STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: NV Homestead Apartments, LP FHFC CASE NO.: 2021-039VW

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ORDER GRANTING WAIVER OF RULE 67-21.028(3)(a)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on July 30, 2021, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on June 23, 2021, from NV Homestead Apartments, LP ("Petitioner"). Notice of the Petition was published on June 24, 2021, in Volume 47, Number 122, of the Florida Administrative Register. Florida Housing has received no comments concerning 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.

2. Petitioner closed on tax-exempt multi-family bonds issued by Capital Trust Agency to assist in the acquisition and rehabilitation of a Development serving low-income families in Miami-Dade County, Florida known as Coral Gardens.

3. Rule 67-21.028(3)(a)), Fla. Admin. Code (2020) provides in relevant part:

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/s/ Hamons DATE: 8/9/2021

(3) Tax-Exempt Bond-Financed Developments receiving bonds from another source other than the Corporation or a County Housing Finance Authority and not competing for Housing Credits under the state of Florida's Allocation Authority shall:

(a) Make Application to the Corporation as required in this rule chapter, utilizing the Non-Competitive Application Package, for receipt by the Corporation once the Applicant has received affirmation that the tax-exempt multifamily bond allocation has been reserved or that the entity issuing the bonds has agreed to award the necessary allocation when available, but no later than 14 days after the TEFRA Hearing, and in no event may the Application be submitted after commencement of Rehabilitation or construction.

4. On February 1, 2018, Petitioner closed on tax-exempt multi-family bonds issued by Capital Trust Agency. The TEFRA Hearing relating to the bonds was held on December 13, 2017. Construction of the Development commenced on July 27, 2018, and the Development was placed in service on April 20, 2020.

5. Prior to July 11, 2019, Rule 67-21.028(3)(a) allowed persons receiving bonds from a source other than Florida Housing to apply for non-competitive housing tax credits ("4% tax credits") no later than "the last Corporation business day of December of the year the Development is placed in service." Petitioner submitted its application for 4% tax credits on December 22, 2020, which was prior to the last business day of December of the year the Development was placed in service. Had the rule not been amended in 2019 to prohibit such applications from being submitted after commencement of rehabilitation or construction, Petitioner would have been allowed to apply for these tax credits.

6. Petitioner asserts that its financing arrangements relied on its ability to apply for 4% tax credits after commencement of construction in accordance with the rule that was in effect at the time. Petitioner further asserts that it will suffer a substantial hardship if it is not allowed to apply for 4% tax credits more than 14 days after the TEFRA hearing and after commencement of construction.

7. At least one principal of Petitioner is also a principal of other Development(s) that are in arrears to the Corporation. Petitioner has agreed to submit a plan for satisfying these arrearages within 30 days of issuance of this Final Order.

8. 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.

9. 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.

10. Petitioner has demonstrated that the waiver is needed in order to efficiently serve low-income families. 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.

11. 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 67-21.028(3)(a), Fla. Admin. Code (2020), is hereby **GRANTED** to allow to allow Petitioner to submit an application for non-competitive housing tax credits after commencement of construction, under the following condition:

Petitioner will submit a plan to Florida Housing within 30 days of issuance of this Final Order detailing how any arrearages associated with any principal of Petitioner will be satisfied. In accordance with Rule 67-21.027(7), Fla. Admin. Code, Florida Housing will not issue Form 8609 to Petitioner until all such arrearages have been satisfied.

DONE and ORDERED this 3rd day of August, 2021.

Florida Housing Finance Corporation

By: _____
Chair

Copies furnished to:

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

Sarah Pape
Zimmerman Kiser Sutcliffe
spape@zkslawfirm.com

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

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.