

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: HIDDEN GROVE HOUSING. L.P. FHFC Case No.: 2020-031VW

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**ORDER GRANTING WAIVER OF RULES 67-21.003(1)(b), 67-  
21.002(9), (85), F.A.C. (2018)**  
**FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on June 11, 2020. Florida Housing Finance Corporation (“Florida Housing”). On May 8, 2020, Florida Housing received a “Amended Petition for Waiver of Rules 67-21.003(1)(b), 67-21.002(9), (85), F.A.C. (2018) and the Incorporated Non-Competitive Application Instructions” (the “Petition”). Notice of the Petition was published on May 12, 2020, in Volume 46, Number 93, 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 (“Board”) of Florida Housing hereby finds:

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

2. Hidden Grove Housing, L.P. (“Petitioner”) was awarded Multifamily Mortgage Revenue Bond (MMRB) funding under its 2018 Non-

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HOUSING FINANCE CORPORATION

*Tommy Dlamosy* PATL 6/11/2020

Competitive Application and associated 4% Non-Competitive funding to assist in the rehabilitation of the Development.

3. Rule 67-21.003, Fla. Admin. Code (2018), provide, in pertinent part:

(1) Applicants shall apply for MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC as set forth below. For purposes of this subsection only, the term NC Award shall refer to MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC, and funding from the following Corporation programs will not be considered to be other Corporation funding: Predevelopment Loan Program (PLP) and Elderly Housing Community Loan (EHCL) Program.

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(b) If the NC Award will not be in conjunction with other Corporation funding made available through the competitive solicitation funding process outlined in rule chapter 67-60, F.A.C., the Applicant shall utilize the Non-Competitive Application Package.

4. Rule 67-21.003(1)(b), Florida Administrative Code, incorporates by reference the Non-Competitive Application Package (“NCA”). The NCA includes the following requirement:

The Applicant entity shall be the recipient of the Non-Competitive Housing Credits and the borrowing entity for the MMRB Loan and cannot be changed in any way (materially or non-materially) until after the MMRB Loan Closing. After loan closing, any change (materially or non-materially) will require Board approval prior to the change. Changes to the Applicant entity prior to the loan closing or without Board approval after the loan closing shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes to the limited partner of an investor limited partnership or an investor member of a limited liability company owning the syndicating interest therein will not result in disqualification.

5. Rule 67-21.002(9) and (85)(a)2.c., and g., Florida Administrative Code (2018), provide as follows:

(9) “Applicant” means any person or legal entity of the type and with the management and ownership structure described herein that is seeking a loan or funding from the Corporation by submitting an Application or responding to a competitive solicitation pursuant to Rule Chapter 67-60, F.A.C., for one or more of the Corporation’s programs. For purposes of Rule 67-21.031, F.A.C., Applicant also includes any assigns or successors in interest of the Applicant. Unless otherwise stated in a competitive solicitation, as used herein, a ‘legal entity’ means a legally formed corporation, limited partnership or limited liability company with a management and ownership structure that consists exclusively of all natural persons by the third principal disclosure level. For Applicants seeking Housing Credits, the Housing Credit Syndicator/Housing Credit investor need only be disclosed at the first principal disclosure level and no other disclosure is required. The terms ‘first principal disclosure level’ and ‘third principal disclosure level’ have the meanings attributed to them in the definition of “Principal.”

(85) ‘Principal’ means:

(a) With respect to an Applicant that is:

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2. A limited partnership, at the first principal disclosure level, any general partner or limited partner of the Applicant limited partnership, and, unless otherwise excluded at subsection 67-21.002(9), F.A.C., with respect to any general partner or limited partner of the Applicant limited partnership, at the second principal disclosure level, that is:

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c. A limited liability company, any manager or member of the limited liability company...

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g. A limited liability company, by the third principal disclosure level, any manager or member of the limited liability company, **each of whom must be a natural person...**  
(Emphasis added)

6. Petitioner requests a waiver of the above Rules to permit it to amend its organizational structure such that an LLC appearing at its second disclosure level may replace the LLC's sole member with the sole member's trust (of which the sole member is the only trust beneficiary).

7. As grounds for this request, Petitioner states that between the date of Application and the invitation to credit underwriting for this Development, amendments to the Rules became effective that allow a trust to be disclosed at the third principal level if all the trust's principals are natural persons. (Rule 67-21.0025(7)(c)-(d), effective July 11, 2019). Petitioner now wishes, for estate planning purposes, to remove Stephen M. Ross as a principal and to replace him with the revocable trust wholly owned by him.

8. Petitioner also states that if this waiver request is denied, Mr. Ross will be required to form an entity specifically for this Development, which will not ultimately roll up into a trust, creating an administrative burden on Mr. Ross' potential heirs and beneficiaries. Petitioner's other natural person principals disclosed in its application will not change if the Petition is

granted. If granted, Mr. Ross will move from the third level of disclosure down to the fourth level of disclosure – which is permitted by the current Rule 67-21.0025(7)(d) (effective July 11, 2019).

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

11. Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver is not granted.

12. 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.

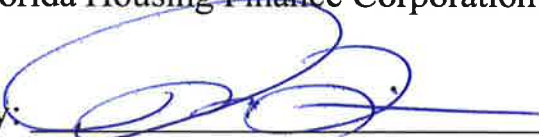
**IT IS THEREFORE ORDERED:** Petitioner’s request for a waiver of Rules 67-21.003(1)(b), 67-21.002(9), (85), Fla. Admin. Code (2018) and the Incorporated Non-Competitive Application Instructions, is hereby

**GRANTED** to permit Petitioner to maintain a trust at the third principal disclosure level and a natural person at the fourth level, as set forth in the Petition.

**DONE and ORDERED** this 11th day of June, 2020.



Florida Housing Finance Corporation

By:   
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee  
Attention: Ms. Yvonne Wood  
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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.**