

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: HERITAGE PARK
APARTMENTS, LTD.

FHFC Case No.: 2014-074VW

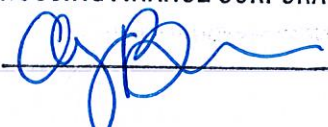
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ORDER GRANTING WAIVER OF RULE 67-21.013,
FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on October 30, 2014, pursuant to a "Petition for Waiver from Florida Administrative Code Rule 67-21.013" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on October 13, 2014, from Heritage Park Apartments, Ltd. ("the Petitioner"). On October 15, 2014, notice of the Petition was published in Volume 40, Number 201, 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 (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATE: 10.30.14

2. In 2014, Petitioner was awarded \$1,162,040 in Non-Competitive Housing Credits with \$19,500,000 in Multifamily Mortgage Revenue Bond program funding under Application 2014-111B, as well as \$5,000,000 in HOME program funding under Application 2014-288H. This funding was allocated to assist in the development of an apartment complex consisting of 238 units (167 set-aside units) serving the Family demographic in Osceola County, Florida.

3. Rule 67-21.013, Fla. Admin Code (Rev. 7-16-14) provides, in pertinent part:

Any issuance of non-Credit enhanced revenue Bonds shall be sold only to a Qualified Institutional Buyer [QIB]¹

4. Petitioner requests a waiver of the above Rule to permit the sale of its allocated Bonds to Fairview Bond Holdings, L.L.C. (“Fairview”), asserting that strict compliance with this Rule under the circumstances would cause Petitioner substantial hardship and violate the principles of fairness. Petitioner further asserts that granting this waiver would neither affect the scoring of Petitioner’s application nor allow Petitioner to gain an unfair advantage over other applicants and would serve the underlying purposes of Florida Housing’s governing statute, Chapter 420, Part V, Fla. Stat. (2014).

¹ As defined by Rule 67-21.002(88), Fla. Admin. Code (Rev. 7-16-14).

5. In support of its Petition, Petitioner also states that Fairview:

- a. Has a Principal with a minimum of \$20,000,000 in liquidity; and,
- b. As a Principal of various borrowers, has closed a minimum of \$300,000,000 in tax-exempt revenue bonds for affordable housing developments; and,
- c. As a Principal of various affordable housing developments, has closed a minimum of \$200,000,000 in tax credit equity; and,
- d. As a Principal of various entities, has closed a minimum of \$200,000,000 in interest rate hedging products (SWAPS, CAPS, COLLARS, etc.) for affordable housing developments.

6. 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.

7. The Board finds that strict application of the above Rule under these circumstances would create a substantial economic hardship for Petitioner. The granting of this request for waiver will also serve the purpose of the underlying statute in that it will enhance the financial viability of the Development and thus ensure the continued availability of affordable housing in Osceola County.

8. The Board also finds that the novelty of this request, and the increased financial risk that it may present, warrant additional safeguards and conditions. Accordingly, the granting of this waiver is to permit the initial sale of the Bonds to Fairview and is conditioned upon the following:

- a. Execution and delivery of an investor letter to Florida Housing and the Bond trustee containing representations, warranties and indemnification provisions and otherwise in form and substance acceptable to Florida Housing in its sole discretion; and,
- b. Each Principal and each member of Fairview shall provide to Florida Housing separate written representations and warranties regarding liquidity and experience as asserted in the Petition, specifically the following:
 - i. Has a Principal with a minimum of \$20,000,000 in liquidity; and,
 - ii. As a Principal of various borrowers, has closed a minimum of \$300,000,000 in tax-exempt revenue bonds for affordable housing developments; and,
 - iii. As a Principal of various affordable housing developments, has closed a minimum of \$200,000,000 in tax credit equity; and,
 - iv. As a Principal of various entities, has closed a minimum of \$200,000,000 in interest rate hedging products (SWAPS, CAPS, COLLARS, etc.) for affordable housing developments.
- c. Each Principal and each member of Fairview shall provide to the Corporation written financial and background documentation confirming the experience and liquidity of

each such Principal and each such member of Fairview, which documentation shall be acceptable to the Corporation in its sole discretion; and,

- d. Any and all future sales of the Bonds, or interests therein, shall be to a QIB only, pursuant to Rule 67-21.013, Fla. Admin. Code (Rev. 7-16-14), and shall be subject to the execution and delivery to the Corporation of an investor letter acceptable to the Corporation in its sole discretion; and,
- e. Approval of Fairview and approval of each Principal and each direct and indirect member by the Corporation, its counsel and the credit underwriter, including the form and substance of each such party's organizational documents; and,
- f. Fairview will fund the full principal amount of the Bonds (\$19,500,000) to the Bond trustee at closing (the Bonds will not be draw-down bonds); and,
- g. Satisfaction of all additional and general conditions set forth in the Credit Underwriting Report dated June 4, 2014, including, without limitation, the requirement that all tax credit equity be funded by Bank of America; and,
- h. Receipt of an opinion from counsel to Fairview, which counsel and which opinion shall be acceptable to the Corporation in its sole discretion, that the funding of the full principal amount of the Bonds by Fairview to the Bond trustee at closing shall not be subject to any federal or state bankruptcy or insolvency laws; and
- i. All costs and expenses of the Corporation, its counsel, bond counsel and the credit underwriter associated with the Petition and this request shall be paid by Petitioner and/or Fairview.

IT IS THEREFORE ORDERED:

Petitioner's request for waiver of Rule 67-21.013, Florida Administrative Code (Rev. 7-16-14) is hereby **GRANTED**, subject to Petitioner meeting the requirements set forth in paragraph 8 of this Order.

DONE and ORDERED this 30th day of October, 2014.



Florida Housing Finance Corporation

By: _____

Chairperson

Copies furnished to:

Wellington H. Meffert II
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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
120 Holland Building
Tallahassee, Florida 32399-1300

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.