

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: HOMESTEAD PORTFOLIO LP, FHFC Case No.: 2023-029VW

**ORDER GRANTING WAIVER OF RULE 67-21.003(1)(b) AND RULE
67-21.003(8)(1), FLORIDA ADMINISTRATIVE CODE (2022)**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on March 10, 2023. Florida Housing Finance Corporation (“Florida Housing”) received the Petition for Waiver of 67-21.003(1)(b) and Rule 67-21.003(8)(1) (“Petition”) on February 22, 2023, from Homestead Portfolio LP, a Florida limited partnership (“Petitioner”). The Notice of the Petition was published on February 23, 2023, in Volume 49, Number 37, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (“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 for 4% Non-Competitive Housing Credits (“Housing Credits”) to be used for a Tax-Exempt Bond-Financed Development where the bonds are issued by a County Housing Finance

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

ATM. Namory AT 3/10/2023

Authority. The funding will be used for acquisition and rehabilitation of a 233-unit multifamily housing rental development commonly known as Gardens at Homestead, located in Miami-Dade County.

3. Petitioner requests a waiver of Rule 67-21.003(8)(1), Florida Administrative Code (2022), which in relevant portion states:

(8) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and *cannot be revised, corrected or supplemented* after the Application is deemed complete. Those items are as follows:...

(1) *The Applicant must execute the Applicant certification and acknowledgement form included in the NCA.* (emphasis added)

4. Petitioner also requests a waiver Rule 67-21.003(1)(b), Florida Administrative Code (2022), which incorporates by reference the Non-Competitive Application Package (Rev. 04/2022) (the “NCA”), and in relevant portion states:

(1) Unless otherwise set forth in a competitive solicitation pursuant to rule Chapter 67-60, F.A.C., Applicants shall apply for Non-Competitive HC or a combination of MMRB and Non-Competitive HC as set forth below. For purposes of this subsection only, the term NC Award shall refer to Non-Competitive HC or a combination of MMRB and Non-Competitive HC, and funding from the Predevelopment Loan Program (PLP) will not be considered to be other Corporation funding.

(b) If the NC Award will not be 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. 04-2022) 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-14387>, which shall be completed and submitted to the Corporation in accordance with this rule chapter. (emphasis added)

5. A waiver of Section A.16. of the NCA is sought, which in relevant portion states:

Applicant Certification:

The Applicant Certification and Acknowledgement Form included in the Application form must be executed by the Authorized Principal Representative to indicate the Applicant's certification and acknowledgement of the provisions and requirements of this Application.

6. Petitioner also seeks waiver of Section 16.p. of the Applicant Certification and Acknowledgement Form of the NCA, which in relevant portion, states:

The Applicant certifies and acknowledges that...

The Applicant, the Developer and all Principals are in good standing among all other state agencies and have not been prohibited from applying for funding. (emphasis added)

7. Petitioner also seeks waiver of the second funding option paragraph on page 1 of the NCA Instructions, which in relevant portion, states:

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;...* (emphasis added)

8. Petitioner also seeks waiver of Section A.6.b(1) of the NCA, which in relevant portion states:

6. Principals Disclosure for the Applicant and for each Developer:

b. The name of the Applicant entity stated in the Application may be changed only by written request of an Applicant to Corporation staff and approval of the Corporation after the Applicant has been invited to enter Credit Underwriting.

For purposes of (1) and (2) below, a material change shall mean 33.3 percent or more of the Applicant, a general partner of the Applicant, or a non-investor member of the Applicant, and a non-material change shall mean less than 33.3 percent of the Applicant, a general partner of the Applicant, or a non-investor member of the Applicant.

(1) For Applicants requesting Non-Competitive Housing Credits only:

The Applicant entity shall be the recipient of the Housing Credits and *the ownership structure of the Applicant entity as set forth in the Principal Disclosure Form and cannot be changed in any*

way (materially or non-materially) until after the Preliminary Determination is issued. Once the Preliminary Determination has been issued, (a) any material change in the ownership structure of the named Applicant will require Board approval prior to the change, and (b) any non-material change in the ownership structure of the named Applicant will require Corporation approval prior to the change. The ownership structure of the Applicant entity may be changed without Corporation or Board approval after a Final Housing Credit Allocation Agreement has been approved and the IRS Forms 8609 have been issued; however, the Corporation must still be notified in writing of the change. The Applicant must comply with Principal disclosure requirements outlined in Rule Chapter 67-21, F.A.C. for the duration of the Compliance Period. Changes to the ownership structure of the Applicant entity prior to the issuance of the Preliminary Determination or without Board approval or Corporation approval, as applicable, prior to the approval of the Final Housing Credit Allocation and issuance of the IRS Forms 8609 shall result in a disqualification from receiving funding and shall be deemed a material misrepresentation. Changes prior to the issuance of the Preliminary Determination to the officers or directors of a Public Housing Authority, officers or directors of a Non-Profit entity, or the limited partner of an investor limited partnership or an investor member of a limited liability company owning the syndicating interest therein will not result in disqualification, however, the Corporation must be notified of the change. Changes to the officers or directors of a Non-Profit entity shall require Corporation approval. Any allowable replacement to the natural person Principals of a Public Housing Authority or officers and/or directors of a non-profit entity will apply to all preliminarily awarded Applications and Applications pending final Board action that include the Public Housing Authority or non-profit entity. (emphasis added)

9. Petitioner is seeking a waiver from Section A.16 of the NCA and more specifically Section 16(p) of the Applicant Certification and

Acknowledgement Form, which requires the Petitioner to certify that all of the Principals, Applicant and Developer are in good standing with all other state agencies and are not prohibited from applying for funding. However, Petitioner cannot make this certification as of Application submission as certain Principals and the Developer (the “Affected Parties”) are currently prohibited from applying for funding in the State of Virginia for reasons that would not be the basis for a funding prohibition in the State of Florida (but that the Affected Parties are nevertheless working to remedy with Virginia Housing to return to good standing). The Affected Parties have previously disclosed this situation to Florida Housing in conjunction with a separate application filed with the Corporation and for which the Board has previously granted the waiver requested hereunder.

10. Petitioner avers that the basis for prohibition was additional design guidelines in connection with the rehabilitation of a project in Virginia (the “VA Project”) which, while not necessary for issuance of IRS Forms 8609, were nonetheless required by Virginia Housing. Petitioner states that while it is true that some of the additional design guidelines were not reflected in the VA Project upon issuance of the IRS Forms 8609, it was the Affected Parties understanding from its prior discussions with Virginia Housing that such matters would not be the basis for a prohibition on funding applications.

In addition, Petitioner states that unlike the process in the State of Florida, application prohibitions do not need to go through prior board discussion or approval and, as such, as there is no delineated opportunity to correct or dispute perceived deficiencies in the State of Virginia prior to the issuance of a prohibition, the Affected Parties were placed out of good standing before steps could be taken to address Virginia Housing's concerns.

11. Petitioner explains that it was a first-time offense by the Affected Parties and does not think the issues in the VA Project rose to the level to warrant an immediate prohibition but, the Affected Parties continue to work to remediate the design deficiencies indicated by Virginia Housing to their satisfaction which should be completed in the near future, as the property is almost done with its inspections and several of the buildings have already been approved by Virginia Housing. Specifically, 6 of the 18 buildings that make up the Virginia project have already been approved by Virginia Housing, and the Affected Parties expect to have another 4 approved this month (with Virginia Housing approving roughly 4 buildings per month). The Affected Parties have requested that Virginia Housing increase the number of inspections per month but, currently the Affected Parties are operating on the assumption that Virginia Housing will at most perform 4 inspections per month. As such, the Petitioner's expectation is that the Affected Parties will

have complete sign off from Virginia Housing by sometime in the Summer of this year.

12. Petitioner avers that because of the foregoing, for Petitioner to submit a NCA for 4 Percent HC for the Development and comply with Section A.16. thereof, it must be able to submit the Applicant Certification and Acknowledgement with Section 16(p) struck through. The basis for the Affected Parties' current prohibition in the State of Virginia would not have resulted in a similar prohibition in the State of Florida and, regardless the Affected Parties are working to resolve the current lack of good standing in the State of Virginia as quickly as possible. Further, the Affected Parties have participated in a number of prior deals in the State of Florida, currently consisting of over 1,500 units throughout the State of Florida, (including, as previously mentioned a prior deal for which the requested waiver has been previously granted, over 1,000 of which have been recently renovated and are in the process of or have already received their IRS Forms 8609 , for which the Affected Parties remain in good standing in connection therewith.

13. Petitioner also requests that Florida Housing consider Petitioner's application before Petitioner's county bond transaction has completed credit underwriting. Petitioner states that it will need to submit the Application before completing Credit Underwriting in order to address this

issue in advance with the Corporation and ensure that the affected parties are permissible in the ownership structure. Thus, Petitioner requests a waiver of the requirement to submit a final Credit Underwriting Report with its application to prevent further delay to the Development.

14. Finally, Petitioner requests a waiver of Section A.6.b(1) of the NCA, which prohibits making changes to the ownership structure of the Applicant entity as set forth in the Principal Disclosure Form prior to the issuance of the Preliminary Determination. Petitioner states that as part of Petitioner's incoming lender's requirements, Petitioner will need to include a special purpose entity (the "SPE") in the ownership structure of the Petitioner's general partner (the "SPE Structure"). However, due to Petitioner's current financing, Petitioner cannot implement this structure change until the closing of the incoming financing occurs. Despite this change, but for the inclusion of a special purpose entity as the new general partner, that is 100% owned by the current general partner, the SPE Structure will be identical to the current ownership structure and inclusion of the SPE will not impact Petitioner's ability to disclose all natural person principals by the 3rd entity level, as it currently discloses all natural person principals by the 2nd entity level, and no new natural persons will be added into the ownership structure in connection with the SPE Structure. Petitioner requests

consent to change its ownership structure now so it can satisfy the principal disclosure requirements of the NCA and move forward with the submission of its Application in accordance with the other waivers discussed by this Petition.

15. Section 120.542(2), Florida Statutes, provides in pertinent part:

Variances 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.

16. The Board finds that granting the requested waivers would not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing.

17. The Board finds that Petitioner has demonstrated that it would suffer a substantial hardship if the waivers are not granted.

18. The Board finds that Petitioner has also demonstrated that the purpose of the underlying statute, which is to “encourage development of low-income housing in the state” would still be achieved if the waivers are granted.
§420.5099, Fla. Stat.

IT IS THEREFORE ORDERED: Petitioner’s request for waiver of Rule 67-21.003(1)(b), Florida Administrative Code (2022), and Rule 67-21.003(8)(l), Florida Administrative Code (2022), and the above-cited

Sections of the Non-Competitive Application Package is hereby **GRANTED** to allow: (1) consideration of Petitioner’s application before Petitioner’s county bond transaction has completed credit underwriting; (2) Petitioner to supplement its Applicant Certification and Acknowledgement by “striking through” Paragraph 16.p. of the certification, which states that all Principals are in good standing among other state agencies and have not been prohibited from applying for funding. As part of this recommendation, staff recommends that the Board require the Application to provide satisfactory documentation from the State of Virginia that the Applicant, Developer and all Principals are in good standing and are not prohibited from applying for funding, prior to issuance of Form 8609; and (3) Petitioner permission to make a future change in the ownership structure prior to issuance of the Preliminary Determination. As part of this recommendation, staff recommends that the Board require the Applicant to make a formal request when the change in ownership structure actually occurs, allowing staff to approve this change, with a recommendation from the credit underwriter, if necessary.

DONE and ORDERED this 10th day of March, 2023.



Florida Housing Finance Corporation

By: 
Chairperson

Copies furnished to:

Hugh R. Brown, General Counsel
Marisa Button, Managing Director of Multifamily Programs
Florida Housing Finance Corporation
Hugh.Brown@floridahousing.org
Marisa.Button@floridahousing.org

Hollie A. Croft, Esquire
Nelson Mullins Riley & Scarborough
hollie.croft@nelsonmullins.com

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
Joint.admin.procedures@leg.state.fl.us

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL 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.