

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: CLERMONT RIDGE, LTD.

FHFC Case No.: 2019-075VW

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**ORDER GRANTING WAIVER OF RULE  
67-48.002(83), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (“Florida Housing”) on September 20, 2019, pursuant to a “Petition for Waiver from the Provisions of Florida Administrative Code Rule 67-48.002(83) F.A.C. (2017).” Florida Housing received the Petition on August 30, 2019, from Clermont Ridge, Ltd. (“Petitioner”). Notice of the Petition was published on September 4, 2019 in Volume 45, Number 172, 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. On December 12, 2017, Petitioner submitted an application in response to Request For Applications 2017-111 ("RFA") for Housing Credit Financing for Affordable Housing Developments Located in Medium and

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*Jennifer Maish* DATE: 9/23/2019

Small Counties and was assigned Application No. 2018-112C ("Application"). Petitioner was awarded competitive Housing Credits in the annual amount of \$1,250,000 to assist in the construction of a 70-unit non-assisted living facility development for elderly persons located in Lake County, Florida, known as Clermont Ridge Senior Villas (the "Development").

3. Petitioner, in its Application, selected the "non-profit set aside" under the RFA, thereby requiring as part of its ownership structure a non-profit entity that meets the definition found in Rule 67-48.002(83), F.A.C. (2107).

4. Petitioner listed New Beginnings Housing, Inc., now known as Provident Housing Solutions, Inc. ("Provident"), as the General Partner of the Applicant, having a 51% ownership interest in the Development. Blue Sky Clermont ALP, LLC ("Blue Sky Clermont") owned the remaining 49%.

5. Provident met the definition of a "non-profit" entity under the rule, which included receiving at least 25% of the Developer fee.

6. In its Application, Petitioner specified that Co-Developer Blue CR Developer, LLC ("Blue CR") would receive 75% of the Developer Fee and Provident would receive the remaining 25%.

7. On August 14, 2019, the Petitioner made a written request to Florida Housing staff to change the ownership structure of the Petitioner and to add a co-developer. That request was attached to the Petition as Exhibit A.

8. Rule 67-48.002(83), Fla. Admin. Code (2017), provides as follows:

(83) “Non-Profit” means a qualified non-profit entity as defined in Section 42(h)(5)(C), subsection 501(c)(3) or 501(c)(4) of the IRC and organized under Chapter 617, F.S., if a Florida Corporation, or organized under similar state law if organized in a jurisdiction other than Florida, to provide housing and other services on a not-for-profit basis, which owns at least 51 percent of the ownership interest in the Development held by the general partner or managing member entity, which shall receive at least 25 percent of the Developer fee, and which entity is acceptable to federal and state agencies and financial institutions as a Sponsor for affordable housing, as further described in Rule 67-48.0075, F.A.C.

9. Petitioner now requests a waiver of the above Rule to allow it to replace Provident with a different “non-profit” entity, TB Affordable Housing, Inc. (“TB Affordable”). Provident will serve as a Special Limited Partner to the Applicant. Blue CR Developer’s share of the Developer Fee will decrease from 75% to 70% and Provident’s share of the Developer Fee will decrease from 25% to 15%. CR GC will receive 15% of the Developer Fee. TB Affordable will meet the definition of a “non-profit” in the rule except that it will only receive 15% of the Developer fee via CR GC Developer, LLC (“CR GC”), a related entity, which will be added as a Co-

Developer, as discussed in paragraph 11 below. The requested waiver would allow TB Affordable to still be considered a “non-profit” entity and Petitioner can continue to meet the “non-profit set-aside” as stated in the Application.

10. To effectuate the requested waiver of Rule 67-48.002(83), Petitioner is also requesting that it be allowed to change the Principals of each Developer, pursuant to Rule 67-48.004(3)(b), Fla. Admin. Code (2017), which 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.

11. Specifically, Petitioner seeks permission to change the Developer entity by adding CR GC as a Co-Developer. CR GC will receive 15% of the Developer Fee, as noted in Paragraph 9 above.

12. Additionally, to effectuate the requested waiver of Rule 67-48.002(83), Petitioner is also requesting that it be allowed to change the Applicant entity, pursuant to Section Four A.3.d.(3) of the Request for Application 2017-111 (“RFA”), which, in pertinent part, provides:

The Applicant entity shall be the recipient of the Housing Credits and cannot be changed in any way (materially or non-materially) until after the Carryover Allocation Agreement is in effect. Once the Carryover Allocation Agreement has been executed by all parties, (a) replacement of the Applicant or a material change in the ownership structure of the named Applicant will require Board approval prior to the change.

13. Specifically, Petitioner seeks permission to change the Applicant entity by adding TB Affordable as the 51% General Partner, changing Provident from a General Partner to a Special Limited Partner with 10% ownership interest, and reducing Blue Sky Clermont's ownership interest to 39%.

14. In support of this request, Petitioner asserts that extenuating site challenges and rising construction costs have increased the hard costs budget, and without additional financing the Development may not be completed. TB Affordable has agreed to provide a soft loan to Petitioner, but only if it acquires rights in the ownership and management of Petitioner. A rule waiver is necessary to avoid economic hardship by allowing the requested changes in order to qualify for the loan.

15. Additionally, Petitioner asserts that the purpose of Rule 67-48.002(83) would be met because both non-profit entities will materially and substantially participate in the development, management, and operation of

the Development, and the non-profit entities, between them, will receive 30% of the Developer fee.

16. 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.

17. Granting the requested waiver would not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing.

18. 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.

19. 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 Rule 67-48.002(83), F.A.C. (2017) is hereby **GRANTED** so that TB Affordable will be considered a non-profit entity. This waiver is conditioned

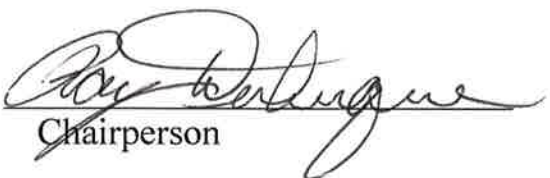
on Petitioner ensuring that Provident and TB Affordable, though its related entity CR GC, each receive at least 15% of the Developer Fee.

Petitioner's request to change the Principals of each Developer by adding CR GC as a Co-Developer, pursuant to Rule 67-48.004(3)(b), Fla. Admin. Code (2017), is hereby **GRANTED**.

Petitioner's request to change the Applicant entity by adding TB Affordable as the 51% General Partner, changing Provident from a General Partner to a Special Limited Partner with a 10% ownership interest, and reducing Blue Sky Clermont's ownership interest to 39% is hereby **GRANTED**.

DONE and ORDERED this 20th day of September, 2019.

Florida Housing Finance Corporation

By:   
Chairperson

Copies furnished to:

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[Joint.admin.procedures@leg.state.fl.us](mailto:Joint.admin.procedures@leg.state.fl.us)

### **NOTICE OF RIGHT TO JUDICIAL REVIEW**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL 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.**