

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Jordan Bayou, LLC

FHFC Case Nos.: 2019-093VW  
and 2019-094VW

**ORDER GRANTING WAIVER OF RULES 67-48.004(3)(b), (d) and (i),  
FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation pursuant to a Petition for Waiver. On November 8, 2019, Florida Housing Finance Corporation (“Florida Housing”) received a Petition for Waiver of Rule 67-48.004(3)(d), *Florida Administrative Code*, filed by Jordan Bayou, LLC (“Petitioner”) to admit a non-profit member to the applicant and developer entities. Notice of the Petition to admit a non-profit member was published in the *Florida Administrative Register* in Volume 45, Number 220, on November 12, 2019. On November 12, 2019, Petitioner filed a Petition for Waiver of Rule 67-48.004(3)(i), *Florida Administrative Code*, to reduce the total number of units in the proposed Development from 50 to 39. Notice of the Petition to reduce the total number of units was published in the *Florida Administrative Register* in Volume 45, Number 222, on November 14, 2019. Florida Housing received no comments regarding either Petition. After

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*ATM: Blamery* DATE: 12/10/19

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 successfully applied for competitive HOME financing in Request for Application (“RFA”) 2017-109 to assist in the construction of a proposed 50-unit affordable housing development located in Franklin County, Florida, known as Jordan Bayou (“Development”).

3. Rule 67-48.004(3), *Florida Administrative Code*, provides in relevant part:

(3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:

\*\*\*

(b) Principals of each Developer, including all co-Developers; notwithstanding the foregoing, the Principals of the Developer(s) may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit underwriting. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant’s request, inclusive of validity and consistency of Application documentation;

\*\*\*

(d) Applicant applying as a Non-Profit or for-profit organization, unless provided otherwise in a competitive solicitation;

\*\*\*

(i) Total number of units...

Section Four A.3.c.(3) of RFA 2019-109 provides in relevant part:

The Applicant entity shall be the borrowing entity and cannot be changed in any way (materially or non-materially) until after loan closing.... Changes to the Applicant entity (material or non-material) prior to loan closing...may result in disqualification from receiving funding and may be deemed a material misrepresentation.

\*\*\*

The Principals of each Developer identified in the application, including all co-Developers, may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit underwriting.

4. On June 21, 2019, Florida Housing's Board of Directors selected Jordan Bayou for funding, and Jordan Bayou was subsequently invited to enter credit underwriting. Jordan Bayou accepted the invitation. Jordan Bayou does not utilize housing credits. Rather, the only sources of funding are the first mortgage proceeds, HOME loan proceeds, and the deferred developer fees.

5. During the course of the credit underwriting process, Petitioner asserts that it became apparent that the proposed Development was not viable

pursuant to the first mortgage debt sizing requirements for HOME Developments in Rule 67-48.0072(11), *Florida Administrative Code* (“HOME Debt Sizing”). That rule requires that the minimum debt service coverage be 1.10x on HOME interest plus all superior debt service (1.0x if deferring 35% or more developer fee).

6. Jordan Bayou is a for-profit Applicant and subject to a 1.5% per annum interest rate on the HOME loan principal under Rule 67-48.0072(2), *Florida Administrative Code*. Jordan Bayou’s annual interest payment would be \$74,970. Jordan Bayou’s first mortgage lender employed standard debt sizing constraints, limiting the first mortgage proceeds to a minimum 1.20x debt service coverage ratio. According to Petitioner, under the HOME Debt Sizing rule, Jordan Bayou would be required to reduce the lender’s acceptable first mortgage to a level where the first mortgage proceeds and the HOME loan proceeds are insufficient to balance the sources and uses, even after deferring 100% of developer fees, rendering Jordan Bayou infeasible.

7. Petitioner asserts that Jordan Bayou has been working with its credit underwriter and with Florida Housing staff to restructure the Applicant entity and the Developer entity in a way that would allow the proposed Development to move forward. According to Petitioner, the proposed restructuring is based on the admittance of a qualified Non-Profit entity,

National Community Renaissance of California, a California not-for-profit corporation (“National CORE”), as a member of MHP Jordan Bayou, LLC and MHP Jordan Bayou Developer, LLC. National CORE is a section 501(c)(3) Non-Profit owner, operator, and developer of affordable housing across the country. Petitioner asserts that National CORE currently owns and operates five affordable housing assets in Florida.

8. Through this request for rule waiver, Petitioner proposes to add a single purpose entity, NCR Jordan Bayou, LLC, as a 99% member of MHP Jordan Bayou, LLC. National CORE will serve as the sole member of NCR Jordan Bayou, LLC. National CORE will also be admitted as a 25% member of MHP Jordan Bayou Developer, LLC, and be entitled to 25% of the Developer’s fees.

9. To simplify the admission of National CORE to these structures, Petitioner requests to make all four of the Developer entities (the three original co-Developers plus the new National CORE entity) as members of MHP Jordan Bayou Developer, LLC as opposed to having separate co-Developers. Petitioner attached copies of the original structure and the proposed Applicant and Developer structure.

10. According to Petitioner, approval of Jordan Bayou’s proposed restructuring would mean that Jordan Bayou would be a Non-Profit Applicant,

as opposed to a for-profit Applicant, as was proposed in the original application. Petitioner asserts that with the restructuring, Jordan Bayou would meet the definition of a Non-Profit entity in Florida Housing's rules (Rule 67-48.002(84), *Florida Administrative Code*) and would be compliant with Rule 67-48.020(d), *Florida Administrative Code*, relating to Terms and Conditions of Loans for Home Rental Developments.

11. The Rule provides that Non-Profit Applicant will receive a zero percent interest rate loan on the portion of the loan amount equal to a Non-Profit's ownership interest in the development held by the general partner or managing member of the ownership entity. Jordan Bayou states that it is prepared to comply with all conditions of Non-Profit Applicants and has attached to the petition, all information that would have been required to be submitted for non-profit applications and a new Principals Disclosure Form.

12. Petitioner also requests that Florida Housing staff and the Board of Directors approve the change to Jordan Bayou's Principals of its Developers.

13. Further, Petitioner requests a waiver from the RFA requirement regarding changes to the Applicant entity and the Principals of each Developer.

14. Additionally, Petitioner requests to reduce the total number of units from 50 to the 39 affordable HOME units. Specifically, Petitioner states that the necessary rental rates for the eleven (11) market rate units to be financially viable is not supported by the population and demographic of the primary market area. The market rate units were scheduled to rent at a 25% premium over the High HOME rental rates for an identical unit. Petitioner states that a market study from Integra Realty Sources, dated September 27, 2019, indicates potential demand and absorption risk for a fifty (50) rental unit development within the primary market area.

15. Petitioner also asserts that given the lack of comparable market rate rental units it is difficult to determine with any certainty the achievable market rate unit rents. According to Petitioner, the proposed elimination of the eleven (11) market rate units, would help ensure that the proposed Development can be successfully executed under the allocated HOME financing.

16. Petitioner states that although the reduction in the number of units would reduce the Total Development Cost and thus allow the number of HOME-assisted units to be less than 39 pursuant to section Four A.6.b.(1) of the RFA, Petitioner proposed to maintain the 39 HOME-assisted units as originally planned.

17. Section 120.542(2), *Florida Statutes*, 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.

18. Granting the requested waiver would not impact other participants in funding programs administered by Florida Housing, nor would it detrimentally impact Florida Housing.

19. Petitioner has demonstrated that it would suffer a substantial hardship if the waiver is not granted.

20. 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.

21. Furthermore, staff particularly supports this specific waiver because it facilitates the viability of a development in a Hurricane-impacted area, with the HOME funding source.

22. The Board finds that strict application of the above Rules and RFA provision under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory



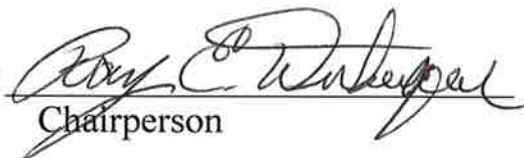
mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

**IT IS THEREFORE ORDERED:** Petitioner's request for a waiver of Rules 67-48.004(3)(b), (d), and (i), *Florida Administrative Code*, and Section Four A.3.c.(3) of RFA 2019-109, is hereby **GRANTED** to allow Petitioner to become a Non-Profit Applicant, admit National CORE as a member of MHP Jordan Bayou, LLC and MHP Jordan Bayou Developer, LLC, restructure as proposed in the Petition, and reduce the total number of units from 50 to 39 while maintaining all of the HOME-assisted units, subject to the requirements of credit underwriting.

**DONE and ORDERED** this 13th day of December, 2019.



Florida Housing Finance Corporation

By:   
Chairperson

Copies furnished to:

Hugh R. Brown, General Counsel  
[Hugh.Brown@floridahousing.org](mailto:Hugh.Brown@floridahousing.org)

Marisa Button, Director of Multifamily Programs  
[Marisa.Button@floridahousing.org](mailto:Marisa.Button@floridahousing.org)

David Westcott, Director of Homeownership Programs  
[David.Westcott@floridahousing.org](mailto:David.Westcott@floridahousing.org)

Donna E. Blanton, Esquire  
Radey Law Firm  
[dblanton@radeylaw.com](mailto:dblanton@radeylaw.com)

Joint Administrative Procedures Committee  
Attention: Ms. Yvonne Wood  
[Joint.admin.procedures@leg.state.fl.us](mailto: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.**