

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Lakeview Tower Venture LP

FHFC CASE NO.: 2020-051VW

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**ORDER GRANTING WAIVER OF RULE 67-21.003(1)(b)**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 4, 2020, pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on August 19, 2020, from Lakeview Tower Venture LP (“Petitioner”). Notice of the Petition was published on August 20, 2020, in Volume 46, Number 163, of the Florida Administrative Register. No public comments regarding the petition have been received. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the “Board”) of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. Petitioner has applied to the Housing Finance Authority of Polk County requesting \$20,000,000 in tax exempt bonds, and has also requested \$803,699 in Non-Competitive Housing Credits to assist in the acquisition and rehabilitation of Lakeview Tower Apartments in Polk County, Florida.
3. Rule 67-21.003(1)(b), Fla. Admin. Code, provides:

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HOUSING FINANCE CORPORATION

*Tom Deamory* / DATE: 9/4/2020

(b) If the NC Award will not be in conjunction with other Corporation funding made available through the competitive solicitation funding process outlined in rule Chapter 67-60, F.A.C., the Applicant shall utilize the Non-Competitive Application Package in effect at the time the Applicant submits the Application. The Non-Competitive Application Package or NCA (Rev. 04- 2020) is adopted and incorporated herein by reference and consists of the forms and instructions available, without charge, on the Corporation's website under the Multifamily Programs link labeled Non-Competitive Programs or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-12011>, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

4. The Non-Competitive Application Form provides in relevant part:

Non-Competitive Housing Credits (4 Percent HC) only, to be used for a Tax-Exempt Bond-Financed Development where the bonds are issued by a County Housing Finance Authority (HFA) established pursuant to Section 159.604, F.S. The Non-Competitive Application Form can be submitted anywhere from the time the Applicant completes Credit Underwriting for the Bonds up until the last Corporation business day of December of the year the Development is placed in service. . . .

15. Applicant Certification: By completing, executing and submitting this Application form and all applicable exhibits, the Applicant certifies and acknowledges that:

\* \* \*

k. The proposed equity amount to be paid prior to or simultaneous with the closing of construction financing is at least 15 percent of the total proposed equity to be provided (the 15 percent criteria). . . .

5. Petitioner desires to close on the tax-exempt bonds in September of 2020 in order to complete construction no later than December 31, 2021. Petitioner alleges that the uncertainty caused by the Covid-19 pandemic resulted in a delay of the investor limited partner's fund closing until January of 2021. Petitioner states

that it has received approval from Freddie Mac for a funding structure involving a third-party bridge loan that would provide the Development with 15 percent or more of the required equity at closing.

6. Petitioner also alleges that the need for a waiver of the 15% criteria has caused a delay in the issuance of the final Credit Underwriting Report, and Petitioner will be unable to complete Credit Underwriting before submission of the Non-Competitive Application. Petitioner also alleges that it cannot submit a request for a waiver of the 15% criteria until it has submitted an Application, but that it cannot submit an Application until it completes Credit Underwriting. Petitioner is therefore requesting permission to submit the Non-Competitive Application before it completes Credit Underwriting.

7. The Board finds that granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

8. Section 120.542(2), Fla. Stat. (2018) provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

9. Petitioner has demonstrated that the waiver is needed in order to efficiently serve low-income elderly residents. Petitioner has also demonstrated that

the purpose of the underlying statute, which is to “encourage development of low-income housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

10. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

**IT IS THEREFORE ORDERED:**

Petitioner's request for a waiver of Rule 67-21.003(1)(b), Fla. Admin. Code, and a waiver of the above-cited portions of the Non-Competitive Application Form, is hereby **GRANTED** to allow Petitioner to close on construction financing even though the investor limited partner will not have paid 15% of the total proposed equity at the time of closing, and to submit a Non-Competitive Application even though Credit Underwriting has not been completed.

DONE and ORDERED this 4th day of September, 2020.



Florida Housing Finance Corporation

By: \_\_\_\_\_

Chair

**Copies furnished to:**

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Joint Administrative Procedures Committee  
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**NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.**