

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Glorieta Partners, Ltd.

FHFC Case No.: 2018-065VW

ORDER GRANTING WAIVER OF RULE 67-21.026(10)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 14, 2018, pursuant to a Petition for Waiver of Rule 67-21.026(10) (“Initial Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on August 17, 2018, from Glorieta Partners, Ltd. (“Petitioner”). On August 21, 2018, Florida Housing filed a Request for Additional Information. In response, Petitioner filed an Amended Petition for Waiver of Rule 67.21.023(10) (collectively with the Initial Petition referred to as the “Petition”). Notice of the Petition was published on August 21, 2018, in Volume 44, Number 163, 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

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James Delaney DATE: 9/17/18

2. Petitioner applied for 4% Non-Competitive Tax Credits from Florida Housing, to assist in the acquisition and rehabilitation of a development serving low-income families in Opa Locka, Miami-Dade County.

3. R. 67-21.026.026(10), Fla. Admin. Code, provides:

The Corporation's assigned Credit Underwriter shall require a guaranteed maximum price construction contract, acceptable to the Corporation, which may include change orders for changes in cost or changes in the scope of work, or both, if all parties agree, and shall order, at the Applicant's sole expense, and review a pre-construction analysis for all new construction units or a physical needs assessment for rehabilitation units and review the Development's costs.

4. Petitioner requests a waiver of the above Rule to permit it to utilize an already existing stipulated sum construction contract in lieu of the guaranteed maximum price construction contract as required.

5. In 2015, Petitioner acquired and began rehabilitating a 330-unit development in Miami-Dade County known as Gardens-Glorieta and entered into a stipulated sum contract with its general contractor on September 3, 2015 to accomplish this. The financing included tax exempt bond financing from Capital Trust Agency. Construction of the Development was completed at the end of 2017, and all work contracted for under the construction contract has been completed.

6. On October 19, 2017, Petitioner submitted an Application for Non-Competitive Housing Credits. While the rule in effect at the time prohibited the use of a stipulated sum contract, the work contracted for under that contract has been

completed, rendering it impossible to retroactively have the work performed under a guaranteed maximum price contract. Petitioner has demonstrated and agreed that the general contractor will be paid no more under the stipulated sum contract than would have been allowed had it performed the work under a guaranteed maximum price contract, that there will be no cost savings billed or paid under the contract, and that the contractor's fee will be limited to the maximum amount allowed under Rule 67-21.026(12)(b), Fla. Admin. Code.

7. Section 120.542(2), Fla, Stat., 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.

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

9. The Board also 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" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

IT IS THEREFORE ORDERED:

Petitioner's request for waiver of Rule 67-21.026(10), Fla. Admin. Code, is hereby **GRANTED** to allow Petitioner to use its existing stipulated sum construction contract in lieu of a guaranteed maximum price contract, with the condition that the construction contract be amended to provide that there will be no cost savings billed or paid under the contract, and that the contractor's fee will be limited to the maximum amount allowed under Rule 67-21.026(12)(b), Fla. Admin. Code.

DONE and ORDERED this 14th day of September, 2018.



Florida Housing Finance Corporation

By:


Chair

Copies furnished to:

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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.