



**Housing Finance Authority
of Palm Beach County**

100 Australian Avenue, Suite 410
West Palm Beach, FL 33406
(561) 233-3656
FAX: (561) 233-3657
www.pbchfa.org

Chairperson

Charles V. St. Lawrence

Vice Chair

Clark D. Bennett

Secretary

Robin B. Henderson

Raymond L. Popkin

Bobby "Tony" Smith

Jimmy L. Weatherspoon

Executive Director

David M. Brandt
dbrandt@pbcgov.org
(561) 233-3652

Administrative Assistant

Jennifer M. Hamilton
jhamilto@pbcgov.org
(561) 233-3656

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To: Housing Finance Authority

From: Executive Director

RE: November 18, 2016 regular meeting – agenda action items

Dated: November 9, 2016

V. "Old Business" items:

Item (a.) Approve accountant's revised engagement letter

Included on the September meeting agenda was a letter of understanding from the Goldstein, Zugman, Weinstein & Poole outlining certain changes that CPA firms are required to include in engagements resulting from the AICPA's accounting and review services committee efforts to clarify and revise standards for reviews, compilations, and engagements to prepare financial statements. This was discussed at the meeting and a motion was approved to accept and file that July 12, 2016 letter with the accountant's current engagement letter. Mr. Weinstein subsequently advised me that it would be necessary for the Authority to approve and execute a revised engagement letter which incorporates the changes previously discussed. The revised engagement letter will then be submitted for approval by the Board of County Commissioners in accordance with the Authority ordinance.

Staff recommends a motion: to approve the revised engagement letter dated June 27, 2016 with Goldstein, Zugman, Weinstein & Poole, LLC, and authorize execution thereof by the Chair or Vice Chair.

Item (b.) Lake Delray Apartments multifamily financing – approval of issuance of the Governmental Lender Note

The Authority initially considered at the May 13, 2016 the application from SHAG Holdings, LLC, (principals are Darren Smith and Tim Henzy) together with ADC Communities, which is owned by the principals of The Alliant Company, for the issuance of short-term bonds to finance a portion of the cost of the acquisition and substantial rehabilitation of Lake Delray Apartments. The project consists of 404 units of senior housing located east of I-95 and south of Linton Boulevard in the City of Delray Beach. The Delray Housing Group, Inc., an entity of the Delray Beach Housing Authority, will be the non-controlling general partner and property manager. The Authority approved an inducement in the amount of \$34M; at the September 9 meeting certain changes to the financing structure were presented and approved which included a switch to a Freddie Mac "Direct Purchase of Tax Exempt Loan" initially funded by Walker & Dunlap and then delivered to Freddie Mac within 30 days of closing, and an increase in funding amount to \$37.5M. The Division of Bond Finance is expected to provide e-mail confirmation of the \$37.5M of 2016 private activity bond allocation just prior to the November 18 meeting.

Updates subsequent to September 9 presentation: I described in the September agenda memorandum this tax exempt loan as having a put option/mandatory redemption in year-15 but it is actually a balloon maturity 15 years after the initial two year construction period. The developer has also requested, and Walker & Dunlop is in the process of getting Freddie Mac approval of, the right to incur up to \$2M of subordinate debt payable from excess cash flow for additional/alternate identified capital improvements for which funding is not currently available.

Credit Underwriting Report: The full credit underwriting report ("CUR") from Seltzer Management Group, Inc. ("Seltzer") dated November 9 for "Lake Delray" apartments has been posted to the Authority's website under the November 18, 2016 meeting agenda. Included in the e-mailed board agenda materials is the "Report Summary" in which Seltzer recommends the issuance of the \$37.5M Note (the "Note").

The Note is secured solely from proceeds of the purchase and funding by Walker & Dunlop ("W&D") who will approve rehab period disbursements during the 24 month construction period and continue to service the project loan until its maturity 15 years thereafter. Total sources of funding for the project are \$65M (\$161K per unit) which in addition to proceeds of the Note includes \$24.2M of equity (Alliant Capital), and \$3.4M of project income during the construction period. These funds will be applied to the \$33.2M purchase price (\$82k per unit), \$16.5M of construction/rehab costs (\$41K per unit), \$4.8M of financing costs (including \$2.5M capitalized interest and \$1.1M of required reserves), \$2.6M of general development costs, a \$1.85M prepayment penalty on the existing FHA first mortgage to be repaid, and \$6M of developer fee (an additional \$4M of deferred developer fee can be paid from future project excess cash flow).

The Note amount of \$37.5M results in a loan-to-value ratio of 85.5% based on restricted rents (194 units at Section 8 rents of \$1,011 per month, one-bed units at \$697 and two-bedroom at \$829), and a 1.205x debt service coverage ratio based on an assumed all-in rate of 4.07% the latter derived from a 10-year Treasury note rate of 1.73% (it is anticipated that the rate lock will occur on or about November 21) plus 219 basis points and the 15 basis point annual Authority Fee. The “break-even” ratio (debt service + operating expense/gross revenue) is 86.3%; the CU indicates that ratios at or below 85% are considered very good but this property is in a strong market, will have a HAP contract on almost half of the units, and has a history of being at or near 100% occupancy.

During the credit underwriting process Seltzer’s underwriter advised that a similar Freddie Mac transaction with the Florida Housing Finance Corporation (“FHFC”) as issuer included a provision in the funding loan agreement whereby at maturity, if the project loan has not been refinanced or otherwise paid off, that a “Mortgage Assignment Event” is triggered whereby FHFC’s governmental lender note is cancelled and the mortgage reassigned back to the servicer thereby removing a potential bond default scenario. WD’s counsel advised that Freddie Mac made this one exception for that FHFC deal but has not accepted this provision in other transactions. Subsequent inquiry by Seltzer revealed that the issue arose during State Board of Administration approval that FHFC transaction, and that while this is not the result of a FHFC policy/position they anticipate that future issuance of FHFC bond deals with balloon maturities or put options/mandatory redemptions will have to have this assignment event provision. The Authority, as well as FHFC and other local HFA’s, have issued non-rated bond/loan transactions with a put/mandatory redemption provision in lieu of a balloon maturity at the direction of the loan servicer/bondholder. WD submitted a letter requesting that assignment event language **not be** included in Note documents. Staff and your professionals are of the opinion that the Authority is in virtually the same position on this Note transaction without the assignment event language as it is on the previous transactions that have a mandatory put feature and therefore recommend the Authority accept W&D’s request.

Bond documents: Included in the e-mailed agenda materials is Resolution No. R-2016-05 (without exhibits) prepared by Greenberg Traurig as bond counsel authorizing the issuance of the Note and approving the forms of: the Funding Loan Agreement (similar to a trust indenture) with Walker & Dunlop, the Governmental Lender Note (rather than bonds), the Project Loan Agreement with the borrower, the Project Note from the borrower, the Security Instrument (mortgage and assignment thereof to US Bank to secure the Governmental Lender Note), the Land Use Restriction Agreement, the Fee Guaranty and Environmental Indemnity Agreement (with the borrower limited partnership entity, Darren Smith and Timothy Henzy, individually, and ADC Communities LLC); appointing US Bank as fiscal agent; determining the need for a negotiated sale of the Note; and authorizing Authority officers to execute the documents for the issuance of the Note. The resolution and all exhibits are posted to the Authority’s website under the November 18, 2016 meeting agenda.

The resolution also approves the Authority’s acceptance and filing of the CUR (Section 14) and a waiver (Section 17) of the Authority’s policy of one bond/note on non-rated debt by allowing a

participation purchase of not less than 25% of Note by an accredited investor or qualified institutional investor with a traveling investor letter, or without such a letter to a trust that sells beneficial interests to only accredited investors.

Staff recommends a motion: to approve Resolution No. R-2016-05 authorizing the issuance of not to exceed a \$37,500,000 Multifamily Note for Lake Delray apartments.

Item (c.) New South Bay Villas multifamily financing – consider guidelines waiver request

The Authority has a stated policy for the issuance of un-rated bonds for many years and is posted on our website. These guidelines require, among other things, that the bonds be issued as a single bond, can only be sold to an accredited investor with a traveling letter, and that the bonds not be eligible for book entry (i.e. electronic/DTC registration). The guidelines allow the board to waive in its sole discretion any of these restrictions, and while it has on a number of occasions waived the single bond and traveling investor letter requirements, to date it has not permitted book-entry on non-rated debt. R4 Capital Funding (the project loan originator and servicer) has advised staff that the bank holding company that will be the ultimate purchaser (RBC Capital Markets is a facilitating the sale) is requesting that the bonds be issued in book entry as they are not equipped to hold a physical bond. Staff and both of the Authority's bond counsel firms discussed this at length and have come up with a set of limitations on the bonds should they be book entry: 1) issuance of one bond that cannot be divided; 2) resale only to Qualified Institutional Buyers known as QIB's; 3) an initial investor letter from both the bond underwriter and initial bond purchaser; 4) a traveling investor letter; and 5) the Environmental Indemnity and Fee Guaranty Agreement will include indemnity for trading in violation of above conditions. R4 has provided a letter indicating that the purchaser has agreed to these items.

Staff recommends a motion: to waive the book-entry prohibition for the bonds expected to be issued for the New South Bay Villas project.

Item (d.) Consider redemption of Single Family Mortgage Revenue Bonds, Series 2004, Sub-Series 2006-1

The Authority approved in 2004 a master trust indenture for the subsequent issuance of one or more sub series of tax exempt single family mortgage revenue bonds to fund its first time homebuyer loan program. Only one series of bonds, the Sub-Series 2006-1 ("2006-1") in the principal amount of \$1,588,520, were issued under this indenture prior to the housing market collapse and economic recession that followed shortly thereafter. The 2006-1 bonds are the only remaining outstanding single family bonds of the Authority. The terms of the master indenture allow for special mandatory redemption at any time the par amount of bonds

outstanding is less than 10% of the issued amount (i.e. \$158K), or at par plus a 2% premium beginning February 1, 2017. The Authority attempted to negotiate beginning in 2010 a purchase of the bonds (then about \$1.1M outstanding) from the bondholder, Fannie Mae, but their market premium was deemed too high (108 at the time) so the board authorized a redemption at par in October 2014 when the outstanding amount was \$209K. The signification reduction in outstanding amount from 2010 to 2014 was the result of loan repayments, but as you can see there has only been normal monthly principal amortization since 2014 on the remaining three loans. US Bank advised in mid-2014 that the reduction in outstanding loan balance would in the inability for the program to cover the issuer fee going forward, and the Authority also determined to forgo the issuer fee and no longer do accounting and auditing of the 2006-1 bonds. As of the October 1 the 2006-1 bonds outstanding was \$193.8K. Using the Clerks investment pool return for FY 2015/16 of 1.4%, the just under 5% average pass-through rate on the 2006-1 MBS should earn back a 2% redemption premium in about six months assuming no loan prepayments. If the outstanding amount of 2006-1 bonds is not below the 10% threshold for special mandatory redemption before February 1, 2017, I suggest an optional redemption on or as soon thereafter as can be arranged with US Bank as trustee.

Staff recommends a motion: to authorize, in accordance with the trust indenture and series supplement for the 2006-1 bonds, either i. special mandatory redemption at par under Section 3.02 (d) of the trust indenture to the extent permissible before February 1, 2017, or ii. optional redemption at 102 on or after the February 1, 2017 first optional redemption date. The executive director is authorized to transfer from the Custody Account the amount necessary for such redemption to US Bank as trustee for the 2006-1 bonds.

VI. "New Business" items:

Item (a.) Consider Master line of Credit Agreement with the West Palm Beach Housing Authority

As you know the Authority has had two previous rehabilitation loans since 2014 with the West Palm Beach Housing Authority ("WPBHA") in the amount \$250K and \$500K. Both of these loans were secured by a pledge of grant funds received by the WPBHA on a reimbursement basis. Both loans were project specific and have since been repaid in full. Laurel Robinson contacted me early in September to say the City of West Palm Beach had given conditional approval for \$398K of HOME funds to rehab a 5-unit rental complex for youth aging out of foster care owned by an entity of the Friendship Missionary Baptist Church where the WPBHA's Baobab not-for-profit would be the developer. She indicated that the maximum amount of funding outstanding at any one time for this project would not exceed \$150K. She said that the WPBHA anticipated other similar opportunities over the next several years. I suggested to her that rather than creating a new loan program for each project that I would recommend to the

Authority that it enter into a master line of credit with the maximum dollar amount set by the board but that each individual project loan could be entered into without having to get board approval each time. These individual project loans that are to be backstopped with a pledge of grant funds would not require additional security such as a first mortgage on the property.

Included in the agenda materials is a request from the WPBHA for a revolving line of credit and a loan application form for the Friendship Court project. Friendship Court LLC will be the party to the HOME loan with the city, Baobab will be the developer/general contractor, and WPBHA will lend its revolving loan proceeds to fund the rehab. Friendship Court will then repay Baobab/WPBHA who will then repay the revolving loan. Ms. Robinson advised that she is prepared to enter into the master line of credit at this time but the project needs an additional signoff from the city's building department before they can finalize the development agreement with Friendship Court LLC. Included in the agenda back up is the form of Master Line of Credit Agreement and form of project promissory note.

Staff recommends a motion: to approve Resolution No. R-2016-06 approving a master line of credit agreement in an amount not to exceed \$250,000 with the West Palm Beach Housing Authority.

Item (b.) Multifamily bond issues

- i. Accounting and auditing of outstanding bond issues

The board discussed at the September meeting whether to continue with the preparation of financial statements and separate audit reports for its outstanding multifamily ("MF") bond issues, and if so, whether developers of newly issued MF bonds should be charged for such costs. There are no requirements nor obligation under the bond documents for audited financial statements of the bond issues; developer/owners are typically required to provide the equity partner and loan servicer/bondholder with audited financials of the project owner entity. Bonds that are publically issued are subject to continuing disclosure agreements, and the audited financials of the project are posted to EMMA. To the best of my knowledge this Authority, and the Broward and Miami-Dade HFA's are the last local HFA's that are still producing individual MF bond issue audits, and Broward has not required them for MF bonds issued after 2008. Orange HFA has a consolidated presentation of all its outstanding bonds in their general purpose audit report, a few other HFA's also include outstanding single family bonds, but most have a statement in the footnotes that bond issues are "conduit" and/or not a debt and therefore not reported as liabilities of the HFA. Under a MF conduit bond the private party borrower is responsible for repayment of the debt and payment of expenses rather than the issuer. Unlike single family any residual estate under a MF bond issuance is remitted to the borrower rather than the HFA. Under the Authority's current guidelines for MF bond issuance developers pay an annual fee equal to 15 basis points (.15%) of bonds issued which is deposited to the general fund, and the Authority then pays for accounting and auditing costs of about \$3K annually for each new issue.

The current engagement letters with our accountants and auditors provide for services through the fiscal year ended September 30, 2018 and September 30, 2017, respectively. These are the last 3-year extensions of original engagements entered into following a Request for Proposal process back in 2009. We will need to go through the RFP process again in the fall of 2017 or early 2018 as Authority and PBC policies provide for an initial 3-year engagement with up to two 3-year extensions for a total contract period of 9 years. Under the current accountant engagement/contract their fee is \$44K for the general fund audit and 20 multifamily bond audits, and allows for the Authority prior to December 31 of each year to opt out of performing services on outstanding multi-family (MF) bond issues for the following September 30 fiscal year end. Elimination of MF bond audits would reduce the annual accounting fee to \$12K. Under the current audit engagement/contract their fee is \$34.2K for the general fund audit and about \$37K for 20 multifamily bond audits, and allows for the Authority prior to October 1 of each year to opt out of performing services on outstanding multi-family (MF) bond issues for the following September 30 fiscal year end. Elimination of MF bond audits would reduce the annual audit fee by \$1,379 per issue or \$27,580 resulting in an audit fee of \$43.7K. Using 20 outstanding MF bond issues this would reduce the total accounting and auditing cost from \$115.2K down to \$55.7K which would be a reduction of almost \$60K. Based upon the contract language as of the date of November meeting the Authority is committed to the engagement of an audit of the MF bond issues for the fiscal year ended September 30, 2016 and 2017 the latter being the last year of the current audit contract.

Staff recommends a motion: to discontinue the preparation of financial statements and the audit thereof of its outstanding multifamily bond issues following the audited financial statements for September 30, 2017.

ii. Review of fee structure

In connection with the discussion at the September 9 meeting on payment of general counsel expenses for MF transactions prior to the issuance of bonds, the board asked me to look at our multifamily fee structure and come back with any recommendations. The preliminary fees received by the Authority from the developer are \$1,500 upon submission of the application and \$6,000 to request the TEFRA hearing. Application fees for other HFA's range from \$1,500 up to 10 basis points of anticipated bonds with a minimum of \$5,000, while TEFRA fees range from zero to \$6,000. FHFC is \$3K and \$1K, respectively. Our bond closing fee and annual issuer fee of 20 and 15 basis points (a basis point is .01%), respectively, while those of FHFC are 40bps and 24bps. Other HFA's closing and annual fees range from 10bps to 75bps, and 12.5bps to 30bps, respectively. I would not suggest any change to our current schedule of fees.

I will make a procedural change, which is permitted under our guidelines, to collect the TEFRA fee as part of the inducement resolution approval/TERFA hearing process rather than separately at a later date. This would limit the cost for a developer who needs only to submit an application to the Authority to obtain a bond issuer letter for purposes of applying in a competitive FHFC SAIL funding round to just our \$1.5K application fee. If the project receives

an award the developer would then seek inducement from the Authority at which time the TEFRA fee would be due. Collecting the TEFRA fee at this time should give the Authority almost complete assurance that it would not have to come out of pocket beyond the amount of fees collected for counsel costs.

During the previous discussion of this matter it was asked if bond counsel had been paid for any time on transactions that did not result in a bond closing. I told the board they had not. They have however been reimbursed the \$100 private activity bond allocation request fee charged by the Division of Bond Finance. Subsequent to that discussion I did receive a request from Greenberg Traurig for the \$100 filing fee for the Royal Palm Place project and \$500 of time. The reason for the invoice is that I had originally assigned this transaction to them under our bond counsel rotation policy but subsequently reassigned it to BMO when one of their transactions went away.

Staff recommends a motion: to authorize the payment to Greenberg Traurig of their invoice for \$600 dated October 20, 2016 in the next general fund payment requisition.

iii. General counsel engagement

You will recall the board discussed at the September meeting my request to affirm general counsel Greenspoon Marder's ("GC") fee arrangement concerning multifamily ("MF") project applications. To summarize GC has bills the Authority on an hourly basis for time expended on a MF deal from the point of review of the application up to the point where they have established a separate billing account in the name of the developer/borrower. This has resulted in hourly billing typically through inducement of the project but sometimes until the TEFRA hearing and BoCC approval process is completed. The Authority at that time approved a motion to direct general counsel to prepare a memorandum of understanding clarifying compensation for services on multifamily projects during the preliminary stages of consideration by the Authority.

Staff recommends a motion: to accept and file the Greenspoon Marder "Memorandum of Clarification" concerning the Contract for Legal Representation with the Authority dated November 7, 2011.

Item (c.) Consider policy for future housing conference attendance

Under "Matters of Authority Members" at the last meeting it was suggested that the board allow members to attend two housing conferences a year without the need to seek prior board consideration as long as these sessions were from a list previously approved from time to time by the board. Initial recommendations include the two that Authority is also a member, NALHFA and FL ALHFA, and the Florida Housing Coalition annual conference. Ray Popkin

recommended the Smith's Affordable Housing Conference, and Helen Feinberg suggested sessions of the National Housing & Rehabilitation Association, the Novogradac Affordable Housing Conference, and the Affordable Housing Finance Live Conference.

Staff recommends a motion: to allow, without board pre-approval, the attendance of up to two affordable housing conferences in any calendar year if such conference is on the list of approved conferences, and to authorize staff to prepare a list of conferences for approval at the next meeting.

Item (d.) Approve 2017 meeting calendar

Enclosed in the agenda materials is the confirmed schedule of meeting dates for calendar 2017 in the McEaddy Conference Room reserved from 9am to 11am. All are the second Friday of the month except for July 21 (week after FL ALHFA conference) and November 17, which are the third Friday. The second Friday in November falls on Veterans Day which is a PBC holiday.

Staff recommends a motion: to approve the 2017 regular meeting calendar dates.
