incorporated in the RFP arbitrarily and capriciously eliminates viable options for a project such as Elmwood to address the newly identified concerns cited by Florida Housing as justification for the 2009 Location A designations.

55. Prior to the issuance of the RFP, Elmwood had initiated efforts to change its demographic grouping. Florida Housing has previously interpreted and applied its rules to allow such a change. A change in the demographic grouping would have potentially made the Tax Credits awarded to Elmwood more marketable. Approving such a change could also alleviate any reasonable concerns about the potential impact of the Elmwood project on other Florida Housing funded projects including Guarantee Fund deals. In other words, a change in the demographic grouping for the Elmwood project might enable it to avoid the concerns

that have been advanced in support of the 2009 Location A designations. But for the provision precluding a change in the demographic grouping, Elmwood could potentially achieve an allocation of Exchange Funds and/or TCAP funds from the RFP.

56. Subsequent to the withdrawal of its anticipated equity syndicator in September 2008, Elmwood explored other options that could potentially enable it to proceed to closing. One option that Elmwood proposed to Florida Housing was to change the demographic grouping of the Elmwood Terracc project to an elderly project. Elmwood had preliminary discussions with possible new syndicator(s) who indicated that the Tax Credits could potentially be sold if the project was converted to an elderly demographic. Elmwood discussed such a change in the demographic grouping of its proposed project during a meeting with Florida Housing staff in December 2008. While no commitment to approve the requested change was made, Florida Housing staff encouraged the exploration of a market study to determine whether such a conversion would be economically viable. This approach of changing the demographic grouping to enhance the marketability of the Tax Credits or to deal with changed market conditions had been approved by Florida Housing in the past.

57. The proposed conversion had the additional potential benefit of eliminating or reducing possible competition that Elmwood Terrace could have on other projects financed by Florida Housing, including projects that were guaranteed by Florida Housing's Guarantee Fund.

58. Elmwood formally requested a change to its demographic grouping in a letter from Elmwood's attorney, Warren Hnsband, to Florida Housing's Deputy Development Officer, Deborah Blinderman, dated January 26, 2009.

59. As set forth above, in September 2008, the Florida Housing Board approved the Credit Underwriting Report for the Elmwood Project which addressed the economic viability of the proposed project and its potential impact on other projects. Subsequently, Elmwood, at the direction of Florida Housing, undertook a new market study in late 2008 to ascertain the economic viability and market impact of converting the Elmwood project to an elderly demographic. That market study concluded that the project would be feasible and viable with such a change.

60. Florida Housing failed to timely and reasonably act upon or respond to the request to change the demographic grouping and Elmwood's project was essentially left in limbo. The RFP provisions would now preclude this change.

61. By precluding applicants from changing the originally submitted demographic grouping, the RFP arbitrarily and capriciously limits the number of projects that can qualify for Exchange Funds and/or TCAP Funds. This limitation of the pool of potential applicants is contrary to competition and contrary to the prior interpretation and policies of Florida Housing.

#### Conclusion

62. Elmwood seeks to participate in the RFP process in order to compete for an award of Exchange Funds with other developers who were awarded Tax Credits in the 2007, 2008 and 2009 Universal Cycles but have not closed on their deals. With an allocation of Exchange Funds pursuant to the RFP, Elmwood's project would be as financially viable as many of the projects who meet the current eligibility criteria.

63. Elmwood's interests will be substantially affected if the current RFP provisions are not changed because the RFP specifications and the newly imposed underwriting criteria effectively preclude Elmwood from competing for an allocation.

64. By excluding a viable, beneficial project such as Elmwood, the RFP and the newly imposed underwriting criteria are arbitrary and capricious, contrary to competition, not in the best interests of the State, and in violation of the governing statutes and administrative rules. The challenged RFP specifications are not based on fair and open competition and there has been no detailed or reasoned justification for the exclusion of Elmwood's project.

65. The RFP as structured is contrary to competition and effectively decides in advance those projects that will be eligible for an award of the Exchange Funds and precludes similarly situated projects from consideration. There is no legal authority or basis for Florida Housing to utilize an RFP to effectively determine prior to submittal which projects can qualify for an allocation of Exchange and TCAP funds.

66. Elmwood is entitled to a formal administrative hearing pursuant to Sections 120.57(1) and 120.57(3), Florida Statutes, to resolve these issues. See, Fairbanks, Inc. v. State, Dep't of Transp., 635 So. 2d 58 (Fla. 1st DCA 1994).

67. Florida Housing has provided no legal authority that authorizes it to allocate or disburse Exchange and/or TCAP Fund funds through an RFP. Florida Housing has adopted by rule a Qualified Allocation Plan which establishes the parameters for the award of Tax Credits. See, Rule 67-48.002(88), Fla. Admin. Code. The RFP is inconsistent with the QAP.

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

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

a. The underlying legal authority for the RFP and the attempt to impose new underwriting criteria on projects that have already received favorable credit underwriting reports;

b. Whether the provisions of the RFP that effectively exclude Elmwood from consideration for an award of Exchange Funds have been properly adopted and/or are based on erroneous assumptions and conclusions;

c. Whether the new underwriting criteria have been properly adopted and/or are arbitrary or capricious and/or contrary to competition;

d. Whether the proposed process for allocating Exchange Funds and TCAP Funds is arbitrary or capricious or is contrary to competition;

e. Whether excluding projects such as Elmwood from consideration for an allocation of Exchange Funds and TCAP Funds is in the best interests of the State of Florida is arbitrary or capricious and/or contrary to competition;

f. Whether the RFP criteria and procedures are contrary to prior Florida Housing interpretations of the applicable statutes and administrative rules;

g. Whether the RFP contains appropriate and sufficient criteria for comparison or evaluation of proposals;

h. Whether the RFP adequately discloses the bases or grounds upon which Exchange Funds and TCAP Funds will be allocated;

- i. Whether the RFP adequately discloses the requirements for obtaining an award of Exchange Funds and/or TCAP Funds;
- j. Whether the RFP inappropriately favors certain developers or projects and/or artificially limits the pool of potential applicants;
- k. Whether the RFP eligibility criteria and the newly imposed underwriting standards are consistent with fair and open competition for the allocation of Exchange Funds and TCAP Funds;
- l. Whether Florida Housing has sufficient information to evaluate the validity of the Elmwood project and/or to exclude it from eligibility for an award of Exchange Funds and/or TCAP Funds;
- m. Whether the RFP establishes a procedure and process that will achieve the best value for the state;
- n. Whether the RFP is imprudent, not cost effective, arbitrary, capricious, contrary to competition and/or contrary to Florida Housing's governing statutes or rules;
- o. Whether the provision in the RFP precluding a change in the demographic grouping of the original application is contrary to prior agency policy, arbitrary, capricious and/or contrary to competition.
- p. Whether Florida Housing is precluded from excluding the Elmwood project from consideration for Exchange Funds and/or TCAP Funds because of the refusal to properly consider and rule upon Elmwood's request to change its demographic grouping;



q. Whether the RFP improperly incorporates new policies and interpretations that impermissibly deviate from existing rules and/or other prior agency interpretations and precedents;

r. Florida Housing has previously allowed applicants awarded Tax Credits to change the demographic grouping that was included in the original application and whether Florida Housing is required to go through the rulemaking process to change this policy and consequently is precluded from attempting to modify the prior precedent by including it as a provision in the RFP.

s. Elmwood also disputes any and all material facts relied upon by Florida Housing to deem Elmwood to be in a Location A and thus ineligible for an award of Exchange Funds and TCAP Funds. In addition, Elmwood disputes the legal basis as well as any and all material facts relied upon for asserting that the Tax Credits for the Elmwood Terrace project are deemed returned; [maybe delete]

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

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

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

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

70. The RFP and the new underwriting criteria should be withdrawn or modified because they are contrary to competition, inconsistent with prior interpretations of the

governing statutes, the existing rules, and previously enunciated policies. See Section 120.57(3)(f), Fla. Stat. (2008).

71. The RFP improperly incorporates changes to prior agency interpretations and precedents without going through the rulemaking process. Florida Housing's new policies and statements incorporated in the RFP are erroneous and unauthorized pursuant to Chapter 120, Florida Statutes. The new policies enunciated in the RFP have not been adopted as rules as required by Chapter 120, Florida Statutes and cannot be applied to disqualify Elmwood without being adopted through the rulemaking procedures set forth in Chapter 120, Florida Statutes.

72. The new designation of all of Lee County as a Location A location for purposes of eligibility to obtain funding from the RFP is unduly and unnecessarily restrictive, arbitrary, capricious and contrary to competition. With an allocation of Exchange Funds pursuant to the RFP, Elmwood's project would be as financially viable as many of the projects who meet the current eligibility criteria.

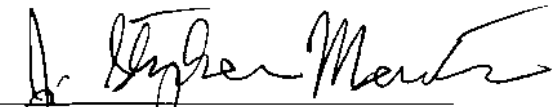
WHEREFORE, pursuant to Section 120.57(3), Florida Statutes, and Rule 28-110.004, Florida Administrative Code, Elmwood requests the following relief:

a) That it be provided an opportunity to resolve this protest by mutual agreement within seven days of the filing of this Petition as provided by Section 120.57(3)(d)1., Florida Statutes.

b) That if this protest cannot be resolved within seven days, that the matter be referred to the Division of Administrative Hearings for a formal hearing to be conducted before an Administrative Law Judge pursuant to Sections 120.57(1) and (3), Florida Statutes.


e) That Recommended and Final Orders be entered that either cancel the RFP or modify the provisions that effectively preclude Elmwood from obtaining an allocation of Exchange Funds and/or TCAP Funds.

RESPECTFULLY SUBMITTED this 17th day of August 2009.

  
\_\_\_\_\_  
J. Stephen Menton  
Fla. Bar No. 331181  
John M. Lockwood  
Fla. Bar No. 028056  
Rutledge, Ecenia & Purnell, P.A.  
119 South Monroe Street, Suite 202  
Tallahassee, Florida 32301  
(850) 681-6788  
(850) 681-6515 (facsimile)  
Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that this original has been hand delivered to the Agency Clerk, Florida Housing Finance Corporation, and a copy to Wellington Meffert, General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000 Tallahassee, Florida 32301; and a copy this 17th day of August 2009 to the following:

  
\_\_\_\_\_  
Attorney

**Warren Husband**

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**From:** UniversalCycle Listmanager [UniversalCycle.listmanager@www.floridahousing.org] '  
**Sent:** Friday, July 31, 2009 3:59 PM  
**Subject:** FHFC Publishes RFPs 2009-3 and 2009-4

From: "Jean Salmonsens" <[jean.salmonsens@floridahousing.org](mailto:jean.salmonsens@floridahousing.org)>

1. Florida Housing's RFP 2009-03 for Nine Percent Low-Income Housing Tax Credits With Or Without Tax Credit Assistance Program (TCAP) Funding has been posted on Florida Housing's website and is available for download from the following link:

[http://apps.floridahousing.org/StandAlone/FHFC\\_FCM/AppPage\\_LegalRFPs.aspx](http://apps.floridahousing.org/StandAlone/FHFC_FCM/AppPage_LegalRFPs.aspx)

2. Florida Housing's RFP 2009-04 for Tax Credit Exchange Program (Exchange) Funding Only Or Exchange Funding With Tax Credit Assistance Program (TCAP) Funding And A Nominal Amount Of Nine Percent Low-Income Housing Tax Credits For Applicants That, As Of February 17, 2009, Had An Active Award Of 9 Percent Housing Credits has been posted on Florida Housing's website and is available for download from the following link:

[http://apps.floridahousing.org/StandAlone/FHFC\\_FCM/AppPage\\_LegalRFPs.aspx](http://apps.floridahousing.org/StandAlone/FHFC_FCM/AppPage_LegalRFPs.aspx)

To login:<http://www.floridahousing.org/webboard/>

To (un)subscribe: [mailto: UniversalCycle.list-request@www.floridahousing.org](mailto:UniversalCycle.list-request@www.floridahousing.org)



**REQUEST FOR PROPOSALS 2009-04**

**TAX CREDIT EXCHANGE PROGRAM (EXCHANGE) FUNDING ONLY OR  
EXCHANGE FUNDING WITH TAX CREDIT ASSISTANCE PROGRAM (TCAP)  
FUNDING AND A NOMINAL AMOUNT OF NINE PERCENT LOW-INCOME  
HOUSING TAX CREDITS FOR APPLICANTS THAT, AS OF FEBRUARY 17,  
2009, HAD AN ACTIVE AWARD OF 9 PERCENT HOUSING CREDITS**

**for**

**FLORIDA HOUSING FINANCE CORPORATION**

**AUGUST 14, 2009**



## **SECTION ONE INTRODUCTION**

This Request for Proposals is open to Applicants that, as of February 17, 2009, had an Active Award of 9 percent Housing Credits.

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

## **SECTION TWO DEFINITIONS**

For purposes of this document, the terms reflected below shall be defined as set out below.

Unless otherwise defined below, the definitions included in Rule 67-48.002, F.A.C., or applicable federal regulations apply.

<b>"Active Award"</b>	An allocation of 9 percent Housing Credits for which a Carryover Allocation Agreement has been issued and the Applicant has not closed a tax credit partnership agreement with an investor.
<b>"Applicant"</b>	Any person or legally formed entity that is seeking funding from Florida Housing by responding to a request for proposal.
<b>"Application"</b>	The Applicant's response to a request for proposal for the purpose of providing the means to apply for Exchange funding only or Exchange funding and TCAP funding (available through the American Recovery and Reinvestment Act of 2009) along with a Nominal Amount of 9 percent Housing Credits to accompany the TCAP funding.
<b>"ARRA"</b>	The American Recovery and Reinvestment Act of 2009
<b>"Award of HC"</b>	The effective date of the award of HC shall be the date of the invitation to Applicant to enter credit underwriting. The invitation to enter credit underwriting also serves the purpose of informing the Applicant in writing that it has been awarded Housing Credits by the Board of Directors.

“Committee”	The review committee composed only of employees of Florida Housing that is established pursuant to Rule 67-49.007, F.A.C.
“Days”	Calendar days, unless otherwise specified. For computing any period of time allowed under this RFP, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.
“Development Cash Flow”	Cash flow of a Development funded with a TCAP loan as calculated in the statement of cash flows prepared in accordance with generally accepted accounting principles (“GAAP”) and as adjusted for items including any distribution or payment to the Applicant or Developer, Principal(s) of the Applicant or Developer or any Affiliate of the Principal(s) of the Applicant or Developer, or to the Developer or any Affiliate of the Developer, whether paid directly or indirectly, which was not expressly disclosed in determining debt service coverage in the Board approved final credit underwriting report.
“Development Cost”	The total of all costs incurred in the completion of a Development excluding Developer fee and total land cost.
“Exchange” or “Exchange Program”	The Tax Credit Exchange Program authorized under Section 1602 of the American Recovery and Reinvestment Act of 2009.
“Exchange Extended Use Period”	With respect to any building that is included in a Development funded through the Exchange Program, the period that begins on the first day of the Compliance Period in which such building is part of the Development and ends on the later of: (i) the date specified by Florida Housing in the Land Use Restriction Agreement or (ii) the date that is the fifteenth anniversary of the last day of the Compliance Period, unless earlier terminated as provided in Section 42(h)(6) of the IRC.
“Florida Housing”	Florida Housing Finance Corporation, a public corporation and public body corporate and politic created by Section 420.504, Fla. Stat.
“Good Faith Effort”	Any Applicant requesting Exchange funds shall demonstrate that it has attempted to obtain an investment commitment for

its Housing Credit allocation but was unable to (i) secure a tentative price that made it a viable transaction or (ii) find a Housing Credit investor for the Proposed Development.

“Guarantee Fund Development”	A Development funded in the Florida Affordable Housing Guarantee Program administered by Florida Housing pursuant to Section 420.5092, Fla. Stat., and Rule Chapter 67-39, F.A.C.
“Housing Credit Syndicator”	A person, partnership, corporation, trust or other entity that regularly engages in the purchase of interests in entities that produce Qualified Low Income Housing Projects [as defined in Section 42(g) of the Internal Revenue Code].
“Interested Party”	A person or entity that requests a copy of this Request for Proposals from Florida Housing.
“LURA” or “Land Use Restriction Agreement”	An agreement which sets forth the set-aside requirements and other Development requirements under a Corporation program.
“Nominal HC”	If TCAP funds are being applied for, the Applicant must also apply for a nominal amount (at least \$100) of 9 percent Housing Credits which shall be expected to be syndicated, sold or used by the Development.
“Original Application”	The Application originally submitted by the Applicant and awarded an allocation of Housing Credits that was subsequently returned to Florida Housing prior to or simultaneously with the Applicant’s Proposal.
“Proposal”	A written submission by an Applicant that responds to this Request for Proposals.
“Proposed Development”	The Development proposed within the Applicant’s Original Application and this RFP.
“RFP”	This Request for Proposals, including all exhibits referenced in this document and all other documents incorporated by reference.
“Shovel-Ready”	As it relates to the TCAP program (i) Proposed Developments that are expected to be completed no later than February 16, 2012 and (ii) where Applicants can demonstrate the capacity, inclusive of a realistic timeline, to (a) expend at least 75 percent of the TCAP award by the earlier of December 31, 2010 or nine (9) months from the



closing date of the TCAP award and (b) expend 100 percent of the TCAP award by the earlier of December 31, 2011 or 12 months from the closing date of the TCAP award, and (iii) Proposed Developments that meet the following “ready-to-go” criteria: (a) Ability to timely complete federal requirements, including NEPA; (b) Ability to timely provide a final water management district permitting letter; (c) Ability to timely provide final site plan approval documentation from the governing jurisdictional agency; (d) Ability to timely deliver signed and sealed plans and specs; (e) Ability to timely provide an executed construction contract; (f) Ability to timely provide building permits, subject only to payment of fee(s); (g) Ability to provide the following documents upon the return of the Florida Housing letter inviting the Applicant into credit underwriting: detailed statement of sources and uses (showing the amount of each expected Florida Housing resource), and detailed current proforma with realistic expectations; (h) Ability to timely provide an Affirmative Fair Housing Marketing Plan acceptable to Florida Housing; (i) Ability to timely deliver letters of interest or term sheets from financial partners which match the sources and uses statement on the earlier of 45 Days after the date of the Award of HC or the date of Board approval of the credit underwriting report; (j) timeliness of closing.

As it relates to the Exchange program, (i) Proposed Developments that are expected to expend 100 percent of the Exchange award on or before December 31, 2010, including any applicable retainage, (ii) Applicants that can demonstrate the capacity to meet the completion dates outlined in the Carryover Allocation Agreement, and (iii) Proposed Developments that meet the following “ready-to-go” criteria: (a) Ability to timely complete federal requirements; (b) Ability to timely provide a final water management district permitting letter; (c) Ability to timely provide final site plan approval documentation from the governing jurisdictional agency; (d) Ability to timely deliver signed and sealed plans and specs; (e) Ability to timely provide an executed construction contract; (f) Ability to timely provide building permits, subject only to payment of fee(s); (g) Ability to provide the following documents upon the return of the Florida Housing letter inviting the Applicant into credit underwriting: detailed statement of sources and uses (showing the amount of each expected Florida Housing resource), and detailed current proforma with realistic expectations; (h) Ability to timely deliver letters of interest or term sheets from financial partners which match the

	sources and uses statement on the earlier of 45 Days after the date of the Award of HC or the date of Board approval of the credit underwriting report; (i) timeliness of closing.
“Sub-award”	That certain funding award made under the provisions of the Exchange Program.
“TCAP” or “TCAP Program”	The Tax Credit Assistance Program authorized in the American Recovery and Reinvestment Act of 2009.
“TCAP Extended Use Period”	With respect to any building that is included in a Development funded through the TCAP Program, the period that begins on the first day of the Compliance Period in which such building is part of the Development and ends on the later of: (i) the date specified by Florida Housing in the Land Use Restriction Agreement or (ii) the date that is the fifteenth anniversary of the last day of the Compliance Period, unless earlier terminated as provided in Section 42(h)(6) of the IRC.
“Threshold Item”	A mandatory requirement of the RFP.
“Website”	The Florida Housing Finance Corporation website, the home address of which is <a href="http://www.floridahousing.org">www.floridahousing.org</a> .

### SECTION THREE PROCEDURES AND PROVISIONS

A. An Applicant must submit one (1) original and four (4) copies of the Proposal in a sealed envelope marked “RFP 2009-04 and a non-refundable Proposal fee in the amount of \$500. Each envelope or package containing Proposals must clearly state the name of the Applicant. The Proposal that is the original must clearly indicate “Original” on that Proposal. Florida Housing shall not accept a faxed or e-mailed Proposal. Florida Housing must receive any Proposal on or before 2:00 p.m., Eastern Time, on August 14, 2009. Proposals shall be opened at that time and consecutively numbered. A Lottery number will then be assigned to each Proposal by having Florida Housing’s internal auditors run the total number of Proposals through a random number generator program. Proposals must be addressed to:

Sherry Green  
Contracts Administrator  
Florida Housing Finance Corporation  
227 N. Bronough Street, Suite 5000  
Tallahassee, FL 32301  
850-488-4197  
[Sherry.green@floridahousing.org](mailto:Sherry.green@floridahousing.org)

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

C. Florida Housing reserves the right to:

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

D. Any Interested Party may submit any inquiry regarding this RFP in writing via mail, fax or e-mail to Sherry Green at the address given in Section Three, paragraph A. All inquiries are due by 5:00 p.m., Eastern Time, on August 4, 2009. Phone calls will not be accepted. Florida Housing expects to respond to all inquiries by 5:00 p.m., Eastern Time, on August 7, 2009. Florida Housing will post a copy of all inquiries received, and their answers, on Florida Housing's Website at:

[http://apps.floridahousing.org/StandAlone/FHFC\\_ECM/AppPage\\_LegalRFPs.aspx](http://apps.floridahousing.org/StandAlone/FHFC_ECM/AppPage_LegalRFPs.aspx) . Florida Housing will also send a copy of those inquiries and answers in writing to any Interested Party that requests a copy. Florida Housing will determine the method of sending its answers, which may include regular United States mail, overnight delivery, fax, e-mail, or any combination of the above. Only written responses from Sherry Green, or her designee, to inquiries raised by Interested Parties that are posted on Florida Housing's Website or sent to Interested Parties shall bind Florida Housing. No other means of communication, whether oral or written, shall be construed as an official response or statement from Florida Housing.

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

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

#### **Section Four OBJECTIVES AND SCOPE OF SERVICES**

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

A. The Applicant commits to the following:

1. Total Affordability Period - to set-aside the units in the Proposed Development for a period of 50 years.
2. Set-Aside Commitment –
  - a. ELI Set-Aside Units – Each Applicant must set aside at least 10 percent of the total units in the Proposed Development for ELI Households. The 10 percent ELI commitment, based on the 2009 ELI Set-Aside AMI Level for the Proposed Development’s county, must be entered on the Total Set-Aside Breakdown Chart described in Section Six of this RFP.
  - b. Deeper Targeting Units – Applicants whose Original Application reflects the Farmworker/Commercial Fishing Worker Demographic category may receive additional TCAP funding for a commitment to set aside additional units below 60 percent AMI, as described in section Six of this RFP.
  - c. Total Set-Aside Percentage – to set aside at least the required minimum total percentage of units at 60 percent AMI or less as described in Section Six of this RFP.

The Applicant’s ELI commitment, any other set-asides, and the total set-aside percentage must be entered on the Total Set-Aside Breakdown Chart described in Section Six of this RFP.

B. The Applicant affirms that the following information and commitments made by the Applicant in its Original Application are still in effect:

1. The Developer entity
2. The Development category
3. The Development Type
4. The Demographic commitment
5. The Development site
6. The Total number of units may not be reduced\*
7. Designation commitment

\* Although the total number of units cannot be reduced, unless previously approved by the Board, the Applicant may increase the total number of units stated in its Original Application.

With regard to the Applicant entity stated in the Original Application, the Applicant entity may change, but must be related to the original Applicant entity. Since there is no investor and if there is no other need to provide for a limited partnership or limited entity, the Applicant may be a related entity to the General Partner or Developer stated in the Original Application.

C. If awarded funding under this RFP, the Applicant understands and agrees that:

1. An Applicant with a Proposed Development that has SAIL funds awarded from a previous eyele that was not de-obligated under 67ER09-3, F.A.C., that does not request TCAP funding, and that is not subject to the federal Davis-Bacon requirements may retain its SAIL funding.
2. An Applieant with a Proposed Development that has supplemental funds awarded from a previous cycle that was not de-obligated under 67ER09-3, F.A.C., may retain its supplemental funds if the Proposed Development is not subject to the federal Davis-Bacon requirements and the Applicant is not requesting TCAP funding. In order to keep its supplemental funding, the Applicant must keep the commitment made in its Original Application to set aside the additional ELI units.
3. Any supplemental and/or SAIL funds not previously de-obligated under 67ER09-3, F.A.C., may be de-obligated under this RFP if the Proposed Development is already subject to the federal Davis-Bacon requirements or if the Applicant is requesting TCAP funding for gap financing. Additional TCAP or Exchange funding shall be provided, to the extent available, to offset the amount of the de-obligated supplemental and/or SAIL funding. Any supplemental funding that cannot be offset with TCAP or Exehange funding may be retained by the Applicant. In any event, the Applicant must keep the commitment made in its Original Application to set-aside the additional ELI units. Any additional TCAP funding awarded for this purpose is not subject to the TCAP funding limitations otherwise considered, execept those required by HUD.
4. Prior to or simultaneous with its submission of a Proposal under this RFP, all 9 percent Housing Credits previously awarded to the Proposed Development have been returned in writing to Florida Housing.

D. Funding Eligibility:

This Request for Proposal is open to any Applicant that, as of February 17, 2009, had an Active Award of 9 percent Housing Credits, subject to the following provisions:

1. A Proposal will not be considered if, as of the due date for this RFP, the Applicant has not returned in writing its previous award of Housing Credits.
2. Proposed Developments located within a 2009 Location A Area are eligible to apply only under the following circumstances:
  - a. Developments where the Original Application for the Proposed Development was funded under the Housing Credit Hope VI goal.
  - b. Developments where the Original Application for the Proposed Development reflects the Housing Credit Preservation Designation.
  - c. Proposed Developments that are located in a 2009 Location A Area that **does not** have a Guarantee Fund Development with the same Demographic category located in the same county.

**2009 Location A Areas**

County	Demographic Category	Number of Existing Guarantee Fund Developments / Demographic Category	Location Description
Brevard	Elderly or Family	None	Entire County
Lake	Family	3 Family	<p>Starting at the Intersection of Lakeshore Drive and Anderson Hill Road, follow Anderson Hill Road east to US 27. Follow US 27 southeast to North Bradshaw Road. Follow N. Bradshaw Road southeast to 5 Mile Road. Follow 5 Mile Road southeast to Shell Pond Road. Follow Shell Pond Road East to the county line. Follow the county line south to Commonwealth Avenue N./SR 33. Follow SR 33 north to CR 561. Follow CR 561 north to Lakeshore Drive. Follow Lakeshore Drive northeast to the intersection of Anderson Hill Road</p> <p style="text-align: center;">and</p> <p>Beginning at northwestern corner of county, follow county border south to CR 470/CR48. Follow CR 470/CR 48 east to SR 19. Follow SR 19 north to CR 448. Follow CR 448 east to county line. Follow county line north around the remaining portion of the county to the northwestern corner of county</p>
Lee	Elderly or Family	3 Family	Entire County

County	Demographic Category	Number of Existing Guarantee Fund Developments / Demographic Category	Location Description
Leon	Family	None	Starting at the intersection of US 319 and State Road 154/Bannerman Road, follow Bannerman Road northwest to State Road 155/Meridian Road. Follow Meridian Road northwest to Orchard Pond Road and Orchard Pond Road west to State Road 157/Old Bainbridge Road. Follow Old Bainbridge Road south to Capital Circle. Follow Capital Circle south to I-10 and follow I-10 east to Mission Road. Follow Mission Road south to Appleyard Drive. Follow Appleyard Drive south to Jackson Bluff Road and follow Jackson Bluff Road east to Chipley Street. Follow Chipley Street south to Plant Street and follow Plant Street east to Escutlower Street. Follow Eisenhower Street south to Orange Avenue. Follow Orange Avenue east to State Road 371/Lake Bradford Road. Follow Lake Bradford Road southwest to Capital Circle/State Road 263 and follow State Road 263 east to Capital Circle/US 319. Follow US 319 east to Tram Road and follow Tram Road/Rose Road east to WW Kelly Road and follow WW Kelly Road north to Chaires Crossroads/State Road 154. Follow State Road 154 north then west to Bradfordville Road. Follow Bradfordville Road north then west to US 319 and follow US 319 south to Bannerman Road.
Manatee	Family	1 Family	Entire County
Marion	Family	None	Entire County
Palm Beach	Family	3 Elderly 9 Family	Beginning at intersection of Florida Turnpike and Donald Ross Road, follow Turnpike south to SR 802/Lake Worth Road. Follow SR 802/Lake Worth Road east to the Atlantic Ocean. Follow the Atlantic Ocean north to US 98/SR 80/SR 700/Southern Blvd. Follow US 98/SR 80/SR 700/Southern Blvd west to I-95. Follow I-95 north to Palm Beach Lakes Blvd. Follow Palm Beach Lakes Blvd northeast to N Australian Avenue. Follow N Australian Avenue north to 25 <sup>th</sup> Street. Follow 25 <sup>th</sup> Street east to US 1. Follow US 1 north to 26 <sup>th</sup> Street. Follow 26 <sup>th</sup> Street east to N Flagler Drive. Follow N Flagler Drive south to SR A1A/Flagler Memorial Bridge/Royal Poinciana Way. Follow SR A1A/Flagler Memorial Bridge/Royal Poinciana Way east to SR A1A/County Road. Follow SR A1A/County Road south to Royal Palm Way. Follow Royal Palm Way east to the Atlantic Ocean. Follow the Atlantic Ocean north to Donald Ross Road. Follow Donald Ross Road west to the Florida Turnpike.
St. Lucie	Family	2 Family	Entire County

3. If selected for funding, the Applicant must commit to (i) provide the Required Features and Amenities and (ii) provide a sufficient number of the Optional Features and Amenities to receive at least the required minimum points in Items 3.b.(1), 3.b.(3) and 3.b.(4) or 3.b.(2), 3.b.(3) and 3.b.(4) below, as applicable. Such commitment must be made at the time the Applicant accepts the invitation to

enter credit underwriting. The Required and Optional Features and Amenities are as follows:

a. Required Features and Amenities

(1) ALL Developments must provide the following:

- Air conditioning in all units (window units are not allowed; however, through-wall units are permissible for rehabilitation);
- Window treatments for each window and glass door inside each unit;
- Termite prevention and pest control throughout the entire affordability period;
- Peephole on all exterior doors;
- Exterior lighting in open and common areas.
- Cable or satellite TV hook-up in all units;
- Full-size range, oven and refrigerator in all units;
- At least two full bathrooms in all 3 bedroom or larger new construction units;
- Bathtub with shower in at least one bathroom in at least 90% of the new construction non-Elderly units;

(2) ALL Applicants must commit to provide at least 10 of the following Green Building options. The Applicant will be required to commit to the specific Green Building options when it accepts invitation to credit underwriting.

- Programmable thermostats in each unit
- Energy Star rated reversible ceiling fans in all bedrooms and living areas
- Showerheads that use less than 2.5 gallons of water per minute
- Faucets that use 2 gallons of water per minute or less in the kitchen and all bathrooms
- Toilets that have dual flush options which include 1.6 gallons of water or less
- Energy Star qualified lighting in all open and common areas
- Motion detectors on all outside lighting that is attached to the units
- Low VOC paint (less than 50 grams per gallon) in all units and common areas
- Reduced Heat-Island Effect paving (use light colored or porous paving materials)
- Energy Star rating for all refrigerators, dishwashers and washing machines that are provided by the Applicant



- Energy Star rating for all windows in each unit
- Carpet and Rug Institute Green Label certified carpet and pad for all carpeting provided
- Florida Yards and Neighborhood certification on all landscaping
- Install daylight sensors or timers on all outdoor lighting

(3) Additionally, ALL Developments with an Elderly Demographic commitment must provide the following features:

FEATURE	Required percentages of the total units
Roll-In Showers 5% of the overall requirement for roll-in showers may be met with walk-in type shower stalls with permanently affixed seat which meet or exceed the Universal Federal Accessibility Standards (UFAS).	15%
Thermostat placed at 48" maximum height	100%
Tight-napped Berber-type carpet or non-skid/non-glossy tile in all living areas or a combination of both	100%
36" entrances on all exterior doors	100%
All wall electrical outlets placed between 18" and 48" above the floor	100%
Scald control valves on all bathtub and shower faucets	100%
Peephole at 4" - 10" on all exterior doors	100%
Toggle type switches for each light and each fan throughout the unit	100%
Adjustable shelving in master bedroom closets (style of shelving must be re-adjustable by resident)	100%
Lever-action handles on all doors in units and public areas	100%
Horizontal grab bars in place around each tub and/or shower, the installation of which meets or exceeds the Universal Federal Accessibility Standards (UFAS 4.34.5)	100%
Horizontal grab bars in place around each toilet, the installation of which meets or exceeds the Universal Federal Accessibility Standards (UFAS 4.34.5)	100%
Roll-out shelving or drawers in all bottom bathroom vanity cabinets	100%
Roll-out shelving or drawers in at least one bottom kitchen cabinet	100%
A minimum of one elevator per residential building must be provided for Developments that consist of more than one story if any of the Elderly set-aside units will be located on a floor higher than the first floor	N/A

b. **Optional Features and Amenities**

(1) **ALL New Construction Developments must commit to provide a sufficient number of the following Optional Features and Amenities to achieve a minimum of 9 points:**

- 30 Year expected life roofing on all buildings (2 points)
- Gated community with “carded” entry or security guard, or if 2 or more stories, “carded” secure entry to building (2 points)
- Ceramic tile bathroom floors in all units (2 points)
- Microwave oven in each unit (1 point)
- Marble window sills in all units (1 point)
- Steel exterior entry door frames for all units (1 point)
- At least 1½ bathrooms (one full bath and one with at least a toilet and sink) in all 2-bedroom new construction units (2 points) Note: In order to be eligible to select this feature, the Development must have at least one 2-bedroom unit.
- Double compartment kitchen sink in all units (1 point)
- Pantry in kitchen area in all units- must be no less than 20 cubic feet of storage space. Pantry cannot be just an under- or over-the-counter cabinet. (2 points)
- Dishwasher in all new construction units (1 point)
- Garbage disposal in all new construction units (1 point)

(2) **ALL Rehabilitation Developments must commit to provide a sufficient number of the following Optional Features and Amenities to achieve a minimum of 9 points:**

- New kitchen cabinets and counter top(s) in all units (3 points)
- 30 Year expected life roofing on all buildings (2 points)
- Gated community with “carded” entry or security guard, or if 2 or more stories, “carded” secure entry to building (2 points)
- Ceramic tile bathroom floors in all units (2 points)
- Microwave oven inside each unit (1 point)
- Marble window sills in all units (1 point)
- Dishwasher inside each unit (1 point)

- Garbage disposals inside each unit (1 point)
- Steel exterior entry door frames for all units (1 point)
- Double compartment kitchen sink in all units (1 point)
- New bathroom cabinet(s), excluding medicine cabinet, in all units (1 point)
- New full-size range and oven in all units (1 point)
- New full-size refrigerator in all units (1 point)
- New plumbing fixtures in kitchen and bathroom(s) in all units (1 point)

(3) ALL Developments must commit to provide a sufficient number of the following Optional Features and Amenities to achieve a minimum of 12 points:

- Emergency call service in all units (3 points)
- Exercise room with appropriate equipment (1 point)
- Community center or clubhouse (3 points)
- Swimming pool (2 points) \*
- Playground/tot lot, accessible to children with disabilities (must be sized in proportion to Development's size and expected resident population with age-appropriate equipment) (2 points)
- Car care area (for car cleaning/washing) (1 point)
- Two or more parking spaces per total number of units (1 point)
- Picnic area with hard cover permanent roof of a design compatible with the Development, open on all sides, containing at least three permanent picnic tables with benches and an adjoining permanent outdoor grill (1 point)
- Outside recreation facility (such as shuffleboard court, putting green, tennis court, full basketball court, volleyball court, etc.). Facility must be identified (2 points)
- Library consisting of a minimum of 100 books and 5 current magazine subscriptions (1 point)
- Computer lab on-site with minimum one computer per 50 units, with basic word processing, spreadsheets and assorted educational and entertainment software programs and at least one printer (1 point)
- Each unit wired for high speed internet (1 point)

Applicant may select only one of the following two items:

- Laundry hook-ups and space for full-size washer and dryer inside each unit (1 point)
- Washer and dryer in a dedicated space with hook-ups within each unit, provided at no charge to the resident during the term of any lease (3 points)

Applicant may select only one of the following two items:

- Laundry facilities with full-size washers and dryers available in at least one common area on site (1 point)
- Laundry facilities with full-size washers and dryers available in at least one common area on every floor if Development consists of more than one story (2 points)

\* ARRA funds cannot be used to cover the cost of a swimming pool

- (4) ALL Developments must commit to provide a sufficient number of the following Energy Conservation Features to achieve a minimum of 9 points:
- (a) Heating – Applicant may select only one of the following three items:
    - Heat pump with a minimum HSPF of 8.2 instead of electric resistance (1 point)
    - Heat pump with a minimum HSPF of 8.5 instead of electric resistance (2 points)
    - Gas hydronic combo unit HVAC (2 points)
  - (b) Cooling – Applicant may select only one of the following three items:
    - Air conditioning with a minimum SEER rating of 14 (1 point)
    - Air conditioning with a minimum SEER rating of 15 (2 points)
    - Air conditioning with a SEER rating of 16 or better (3 points)
  - (c) Water Heating – Applicant may select only one of the following three items:

- Gas water heater with energy factor of .61 or better (1 point)
- Electric water heater with energy factor of .93 or better (1 point)
- Tankless gas water heater (2 points)

(d) Insulation –

Wall insulation ratings are determined by the insulation material only, not the wall assembly materials. For mixed-type construction, the Applicant may only select the insulation option for the construction type that comprises 51 percent or more of the proposed Development.

- (i) Frame built construction (Applicant may select only one of the following two items):

- Wall insulation of a minimum of R-13 (1 point)
- Wall insulation of R-15 or better (2 points)

OR

- (ii) Masonry/concrete block construction (Applicant may select only one of the following two items):

- Wall insulation of a minimum of R-7 (1 point)
- Wall insulation of R-10 or better (2 points)

In addition, Applicant may select only one of the following two items:

- Attic insulation of R-30 or better (1 point)
- Insulation of R-19 with radiant barrier on top floor only (1 point)

- (e) Windows (excluding windows on doors and sidelights) – Applicant may select only one of the following five items:

- Solar screens on all west and east facing windows (1 point)

- Double-pane glass on all windows (2 points)
- All windows double-pane with minimum solar heat gain coefficient of  $\leq .50$  and minimum of .75 U Value (2 points)
- All windows single-pane with minimum solar heat gain coefficient of .58 or better (2 points)
- All windows single-pane with shading coefficient of .67 or better (2 points)

(f) Energy Star Appliances:

- Energy Star certified refrigerator and dishwasher in each unit (1 point)

(g) Other:

- Ceiling fans in all bedrooms and living area in each unit (2 points)

4. Resident Programs

a. ALL Proposed Developments with the Family Demographic commitment must commit to provide a sufficient number of the following Qualified Resident Programs to achieve a minimum of 6 points:

- (1) Welfare to Work or Self-Sufficiency Type Programs. The Applicant commits to actively seek residents who are participating in or who have successfully completed the training provided by these types of programs. To receive point, Applicant must identify the program and the contact person. (1 point)
- (2) After School Program for Children - This program requires the Applicant or its Management Agent to provide supervised, structured, age-appropriate activities for children during the after school hours, Monday through Friday. Activities must be on-site and at no charge to the residents. (3 points)
- (3) First Time Homebuyer Seminars - Applicant or its Management Agent must arrange for and provide, at no cost to the resident, in conjunction with local realtors or lending institutions, semiannual on-site seminars for residents interested in becoming homeowners. Electronic media, if used, must be used in conjunction with live instruction. (1 point)

- (4) Literacy Training - Applicant or its Management Agent must make available, at no cost to the resident, literacy tutor(s) who will provide weekly literacy lessons to residents in private space on-site. Electronic media, if used, must be used in conjunction with live instruction. (2 points)
- (5) Job Training - Applicant or its Management Agent must provide, at no cost to the resident, regularly scheduled classes in keyboarding, computer literacy, secretarial skills or other useful job skills, which will be provided at least once each quarter. If the training is not provided on-site, transportation at no cost to the resident must be provided. Electronic media, if used, must be used in conjunction with live instruction. (2 points)

- b. ALL Proposed Developments with the Homeless Demographic commitment must commit to provide a sufficient number of the following Qualified Resident Programs to achieve a minimum of 6 points:

Note: All Applicants with the Homeless Demographic commitment will be required to provide a Case Management Program whereby the Applicant or its Management Agent must provide, at no cost to the resident, a Case Manager (at least one for every 25 Homeless or formerly Homeless resident families) whose activities are aimed at assessing resident needs, planning services, linking the service system to a resident, coordinating the various system components, monitoring service delivery, and evaluating the effect of service delivery. Case Managers must possess at least a bachelor's degree in human services or a related field.

- (1) Financial Assistance with Purchase of a Home. (2 points) Applicant commits to provide a financial incentive which includes the following provisions:
  - The incentive must be applicable to the home selected by the resident and may not be restricted to or enhanced by the purchase of homes in which the Applicant, Developer, or other related party has an interest;
  - the incentive must be not less than 5 percent of the rent for the resident's unit during the resident's entire occupancy (Note: Resident will receive the incentive for all months for which the

resident is in compliance with the terms and conditions of the lease. Damages to the unit in excess of the security deposit will be deducted from the incentive.);

- the benefit must be in the form of a gift or grant and may not be a loan of any nature;
- the benefits of the incentive must accrue from the beginning of occupancy;
- the vesting period can be no longer than 2 years of continuous residency; and
- no fee, deposit or any other such charge can be levied against the resident as a condition of participation in this program.

- (2) After School Program for Children - This program requires the Applicant or its Management Agent to provide supervised, structured, age-appropriate activities for children during the after school hours, Monday through Friday. Activities must be on-site and at no charge to the residents. (3 points)
- (3) First Time Homebuyer Seminars - Applicant or its Management Agent must arrange for and provide, at no cost to the resident, in conjunction with local realtors or lending institutions, semiannual on-site seminars for residents interested in becoming homeowners. Electronic media, if used, must be used in conjunction with live instruction. (1 point)
- (4) Welfare to Work or Self-Sufficiency Type Programs - The Applicant commits to actively seek residents who are participating in or who have successfully completed the training provided by these types of programs. To receive point, Applicant must identify the program and the contact person. (1 point)
- (5) Literacy Training - Applicant or its Management Agent must make available, at no cost to the resident, literacy tutor(s) who will provide weekly literacy lessons to residents in private space on-site. Electronic media, if used, must be used in conjunction with live instruction. (2 points)
- (6) Job Training - Applicant or its Management Agent must provide, at no cost to the resident, regularly scheduled classes in keyboarding, computer literacy, secretarial skills or other useful job skills, which will



be provided at least once each quarter. If the training is not provided on-site, transportation at no cost to the resident must be provided. Electronic media, if used, must be used in conjunction with live instruction. (2 points)

c. ALL Proposed Developments with the Elderly Demographic commitment must commit to provide a sufficient number of the following Qualified Resident Programs to achieve a minimum of 6 points:

- (1) Daily Activities - Applicant or its Management Agent must provide on-site supervised, structured activities, at no cost to the resident, at least five days per week. (3 points)
- (2) Assistance with Light Housekeeping, Grocery Shopping and/or Laundry - The Applicant or its Management Agent will provide residents with a list of qualified service providers for (a) light housekeeping, and/or (b) grocery shopping, and/or (c) laundry and will coordinate, at no cost to the resident, the scheduling of services. (1 point)
- (3) Resident Assurance Check-In Program – Applicant commits to provide and use an established system for checking in with each resident on a pre-determined basis not less than once per day, at no cost to the resident. Residents may opt out of this program with a written certification that they choose not to participate. (2 points)
- (4) Manager On-Call 24 Hours Per Day – Applicant must provide management personnel on the Development’s premises at all times who will be available and accessible to the residents 24 hours per day, seven days per week, at no cost to the resident. (2 points)
- (5) Private Transportation – The Applicant or its Management Agent must make available a safe and serviceable vehicle that can transport residents to off-site locations for such things as medical appointments, public service facilities, and/or educational or social activities, at no cost to the resident. A nearby bus stop or access to programs such as “Dial-A-Ride” will not be acceptable for purposes of this program. (3 points)

- (6) Literacy Training - Applicant or its Management Agent must make available, at no cost to the resident, literacy tutor(s) who will provide weekly literacy lessons to residents in private space on-site. Electronic media, if used, must be used in conjunction with live instruction. (2 points)
  - (7) Computer Training – The Applicant or its Management Agent shall make available computer and internet training classes (basic and/or advanced level depending on the needs and requests of the residents). The training classes must be provided at least once a week, at no cost to the resident, in a dedicated space on site. Electronic media, if used, must be used in conjunction with live instruction. (2 points)
- d. ALL Developments must commit to provide a sufficient number of the following Qualified Resident Programs to achieve a minimum of 8 points:
- (1) Health Care – At least quarterly visits by health care professionals such as nurses, doctors, or other licensed care providers. At a minimum, the following services must be provided: health screening, flu shots, vision and hearing tests. Regularly scheduled is defined as not less often than once each quarter. On-site space must be provided. Service must be provided at no cost to the residents, with the exception that the residents may be charged for medications. (2 points)
  - (2) Health and Nutrition Classes – At least 8 hours per year, provided on site at no cost to the residents. Electronic media, if used, must be used in conjunction with live instruction. (2 points)
  - (3) Mentoring – Establish a partnership with a primary or secondary education institution to encourage mentoring, tutoring and/or financial support that will benefit the residents of the proposed affordable housing community. This service must be provided at no cost to the resident. Electronic media, if used, must be used in conjunction with live instruction. (2 points)

- (4) Resident Activities - These specified activities are planned, arranged, provided and paid for by the Applicant or its Management Agent. These activities must be an integral part of the management plan. The Applicant must develop and execute a comprehensive plan of varied activities that brings the residents together and encourages community pride. The goal here is to foster a sense of community by bringing residents together on a regularly scheduled basis by providing activities such as holiday and special occasion parties, community picnics, newsletters, children's special functions, etc. (2 points)
- (5) Financial Counseling - This service must be provided by the Applicant or its Management Agent, at no cost to the resident, and must include the following components: must be regularly scheduled at least once each quarter; must include tax preparation assistance by qualified professionals; must include educational workshops on such topics as "Learning to Budget", "Handling Personal Finances", "Predatory Lending", or "Comparison Shopping for the Consumer". Electronic media, if used, must be used in conjunction with live instruction. (2 points)
- (6) English as a Second Language – The Applicant or its Management Agent must make available, at no cost to the resident, literacy tutor(s) who will provide weekly English lessons to residents in private space on-site. Electronic media, if used, must be used in conjunction with live instruction. (2 points)
- (7) Resident Assistance Referral Program - The Applicant or its Management Agent will make available to residents information about services such as crisis intervention, individual and family needs assessment, problem solving and planning, appropriate information and referral to community resources and services based on need, monitoring of ongoing ability to retain self sufficiency, and advocacy to assist clients in securing needed resources. This service must be provided at no cost to the resident. Electronic media, if used, must be used in conjunction with live instruction. (2 points)
- (8) Swimming Lessons – The Applicant or its Management Agent must provide on-site swimming

lessons for children or adults, at no cost to the resident, at least twice each year. (2 points)

- (9) Life Safety Training – The Applicant or its Management Agent must provide courses such as fire safety, first aid (including CPR), etc., on-site, at least twice each year, at no cost to the resident. Electronic media, if used, must be used in conjunction with live instruction. (2 points)

E. Fees:

Unless indicated otherwise, the following fees apply to both the Exchange and TACP Programs.

1. Proposal Fee:

Applicants shall submit to Florida Housing by the RFP Deadline a non-refundable Proposal Fee of \$500.

2. Exchange Administrative Fee:

Each Applicant receiving an award of Exchange funding shall submit to Florida Housing a non-refundable exchange fee based on 8 percent of the HC equivalent amount for a for-profit Applicant and 5 percent of the HC equivalent amount for a Non-Profit Applicant. Each Applicant receiving Exchange funding that did not remit the HC administrative fee prior to returning its previous 9 percent Housing Credit award will be responsible for paying the exchange fee. The amount of the exchange fee and the due date will be stated in the Carryover Allocation Agreement. The exchange fee requirement will be deemed to be met if the Applicant submitted the non-refundable HC administrative fee prior to returning its Housing Credit award.

3. Asset Management and Financial Monitoring Fees:

- a. Asset management fees will be determined based upon federal guidance and will be charged annually.
- b. A financial monitoring fee of \$3,000 will be charged annually.

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

4. Compliance Monitoring Fee:

- a. Annual fee of \$1,723 + \$9.00 per set-aside unit, billed annually following loan and/or grant closing.
- b. Follow-up Review - \$152 per hour

Note: These fees are provided for estimation purposes only and are not the fees that will actually be charged. The actual fees will be determined based on the current contract for services between Florida Housing and the Compliance Monitor(s).

5. Additional Credit Underwriting Fee

Prior to the performance of the analysis by the Credit Underwriter, an additional credit underwriting fee may be charged by the Credit Underwriter. The minimum additional fee will be \$3,000 and the total additional fee will not exceed \$10,509. The exact amount will be determined by the Credit Underwriter based on previous work performed by the Credit Underwriter with regard to the Original Application and must be paid by the Applicant within seven (7) Days of receipt of the invoice from the Credit Underwriter.

6. Construction Inspection Fees:

- a. On-site construction inspection - \$152 per hour, not to exceed \$1,519 per inspection.
- b. In-house reviews - \$152 per hour, not to exceed \$1,869 per review.
- c. Extraordinary services - \$152 per hour.

Note: These fees are provided for estimation purposes only and are not the fees that will actually be charged. The actual fees will be determined based on the current contract for services between Florida Housing and the Servicee(s).

7. TCAP Federal Labor Standards Monitoring Fees:

- a. An Annual Rate of 75 basis points on the outstanding amount of the TCAP loan, with an annual minimum amount of \$3,838 and a maximum annual amount not to exceed \$13,649.
- b. Site visits - \$701 per site visit

- c. Extraordinary services - \$152 per hour

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

8. Permanent Loan Servicing Fees:

- a. An annual fee of 25 basis points on the outstanding balance of the TCAP loan, with an annual minimum fee of \$2,184 and an annual maximum fee not to exceed \$8,735
- b. Extraordinary services - \$152 per hour.

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

9. Additional Fees:

Funding recipients will be responsible for all fees associated with Florida Housing's legal counsel related to the Exchange and TCAP Programs, as applicable.

## **SECTION FIVE CERTIFICATION**

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

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

B. Proposed Developments funded with Exchange or a combination of both Exchange and TCAP/Nominal HC will be subject to all applicable provisions of Rule Chapter 67-48, F.A.C., this RFP, Section 42 of the IRC, and, as applicable, the Tax Credit Exchange Program provisions, as amended, and the Tax Credit Assistance Program provisions, as amended. If any provisions of this RFP conflict with the provisions of Rule Chapter 67-48, F.A.C., the provisions in this RFP will take precedence.

1. Credit Underwriting Review, Carryover Allocation Agreement, and Terms and Conditions of the Exchange Grant and TCAP Loan
  - a. Upon Board approval of the selected Proposals, the Applicants will be invited to enter credit underwriting. The invitations must be executed and returned within seven (7) Days of the date of the invitation letter, along with the following information: a detailed statement of sources and uses (showing the amount of each expected Florida Housing resource) and detailed current proforma as specified in the Shovel-Ready definition, selected features and amenities, selected resident programs, the 2009 Universal Application Applicant Notification to Special Needs Household Referral Agency form, if applicable, as well as any other information specified in the invitation letter.
  - b. To ensure that scarce resources are not allocated to areas of the state that do not have the greatest need, the tentative funding awarded pursuant to this RFP (Exchange funding and/or TCAP funding with a nominal Housing Credit allocation) shall be rescinded if the submarket of the Proposed Development does not have an average occupancy rate of 92 percent or greater for the same Demographic population, as determined by a market study ordered by the Credit Underwriter, and analyzed by the Credit Underwriter and Florida Housing Staff, as well as approved by the Board.
  - c. The information required by the Credit Underwriter to engage a market study and appraisal must be provided to the Credit Underwriter within 14 Days of the date of the invitation to enter credit underwriting (which is the same date as the Award of HC for TCAP Applicants). The market study shall include verification of the location of the Proposed Development within a 2009 DDA or QCT.
  - d. Florida Housing shall hold periodic telephonic Board meetings so that completed market studies may be submitted for Board approval. The Board's approval at such telephonic meetings shall then be presented for ratification at the next regularly scheduled Board Meeting. The deadline for obtaining final ratified Board approval of a market study is October 23, 2009, with a possibility of a one (1) month extension conditioned upon Florida Housing's written approval of such extension. If such extension is granted, the market study must be completed, approved by the Board telephonically within the extension period, and submitted for final ratified Board approval no later than December 4, 2009.

Upon approval of the market study and the preliminary financial viability of the Proposed Development, Florida Housing shall issue the Carryover Allocation Agreement for the Exchange funding and the Nominal HC, if the Applicant is also receiving TCAP.

- e. If the Board does not approve the market study, the funding awarded pursuant to this RFP shall be rescinded and returned to Florida Housing.
- f. All other items required for the Credit Underwriter to complete the credit underwriting report must be provided to the Credit Underwriter within 28 Days of the date of the invitation to enter credit underwriting (which is the same date as the Award of HC for TCAP Applicants).
- g. Florida Housing shall hold periodic telephonic Board meetings so that completed credit underwriting reports may be submitted for Board approval. The Board's approval at such telephonic meetings shall then be presented for ratification at the next regularly scheduled Board Meeting.

No TCAP funds shall be committed to a Proposed Development before it receives the appropriate environmental clearance and a credit underwriting report approved by the Board.

The amount of Exchange and, if applicable TCAP/Nominal HC will be reflected in the credit underwriting report submitted to the Board for approval. Upon approval of the credit underwriting report, the firm commitment for any TCAP funding shall be issued and, if necessary, the Carryover Allocation Agreement for the Exchange funding and Nominal HC will be revised.

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

- h. During credit underwriting, the Credit Underwriter shall consider the market study, the Development's financial impact on Developments in the area previously funded by Florida Housing, and other documentation when making its recommendation of whether to approve or disapprove funding (Exchange and, if applicable, TCAP/Nominal HC). The Credit Underwriter shall 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.

- i. During credit underwriting, the Credit Underwriter shall also review the appraisal and other market documentation to determine if the market exists to support the demographic and income restriction set-asides committed to in the Applicant's Proposal.
- j. Replacement Reserves (RR) shall be a minimum of \$300/unit with a requirement to maintain a minimum amount of \$1,500 per unit at all times, allowing for an initial period to accumulate this minimum. Allowed uses for RR in order to fall below the minimum amount: life safety, structural and systems as determined by Florida Housing and its servicers. Traditional RR draws shall be limited to items which can be depreciated.
- k. Any amount of funding to be awarded (Exchange and, if applicable, TCAP/Nominal HC) will be sized during credit underwriting. The following parameters shall be used unless the Proposed Development is utilizing a HUD financing vehicle (e.g., FHA insured 221(d)4 bonds) AND the Proposed Development is 100 percent Project-Based Section 8 Rent Subsidized. For this latter instance, the Applicant may choose to follow the sizing procedures below for a determination of an Exchange and TCAP award, or the Applicant may choose to (i) not have the first mortgage sized, (ii) not have TCAP available, and (iii) have the Exchange funds used to fill the gap, up to \$0.85 (times 10) for the qualifying HC Allocation equivalent.
  - (1) The first mortgage shall be sized and limited to said sized amount. The sizing will be initially based on a first mortgage with an interest rate of 7.5 percent and a 30-year amortization, but shall actually be determined by the actual interest rate and actual amortization of the first mortgage. Any Development serving 50 percent Homeless population (Applicant selected the Homeless Demographic Commitment in its Original Application) shall assume to have no traditional first mortgage. The debt service requirements for the TCAP funds are provided in the next paragraph.

The combined amount of the Proposed Development's TCAP award, qualifying restricted

first mortgage and any other lien superior to the TCAP award shall be restricted based on having their combined debt services ("Debt Service") equal to the lesser of one of the following two calculations:

- (a) The greater of either (i) an amount that yields a net cash flow after Debt Service of \$1,000 per unit, or (ii) an amount that yields a Debt Service coverage ratio of 1.50x, both of which are based on the proforma for the Proposed Development's initial year, or
- (b) An amount that yields a Debt Service coverage ratio of 1.25x based on the proforma for the Proposed Development's 15<sup>th</sup> year given annual increases of 2 percent for revenues and 3 percent for operating expenses.

Note: The aforementioned Debt Service coverage ratios reflect the combined required debt service for the TCAP funds, the first mortgage and any other lien superior to the TCAP funds.

Once the Debt Service is determined, the amount of the TCAP award shall be determined based on balancing the need to (i) not over subsidize the transaction, (ii) ensure the financial feasibility of the Proposed Development as well as its viability throughout the covenant period, given the additional restrictions provided below, and (iii) fill the financing gap to have total sources of funds equal all uses of funds.

If the resulting qualifying restricted first mortgage is less than \$500,000, then the Applicant shall have the opportunity to elect to either (a) move forward with said first mortgage amount, or (b) have a portion of said first mortgage amount added to the deferred Developer fee with the remainder paid by additional TCAP funds. In the later case, the portion of said first mortgage amount that is being added to the deferred Developer fee shall be an amount that is determined by taking the lesser of (i) 10 percent of the Developer's fee, or (ii) 50 percent of said first mortgage amount.

- (2) The sizing of the TCAP funds shall assume a portion of the Developer fee will be deferred, except for any Homeless Development where there will be no deferment to the extent possible. For transactions with TCAP funds, the deferred portion shall be 15 percent to the extent possible. For transactions without TCAP funds, the deferred portion shall be 25 percent to the extent possible. In any case, the maximum deferred Developer fee shall be the lesser of (a) an amount that can be demonstrated to be repaid within 10 years based on Florida Housing's Credit Underwriter's 15-year proforma or (b) 50 percent of the total Developer fee. This includes any deferment needed to balance the sources and uses schedule.
- (3) For any Homeless Development, the amount of the Developer fee shall be 21 percent of eligible costs with an amount equal to 5 percent being set-aside in an operating reserve.
- (4) Consideration shall be given to those Developments receiving TCAP funds for the increased cost, if any, due to Davis-Bacon and other HOME-like reporting requirements, as outlined in Section Five, B.4. below.
- (5) For those Applicants that submit a successful Application that also either request TCAP or for those Proposed Developments that are already subject to Davis-Bacon requirements, Florida Housing shall size the TCAP award to be the lesser of (a) \$3,000,000, (b) \$30,000 per set-aside unit, (c) maximum qualifying amounts per HUD restrictions, or (d) the greater of (i) 20 percent of the total ARRA funding (sum of the TCAP award plus the Exchange funds awarded), or (ii) the actual amount the Proposed Development needs for gap financing. Except for (c) above, these maximum limitations are exclusive of any additional TCAP funding awarded as provided herein (i.e., accepting additional lower-AMI units or replacing funds that were returned due to this RFP with TCAP).
- (6) For Exchange funds, the process will allow the Proposed Development to receive an amount of up to \$0.85 (times 10) for the lesser of (a) the amount of the HC Allocation returned in 2009, or (b) the

maximum HC Allocation award for the county in which the Proposed Development is located as provided by the 2009 UAC (inclusive of current DDA/QCT bonuses), which the total amount of resulting Exchange funds shall not exceed the maximum allowable amount of a sub-award as determined by the Treasury for the Exchange program. There will not be an investor in the transaction.

The amount of Exchange funds a Proposed Development would qualify for shall be equal to Total Development Costs, less the restricted first mortgage, less any TCAP awarded funds, less any other Florida Housing resources, less the deferred Developer fee, less any Local Government subsidy funds, and less any other committed resources, subject to maximum limitations provided herein.

- l. An analysis of the Sponsor shall be completed with more in-depth consideration to key topics than typically completed by Florida Housing, including liquidity, net worth, unrestricted assets, and contingent liabilities.
- m. An analysis of the credit worthiness of the Developer shall be completed with more in-depth review than typically considered, including areas of past performance, default history, failed conversions, guarantor performance, and outstanding contingencies.
- n. Payment of Developer fees:
  - (1) For Proposed Developments with only Exchange funds, given a total deferment of Developer fees of 25 percent as intended with Exchange funds, Developer fees shall be paid as follows: (a) no more than 25 percent shall be paid at construction commencement, (b) no more than 25 percent shall be paid at construction completion, and (c) no more than 25 percent shall be paid at stabilization. The remainder of the Developer fees shall be paid from Development Cash Flow.
  - (2) Given a total deferment of Developer fees of 15 percent as intended with TCAP funds, for Proposed Developments with any TCAP funding the Developer fees shall be paid as follows: (a) no more than 25 percent shall be paid at construction commencement,

(b) no more than 25 percent shall be paid at construction completion, and (c) no more than 35 percent shall be paid at stabilization. The remainder of the Developer fees shall be paid from Development Cash Flow or other non-Florida Housing sources.

(3) For Proposed Homeless Developments, regardless of whether funded with Exchange or Exchange/TCAP, Developer fees shall be paid as follows: (a) no more than 25 percent shall be paid at construction commencement, (b) no more than 25 percent shall be paid at construction completion, and (c) the remaining 50 percent shall be paid at stabilization.

(4) If other non-Florida Housing sources are also funding Developer fees, then Florida Housing reserves the right to decrease its portion of the funding to meet these maximum funding parameters, with any Florida Housing funding balance to be provided at stabilization.

(5) In the case where the total Developer fee available to be paid is adjusted by the Credit Underwriter (e.g., cost of land acquisition which is in excess of the appraised value), the amount of the adjustment shall be considered a part of the paid Developer fee and shall be allocated as the initial amount(s) paid unless the final Exchange or TCAP disbursement(s) would push said payment beyond the applicable final expenditure deadline, then the Exchange/TCAP disbursement shall be funded with the proceeds used in a means that meets Exchange/TCAP expenditure restrictions, including the viability of the Proposed Development.

o. Disbursements of TCAP funds shall be done through monthly draw requests based on completed work and the expenditure of costs associated with eligible costs as defined/restricted by HUD. TCAP funds must be tracked, as required by HUD, on a draw-by-draw basis. The Proposed Development shall not take any disbursements from the first mortgage lender until all of the Exchange/TCAP funds are disbursed first, unless the first mortgage lender is used to acquire the land prior to closing the Exchange/TCAP funds. Disbursement of Exchange funds and TCAP funds will be

managed with the expectation to meet the respective expenditure deadlines and cost-tracking requirements.

- p. Exchange funds shall be a Sub-award grant, to be used for costs that are included in the eligible costs of a Proposed Development, and are subject to the Housing Credit rent, income, use restrictions and compliance monitoring requirements, all as required under Section 42 of the IRC.
- q. TCAP funds shall be awarded as a loan, to be used for costs that are associated with eligible costs of a Proposed Development, as defined/restricted by HUD and may be required to be tracked on a draw-by-draw basis, as determined by HUD. These funds are also subject to the Housing Credit rent, income, use restrictions and compliance monitoring; all as required under Section 42 of the IRC. TCAP funds cannot be used for administrative costs or to cover the cost of swimming pools or any other uses prohibited by HUD guidelines, as amended.
- r. The loan structure of TCAP funds shall be non-amortizing with a balloon payment due at maturity which shall be co-terminus with the first mortgage. In the case where a traditional first mortgage is not provided, the maturity shall be 15 years after rehab if the Proposed Development is an Acquisition/Rehabilitation or at least 15 years and up to 20 years after construction if it is new construction. The TCAP loan shall have an interest rate of 0.0 percent through May 1, 2012. Thereafter, a blended interest rate shall accrue based on 1.0 percent for the portion owned by a for-profit Sponsor and 0.0 percent for the portion owned by a Non-Profit Sponsor. The debt service shall be an annual payment that is cash flow dependent. The amount of cash flow available to pay the accrued debt service on the TCAP loan will be calculated based on cash flow calculations similar to the provisions of Rule 67-48.010(6) F.A.C. Payments shall be due annually beginning in 2013. Any proforma for the Proposed Development shall assume the TCAP funds will have the interest accrue at the stated interest rate once construction has completed.
- s. Florida Housing does not expect to grant extensions to close the TCAP loan or the sub-award for Exchange funds.
- t. Shovel-Readiness and timely expenditure shall be mandated for both Exchange and TCAP funding. If Shovel-Readiness or timely expenditure cannot be met, Florida Housing may withdraw any sub-award of Exchange or award of TCAP

funding as well as any future Exchange and TCAP funding based on the facts and circumstances as presented to staff. As established by HUD, Florida Housing cannot request any TCAP funding from HUD past February 16, 2012. Unless the Treasury changes their current ruling, Florida Housing cannot request any Exchange funding from the Treasury past December 31, 2010.

u. Documentation

(1) TCAP documentation shall include the standard closing documentation, including, but not limited to, a Promissory Note, Mortgage and Security Agreement, Land Use Restriction Agreement, Compliance, Financial Monitoring and Servicing Agreement, Construction Loan Agreement, Completion and Operating Deficit Guaranty (which may be for a period of up to 15 years), Continuing, Absolute and Unconditional Guaranty of Recourse Obligations, and Environmental Indemnity Agreement.

(2) Exchange Documentation shall include a Carryover Allocation Agreement, Extended Use Agreement, Final Cost Certification Allocation, and the standard closing documentation, including, but not limited to, a Promissory Note, Mortgage and Security Agreement, Land Use Restriction Agreement, Compliance, Financial Monitoring and Servicing Agreement, Construction Loan Agreement, Completion and Operating Deficit Guaranty (which may be for a period of up to 15 years), Continuing, Absolute and Unconditional Guaranty of Recourse Obligations, and Environmental Indemnity Agreement.

v. All Proposed Developments must have nine (9) to 12-months debt service and operating expenses reserves based on market and demographic risk parameters related to their impact on the Proposed Development's ability to generate adequate net operating income. For example, a strong market or a demographic that historically has proven to generate consistently strong net operating profits for the Developments may have 9-month debt service and operating expenses reserves, whereas a weak market or a demographic that historically has not proven to generate a consistent strong net operating profit for the Developments may have

12 months. The extra reserve shall be allowed to be a line item (not a sub-set of Developer fee); however, if the reserve required by the first mortgage lender or an entity other than Florida Housing is higher than what is recommended by our Credit Underwriter, then the overage shall be a sub-set of Developer fee. Florida Housing may also require a portion of the excess cash flow to be paid into said reserve.

- w. The Applicant requesting Exchange funds must demonstrate a Good Faith Effort to obtain investment commitments for its previous HC Allocation by producing an affidavit describing the Applicant's efforts, including the date contact was made and the name of the investor contacted, name and title of the person contacted, and contact's telephone number and e-mail address. The Applicant must also provide the amount of the sales price for its Housing Credits in the Original Application, the amount of total equity to be generated by the sale, and identify the same for any offer it received most recently.
- x. Florida Housing shall require the Applicant to certify that it owns the land on which the Proposed Development is to be built or that the Applicant is the Lessee under a lease of the land on which the Proposed Development is to be built and which has a term that does not expire prior to the expiration of the Extended Use Period. Such certification must be demonstrated on or before five (5) months after the executed date of the Carryover Allocation Agreement.
- y. Florida Housing shall require the Applicant to certify that it has incurred at least 10 percent of the reasonably expected basis (10 percent test) of the Proposed Development. Such certification must be demonstrated on or before six (6) months after the executed date of the Carryover Allocation Agreement.
- z. Florida Housing shall require the Applicant to acknowledge and agree to commence construction on or before six (6) months after the executed date of the Carryover Allocation Agreement. As proof of construction commencement the Applicant shall deliver to Florida Housing a copy of the recorded Notice of Commencement from the Official Records of the applicable jurisdiction(s) relative to the Proposed Development.

## 2. TCAP Funding Priorities During Credit Underwriting



The TCAP funding for this RFP will be that which remains after funding eligible Proposals under RFP 2009-03. After reviewing the economic viability test, as required by Section 42, IRC, in the event that Florida Housing does not have a sufficient amount of TCAP funds to satisfy all intended uses, eligible Proposed Developments will receive TCAP funding in the following order of preference:

a. Gap Financing

- (1) Preference will be given to Proposed Developments that are Shovel-Ready.
- (2) Next, preference will be given to Proposed Developments where the Original Application reflects the Preservation Designation.
- (3) Next, preference will be given to Proposed Developments where the Original Application reflects the Homeless Demographic category.
- (4) Next, preference will be given to Proposed Developments that are not located in a 2009 Location A Area.
- (5) Next, preference will be given to Proposed Developments that are located in a 2009 Location A Area where there is no Guarantee Fund Development located within that county.
- (6) Within categories (1) through (5) above, the funding order will be based first on Proposed Developments with a commitment to provide 5 percent of the ELI units for Special Needs Households, and then on the relative lottery number with the lowest number funded first.

b. Deeper Targeting Units

If TCAP funding remains after satisfying the gap financing requirements of all eligible Applications, TCAP funding will be provided to Proposed Developments where the Original Application reflects the Farmworker/Commercial Fishing Worker Demographic. Following the funding order outlined in Section (a) above, preference will be given to Farmworker/Commercial Fishing Worker Proposed Developments where the Applicant has committed to set aside up to 20 percent of the Proposed Development's total

units, which were otherwise going to be units set aside at 60 percent AMI, at the greater of (i) 40 percent AMI or (ii) the Proposed Development's ELI Set-Aside AMI Level.

c. Replacing Existing Funding

If funds remain, Florida Housing may distribute TCAP or Exchange funding as follows:

- (1) First, de-obligate SAIL funds still held by Applicants that are already subject to the TCAP federal requirements and replace it, to the extent possible, with TCAP or Exchange funding.
- (2) Next, de-obligate SAIL funds still held by Applicants that are not subject to the TCAP federal requirements and replace it, to the extent possible, with TCAP or Exchange funding.
- (3) Next, de-obligate supplemental funds still held by Applicants that are already subject to the TCAP federal requirements and replace it, to the extent possible, with TCAP or Exchange funding.
- (4) And finally, de-obligate supplemental funds still held by Applicants that are not subject to the TCAP federal requirements and replace it, to the extent possible, with TCAP or Exchange funding.

3. Reporting

a. Quarterly Reporting for TCAP and Exchange Funding

(1) TCAP Funding

Within 3 Days after the end of each calendar quarter, each Applicant awarded TCAP funding must submit the following information to Florida Housing to enable Florida Housing to submit the required quarterly TCAP report to the Office of Management and Budget. The first TCAP quarterly report is due within 3 Days after the end of the third Quarter of 2009.

Any quarterly report that is not received by the due date will be assessed a late fee of \$1,000, with no grace period.

To provide the following information, Applicants must use the TCAP Quarterly Reporting form found on the Website at [http://apps.floridahousing.org/StandAlone/FHFC\\_ECM/ContentPage.aspx?PAGE=0042](http://apps.floridahousing.org/StandAlone/FHFC_ECM/ContentPage.aspx?PAGE=0042).

- (a) The total amount of TCAP funds received;
- (b) The amount of TCAP funds expended or obligated to Developments or activities, including unobligated balances;
- (c) A detailed list of all Developments or activities for which TCAP funds were expended or obligated, including:
  - i. The name of the Development
  - ii. A description of the Development
  - iii. An evaluation of the completion status of the Development
  - iv. An estimate of the number of jobs created by the Development
  - v. An estimate of the number of jobs retained by the Development

As part of its acceptance of the TCAP funding, the Applicant agrees to provide any additional information which HUD deems necessary to comply with the TCAP provisions and American Recovery and Reinvestment Act guidance.

(2) Exchange Funding

Within 3 Days after the end of each calendar quarter, each Applicant awarded Exchange funding must submit the following information to Florida Housing to enable Florida Housing to submit the required quarterly Exchange report to the Treasury. The first TCAP quarterly report is due within 3 Days after the end of the third Quarter of 2009.

Any quarterly report that is not received by the due date will be assessed a late fee of \$1,000, with no grace period.

To provide the following information, Applicants must use the Exchange Quarterly Reporting form found on the Website at [http://apps.floridahousing.org/StandAlone/FHFC\\_ECM/ContentPage.aspx?PAGE=0042](http://apps.floridahousing.org/StandAlone/FHFC_ECM/ContentPage.aspx?PAGE=0042).

- (a) Name of the recipient entity
- (b) Name of the Development
- (c) Brief description of the Development
- (d) Location of the Development: city/county, State, zip code
- (e) Number of construction jobs created
- (f) Number of construction jobs retained
- (g) Number of non-construction jobs created
- (h) Number of non-construction jobs retained
- (i) Number of total housing units newly constructed
- (j) Number of total housing units rehabilitated
- (k) Number of low-income housing units newly constructed
- (l) Number of low-income housing units rehabilitated

As part of its acceptance of the Exchange funding, the Applicant agrees to provide any additional information which the Treasury deems necessary to comply with Section 162 of the Act and American Recovery and Reinvestment Act guidance.

**b. Bimonthly Reporting for Exchange Funding and Nominal HC**

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

**4. Federal Requirements**

- a. Exchange funds are subject to Fair Housing Act and other federal requirements that apply to Developments funded under the Housing Credit Program.
- b. TCAP funds are subject to the requirements applicable to federal financial assistance and Applicants shall be required to comply with the following federal requirements:

- Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR Part 100 and the regulations at 24 CFR Part 107 (Equal Opportunity in Housing).
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1.
- The Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146 "Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance."
- Affirmatively Furthering Fair Housing – Florida Housing shall establish an affirmative fair housing marketing plan for its TCAP Developments. Applicants receiving TCAP funds shall be required to follow the plan when marketing the TCAP units. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. The affirmative marketing requirements and procedures adopted by Florida Housing shall include:
  - Methods for informing the public, owners and potential tenants about Federal fair housing laws and the grantee's affirmative marketing policy;
  - Requirements and practices each owner must adhere to in order to carry out the grantee's affirmative marketing procedures and requirements;
  - Procedures to be used by owners to inform and solicit applications from persons in the housing market areas that are not likely to apply for the housing without special outreach. Special outreach, as appropriate, includes but is not limited to, the translation of marketing material for persons who are limited English proficient; the placement of translated marketing material in minority owned media; and the provision of meaningful access concerning the residential rental project (e.g. providing translated information about application procedures, tenancy and other project amenities);
  - Records that will be kept describing actions taken by the grantee and by owners to affirmatively market units and records to assess the results of these actions; and
  - A description of how the grantee will annually assess the success of affirmative marketing actions and what

corrective actions will be taken where affirmative marketing requirements are not met.

- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8 “Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development.” Section 504 of the Rehabilitation Act of 1973 applies to all TCAP projects. For new construction projects and projects undergoing substantial rehabilitation, 5 percent of the units must be accessible to persons with mobility impairments and 2 percent of the units must be accessible to persons with hearing or vision impairments (See 24 CFR 8.22.) Substantial rehabilitation for a multifamily rental project is defined in Section 24 CFR 8.23 as a project with 15 or more units for which the alterations would equal more than 75 percent of the replacement cost for the facility. Modifications to projects to comply with Section 504 requirements are eligible costs under TCAP. However, compliance with Section 504 requirements may be infeasible or impracticable for some projects, depending on where they are in the development process. If a new construction or substantial rehabilitation project is underway or has already been completed, and it cannot be modified to meet the accessibility requirements established by Section 504, it is ineligible to receive TCAP assistance. For projects in which the rehabilitation would not be considered substantial, the Section 504 provisions are applicable only to the maximum extent feasible, i.e., not required if it would impose undue financial and administrative burden. See 24 CFR 8.23.
- National Environmental Policy Act and Related Laws (Environmental review responsibilities) and implementing regulations at 24 CFR Part 58.
- The Recovery Act expressly applies section 288 of the HOME statute, which requires environmental review under the National Environmental Policy Act (NEPA) of 1969 and related federal environmental authorities and regulations at 24 CFR Part 58 “Environmental Review Procedures. No TCAP funds may be committed to a project before completion of the environmental review process. Once an owner applies for TCAP funds, committing TCAP or any other funds to or undertaking any “choice-limiting” activity prior to successful completion of the environmental clearance review (i.e., HUD approval of the Request for Release of Funds), is

prohibited. This includes any activity that will result in a physical change and/or acquisition, including leasing, or disposition of real property. Performing a choice-limiting action may disqualify a project from receiving any federal funds. See 24 CFR Part 58 for general information about environmental review requirements at [http://www.access.gpo.gov/nara/cfr/waisidx\\_04/24cfr58\\_04.html](http://www.access.gpo.gov/nara/cfr/waisidx_04/24cfr58_04.html) or

<http://www.hud.gov/offices/cpd/environment/index.efm>. If a federal environmental review has already been completed for a project, providing TCAP funds to the project may not require an additional environmental review. For example, if the state housing credit agency or another agency or department of the State performed an earlier environmental clearance for HUD assistance on the project that is now receiving TCAP assistance from the state, and neither the project nor the environmental conditions have changed since the previous review, then no new environmental clearance is required. See 24 CFR 58.35(b)(7). Applicants unfamiliar with the HUD environmental requirements are strongly advised to seek technical assistance and training regarding compliance with NEPA requirements. Environmental officers stationed in HUD field offices are ready to assist.

- The Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992 and implementing regulations at 24 CFR Part 35 are applicable to housing that receives Federal assistance.
- Davis-Bacon Prevailing Wages - Under section 1606 of Division A of the American Recovery and Reinvestment Act of 2009, contractors and subcontractors hired with Recovery Act funds are required to pay prevailing wages to laborers and mechanics in compliance with the Davis-Bacon Act. In the case of projects already under construction, it may be possible to obtain a determination, under 29 CFR 1.6(g), that Davis-Bacon requirements apply prospectively to the construction project, as of the date of the TCAP award. Labor Relations Specialists in HUD Field Offices are available to assist grantees with questions related to these requirements.
- Anti-Lobbying” Restrictions (Restrictions on lobbying in 31 USC 1352 and implementing regulations at 24 CFR Part 87 “New Restrictions on Lobbying”.) This statute prohibits the use of funds appropriated by any act by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or

attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with covered Federal action.

- The Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq., as implemented at 24 CFR Part 21 “Government-Wide Requirements for Drug-Free Workplace (Grants).”) This statute prohibits the receipt of a grant from any Federal agency unless the recipient agrees to provide and certify to a drug-free workplace.

5. Training and Technical Assistance

Applicants are encouraged to retain subject matter experts to assist them in complying with federal requirements, which may help avoid delays in committing and expending funds and findings of noncompliance. Costs incurred by Applicants to comply with federal requirements are eligible TCAP costs.

6. Compliance and Asset Management

a. Asset Management

Florida Housing shall perform asset management functions so as to ensure compliance with Section 42 of the IRC and the regulations there under (including Title 26 Code of Federal Regulations section 1.42.9), and the long-term viability of the buildings funded by (i) a Exchange Sub-award under the Act in accordance with Section 160-2(c)(3) of the Act , or (ii) a TCAP loan, or (iii) a combined Exchange Sub-award and TCAP loan.

b. Compliance

All Applicants receiving an award of Exchange and/or TCAP funding will be required to comply with the Housing Credit and Home Program compliance requirements of Rule Chapter 67-53, F.A.C., as applicable.

7. Recapture of Exchange Funds

Each LURA will include a requirement providing for recapture to assure that the building remains a qualified low-income building during the 15-year Compliance Period. As part of its acceptance of the Exchange funding, the Sub-award Applicant understands that any amount subject to recapture becomes a debt owed to the United States payable to the General Fund of the Treasury and enforceable



by all available means against any assets of the Sub-award Applicant.

8. Recapture of TCAP Funds

Each LURA will include a requirement providing for recapture to assure that the building remains a qualified low-income building during the 15-year Compliance Period.

9. Written Agreements

a. Written Agreements (LURA) and Disbursement of Exchange and, if applicable, TCAP Funding

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

(1) For the Exchange Funds –

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

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

The LURA must be signed and dated by the Applicant and Florida Housing before any Exchange funds can be disbursed to the Sub-awardee.

(2) For TCAP Funds, if applicable -

The LURA shall set forth all of the TCAP Program and crosscutting federal grant requirements applicable to the TCAP funding, including a schedule for the expenditure of the TCAP funds and the circumstances under which TCAP funds will be recaptured if the Applicant fails to meet the schedule.

The LURA cannot be executed until environmental clearance for the project is completed and the Request for Release of Funds (RROF) is approved.

The LURA must be signed and dated by the Applicant and Florida Housing before any TCAP funds can be disbursed.

- b. Extended Use Agreement (EUA) for Nominal HC, as required by Rule 67-48.029, F.A.C.

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

The Applicant must provide a properly completed and executed Exhibit A to RFP 2009-04, which includes the following information:

- A. Threshold Items:
  - 1. Name of Proposed Development
  - 2. Application Number of the Original Application.
  - 3. Indicate whether federal funds (other than ARRA funding) that require Davis-Bacon and NEPA will be used for the Proposed Development.
  - 4. Funding Request - Indicate the funding the Applicant is requesting – Exchange Funding Only or Exchange funding with TCAP and Nominal HC.
  - 5. Demonstration of the Applicant's Good Faith Effort - The Applicant must enclose an affidavit demonstrating the Applicant's efforts to obtain an investment commitment for its previously awarded 9 percent Housing Credit Allocation.

The affidavit must briefly describe the Applicant's efforts, including the following information:

- a. Name of each investor entity contacted.
- b. Name, title, telephone number and e-mail address of the person(s) contacted.
- c. Date(s) contact was made.

- d. Amount of the sales price for the Applicant's Housing Credits as stated in its Original Application, including the amount of total equity to be generated by the sale.
- e. The following information for any recent offers Applicant has received: amount of the sales price for the Applicant's Housing Credits and the amount of total equity to be generated by the sale.

Florida Housing may contact one or more of the investors to verify the statements made in the Applicant's affidavit.

6. Total Set-Aside Breakdown Chart

- a. Applicants must indicate the percentage of residential units, stated in whole numbers, to be set aside at each selected AMI level including:
  - (1) ELI Set-Aside commitment, based on the ELI Set-Aside AMI Level on the following 2009 ELI County Chart.

2009 ELI County Chart			
County	ELI Set-Aside AMI Level	County	ELI Set-Aside AMI Level
Bay	40%	Marion	40%
Brevard	33%	Miami-Dade	33%
Broward	28%	Monroe	28%
Escambia	35%	Okaloosa	30%
Highlands	45%	Palm Beach	28%
Hillsborough	35%	Pinellas	35%
Jackson	45%	Polk	40%
Lake	33%	St. Lucie	33%
Lee	33%	Volusia	40%
Leon	33%	Walton	40%
Manatee	33%		

- (2) Units voluntarily restricted to an AMI lower than 60 percent are available to an Applicant whose Original Application for the Proposed Development reflects the Farmworker/Commercial Fishing Worker Demographic category. Those select Applicants have the opportunity to commit to set aside up to 20 percent of the Proposed Development's total units which were otherwise going to be units set aside at 60 percent of AMI, at the greater of (a) 40 percent AMI or (b) the Proposed Development's ELI Set-Aside AMI Level. If the Applicant chooses this option, the number of additional units this voluntary request adds (partial units must be rounded up) shall

be multiplied by \$60,000 and the resulting amount shall be offered as additional TCAP funding, to the extent TCAP funds are available.

The loan structure for these TCAP funds shall be the same as the TCAP gap financing loan structure.

- (3) Any additional set-aside commitments at 60 percent AMI or less

b. Total Set-Aside Percentage

Applicants with a Proposed Development located in a 2009 Location A Area must commit to set aside a total of at least 90 percent of the Development's residential units at 60 percent AMI or less. Applicants with a Proposed Development that is not located in a 2009 Location Area must commit to set aside a total of at least 70 percent of the Proposed Development's residential units at 60 percent AMI or less.

7. Contact Person - Name, mailing address, telephone number and e-mail address.
8. State the anticipated placed-in-service date for the Proposed Development.
9. Indicate whether the Applicant has increased the total number of units stated in the Original Application.
10. Indicate whether the Applicant commits to set-aside 5 percent of the ELI units for Special Needs Households (as defined in Rule 67-48.002, F.A.C.)

B. Ranking Preference

Indicate whether the Proposed Development is Shovel Ready.

## **SECTION SEVEN EVALUATION PROCESS**

Individual Committee members shall evaluate the Proposals independently. As indicated in this section, all items presented in Section Six of this RFP are Threshold Items. If any of the items are not submitted, the Proposal will be rejected. The individual Committee members shall evaluate the Proposals by reviewing the answers to determine if threshold is met for each Application. The Committee shall conduct one public meeting during which the Committee may discuss their evaluations, select Applicants most likely

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

## **SECTION EIGHT AWARD PROCESS**

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

**Exhibit A to RFP 2009-04 - Request for Exchange Funding Only or Exchange Funding with TCAP Funding/Nominal HC**

**A. Threshold Items:**

- 1 Name of Proposed Development \_\_\_\_\_ 2 Original Application No. \_\_\_\_\_
- 3 Will federal funds (other than ARRA funding) requiring Davis-Bacon and NEPA be used for the Proposed Development?  Yes  No
- 4 Applicant is Requesting  Exchange Funding Only or  Exchange Funding with TCAP Funding and Nominal HC
- 5 An affidavit demonstrating the Applicant's Good Faith Effort to obtain an investor is enclosed with this Exhibit A form.  Yes  No
- 6 Total Set-Aside Breakdown Chart 7 Contact Information.

Percentage of Residential Units	AMI Level
%	At or Below 25%
%	At or Below 28%
%	At or Below 30%
%	At or Below 33%
%	At or Below 35%
%	At or Below 40%
%	At or Below 45%
%	At or Below 50%
%	At or Below 60%
Total Set-Aside Percentage.	%

\_\_\_\_\_  
Name

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Telephone No

\_\_\_\_\_  
E-Mail Address

8. Anticipated Placed-In-Service Date \_\_\_\_\_ 9. Has the total number of units in the Proposed Development increased  Yes  No
- 10 Does the Applicant commit to set aside 5 percent of the ELI units for Special Needs Households?  Yes  No

**B. Ranking Preference:**

Proposed Development is Shovel Ready:  Yes  No

The Applicant certifies that the Proposed Development can be completed and operating within the development schedule and budget submitted to Florida Housing and the Credit Underwriter.

The Applicant commits (i) that no qualified residents will be refused occupancy because they have Section 8 vouchers or certificates, (ii) to actively seek tenants from public housing waiting lists, and (iii) to participate in the statewide housing locator system as required by Florida Housing.

The Applicant and all Financial Beneficiaries have read all applicable Florida Housing rules governing this RFP and have read the Instructions for completing this RFP, have read, understand and will comply with section 42 of the Internal Revenue Code, as amended, and all related federal regulations, including the provisions of the Exchange and/or TCAP Program under the American Recovery and Reinvestment Act of 2009, and will abide by the applicable Florida Statutes and administrative rules, including, but not limited to, Rule Chapter 67-48, Florida Administrative Code, and Request for Proposal 2009-04.

The undersigned understands and agrees that in the event that the Applicant is invited to enter credit underwriting, the Applicant must submit IRS Form 8821 for all Financial Beneficiaries in order to obtain a recommendation for a Housing Credit Allocation.

The undersigned is authorized to bind all Financial Beneficiaries to this certification and warranty of truthfulness and completeness of the Application.

Under the penalties of perjury, I declare and certify that I have read the foregoing and that the information is true, correct and complete. I certify that all information provided in this Proposal is true and correct, that I am authorized to sign this Proposal as the Applicant and that I am in compliance with all requirements of the RFP.

\_\_\_\_\_  
Signature of Applicant Name (typed or printed)

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



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AUG 11 2009  
FLORIDA HOUSING FINANCE CORPORATION

August 5, 2009

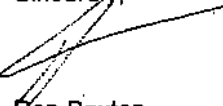
**Via Hand Delivery**

Sherry Green  
Contracts Administrator  
Florida Housing Finance Corporation  
227 N. Bronough St., Suite 5000  
Tallahassee, FL 32301-1329

Re: Request for Proposals ("RFP") #2009-04 – "Tax Credit Exchange Program (Exchange) Funding Only or Exchange Funding With Tax Credit Assistance Program (TCAP) Funding And a Nominal Amount of Nine Percent Low-Income Housing Tax Credits For Applicants That, as of February 17, 2009, Had an Active Award of 9 Percent Housing Credits"

Dear Ms. Green:

On behalf of Elmwood Terrace Limited Partnership ("Elmwood"), this letter serves as Elmwood's notice of protest, pursuant to s. 120.57(3), Florida Statutes, and advises the Florida Housing Finance Corporation that Elmwood intends to protest the terms of the above-referenced RFP.

Sincerely,  
  
Don Paxton

cc: Wellington Meffert, Esq.  
Corporation Clerk

