

**IN THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

HALLMARK - FLORIDA GP, LLC
Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

Case No. **2016-002-VW**

AMENDED AND RESTATED PETITION FOR WAIVER OF RULE 67-21.003(8)(k) AND (l)
AND PART C OF THE NON-COMPETITIVE APPLICATION INSTRUCTIONS TO SUBMIT
ONE MASTER APPLICATION AND ONE APPLICATION FEE FOR A 24 PROPERTY
MULTIFAMILY MORTGAGE REVENUE BOND PORTFOLIO

Petitioner Hallmark-Florida GP , LLC, a Georgia limited liability company ("Hallmark"), submits this its *Amended and Restated Petition for Waiver of Rule 67-21.003(8)(k) and (l) and Part C of the Non-Competitive Application Instructions to Submit One Master Application and One Application Fee for a 24 Property Multifamily Mortgage Revenue Bond Portfolio* to Respondent Florida Housing Finance Corporation ("Corporation") for (i) a waiver or variance of the application filing instructions and (ii) a waiver or variance of the Corporation's application fee. See Rule 67-21.003(8)(k) and (l), Florida Administrative Code.

In support of its Petition, Hallmark states:

A. THE PETITIONER

The name, address, telephone number, facsimile number, and email address for Hallmark and its qualified representative for Hallmark's application (the "Application") for non-competitive 4% Low-Income Housing Tax Credits ("LIHTC") is:

Hallmark-Florida GP, LLC
3111 Paces Mill Road SE
Atlanta, GA 30339
Telephone: (770)-984-2100
Facsimile: (770)952-9116
E-Mail: PPetersen@hallmarkco.com

The name, address, telephone number, facsimile number, and email address for Hallmark's attorney is:

Gregory Q. Clark
910 Patterson Street
Valdosta, GA, 31601
Telephone: (229)671-8260
Facsimile: (229)333-0885
E-Mail: Greg.Clark@ColemanTalley.com

B. THE DEVELOPMENT

The Hallmark development involves preservation of a portfolio (the "Portfolio") of 1,038 affordable housing apartment units located on 24 properties spanning 13 Counties in the State of Florida (the "Properties"). All of the Properties currently operate under the USDA Section 515 program. Hallmark intends to finance the acquisition and rehabilitation of the Properties through a single tax-exempt bond issuance issued by Osceola County along with a 4% LIHTC issued by the Corporation. Please see the attached property information schedule for more detail on the Properties.

Hallmark submitted an application for a private-activity bond volume cap to Osceola County and received approval for a 2015 bond allocation and carryforward volume cap award from the State Division of Bonds. Hallmark submitted one bond application for the 24-Property Portfolio to Osceola County. The Portfolio is underwritten by Seltzer Management.

Hallmark will submit an application to the Corporation for a determination of eligibility for 4% LIHTC. Prior to submitting the application, Hallmark requests the waivers described in **Section C**. The requested rule waivers will not adversely affect the Development. However, a denial of this Petition (a) could deprive multiple Florida Counties of desperately needed affordable housing units and (b) would cause a substantial hardship to the developer¹.

The waivers being sought are permanent in nature.

C. RULES FROM WHICH WAIVER IS SOUGHT

First, Hallmark requests the Corporation allow submission of a single "master" Application for all Properties in the Portfolio as an alternative to the submission of 24 separate

¹ "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. Fla. Stat. § 120.542.

and individual Applications. Hallmark will submit a binder containing one “master” Application for 4% LIHTC covering all Properties in the Portfolio pursuant to the Rules set forth in Section 21.003(8)(k). Each of the individual Properties will have a fully complete “sub” application that will be tabbed in the submitted binder of the “master” Application.

Section 21.003(8)(k) provides, in pertinent part, as follows:

**“(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:
. . . (k) Submission of one original hard copy with the required number of photocopies of the Application by the applicable Application submission deadline, as outlined in the Non-Competitive Application instructions.”**

Second, Hallmark requests the Corporation calculate the fee required for submitting the Application for all Properties in the Portfolio as if it were submitting a single application. Hallmark intends to submit one “master” Application covering all Properties in the Portfolio and will pay the applicable \$3,000 Application fee for the Portfolio as an alternative to a cumulative \$72,000 fee (\$3,000 for each of the 24 properties) pursuant to Part C of the Non-Competitive Application Instructions.

Section 21.003(8)(l) provides, in pertinent part, as follows: **“Payment of the required Application fee and, if applicable, the TEFRA fee at submission of the Application.”** Part C of the “Non-Competitive Application Instructions” provides, in pertinent part, as follows: **“All Applicants requesting MMRB and/or HC shall submit to the Corporation as a part of the Application submission a non-refundable Application fee of \$3,000.”**

D. STATUTES IMPLEMENTED BY THE RULE

The rules cited above implement, among other sections of the Florida Housing Finance Corporation Act, the statute designating the Corporation as the housing credit agency responsible for the allocation and administration of Low-Income Housing Tax Credits. *See Fla. Stat. § 420.5099.*

E. PETITIONER REQUESTS A WAIVER OR VARIANCE FROM THE RULE FOR THE FOLLOWING REASONS

First, Hallmark requests the Corporation allow a waiver or variance to Section 21.003(8)(k). Under the strict reading of this rule, the Corporation requires the separate and individual submission of applications for each of the twenty-four (24) Properties in the Portfolio. Requiring Hallmark to submit separate and individual applications creates a substantial hardship for the developer in both time and resources.

The financing structure for all Properties in the Portfolio will consist of a single tax-exempt bond issuance with one trust indenture covering all twenty-four (24) Properties. It is important to note that these redevelopment properties cannot stand alone to support a transaction. Thus, Hallmark pools the properties together for one transaction and one bond issuance. One bond issuance benefits the Portfolio without adversely affecting the Development as the Properties will not be cross-collateralized or cross-defaulted under the proposed financing structure even with a single bond indenture. Instead, the tax-exempt bonds will be 100% cash collateralized and the bondholders will not have a mortgage on any Property. The bond holders' collateral will be cash funds held by a trustee in an equal amount to the bond issuance that will be provided by the senior lender, tax credit investor and project owner. The Development benefits from this structure through cost savings and economies of scale that permit a 4% LIHTC execution for the Portfolio that would otherwise not be financially feasible if each Property were financed separately.

If a waiver or variance is granted, Hallmark intends to submit a "master" Application covering all twenty-four (24) Properties. While Hallmark will generate a separate tax credit "sub" application for each property, they will be submitted in a single, tabbed binder in one "master" Application.

Second, Hallmark requests the Corporation allow a waiver or variance to Section 21.003(8)(l) and Part C of the "Non-Competitive Application Instructions." Under the strict reading of this rule, the Corporation requires the submission of a \$3,000 non-refundable application fee per application submitted. Requiring Hallmark to submit a \$3,000 fee for each of the twenty-four (24) properties in the Portfolio creates a substantial financial hardship for the developer.

Since the Development will be financed with one bond issuance and will be submitted to the Corporation under one master application for 4% LIHTC, the project should be treated as one Development and should pay fees based on a single Development submission. Calculating the non-refundable application fee in this manner results in savings for the Development by reducing the Application fees from \$72,000 to \$3,000 (a savings of \$69,000). These funds could be allocated to rehabilitation costs for improvements to the Properties that benefit the tenant, “ensur[ing] the maximum use of available tax credits in order to encourage development of low-income housing in the state,” an aim of the Florida Housing Finance Corporation. *See Fla. Stat. § 420.5099.*

Allowing these waivers or variances does not produce an unfair advantage for Hallmark, in fact, it works to level the playing field between Hallmark and all other applicants. Submitting a master application containing the twenty-four (24) properties allows Hallmark to pool the properties, which individually are not able to support a transaction. Further, paying a \$3,000 application fee for the master application ensures Hallmark has the same opportunity to invest in the redevelopment project, instead of starting almost \$70,000 behind every other 4% LIHTC applicant.

E. ACTION REQUESTED

Hallmark requests the following:

1. That the corporation grant Hallmark a waiver from Rule 67-21.003(8)(k) and (l) Florida Administrative Code, allowing it to submit one “master” application and one application fee for the 24 property portfolio;
2. That the Corporation grant the Petition and all the relief requested therein; and
3. That the Corporation grant such further relief as may be deemed appropriate.

Respectfully submitted,

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BY: 

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