

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: BDG HIBISCUS APARTMENTS, LP    FHFC CASE NO.: 2019-059VW

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**ORDER GRANTING WAIVER OF RULE 67-48.0072(21)(b), F.A.C.**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on August 2, 2019, pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on July 3, 2019, from BDG Hibiscus Apartments, LP (“Petitioner” or “Hibiscus”). Notice of the Petition was published on July 8, 2019, in Volume 45, Number 131, 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.
  
2. Petitioner was selected to receive State Apartment Incentive Loan (“SAIL”) financing, 4% housing credits, Multifamily Mortgage Revenue Bonds (“MMRB”), and an Extremely Low Income (ELI) loan under RFA 2017-108 to assist in the development of Hibiscus Apartments, a 96-unit family housing development in Fort Myers, Florida.

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*James Blamney* / DATE: 8/5/19

3. Rule 67-48.0072, Fla. Admin. Code, (2017), provides in relevant part:

(21) Information required by the Credit Underwriter shall be provided as follows: ...

(b) For SAIL, EHCL, and HOME that is not in conjunction with Competitive HC, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued within nine (9) months of the Applicant's acceptance to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to achieve credit underwriting report approval and issuance of a firm loan commitment by the specified deadline shall result in withdrawal of the preliminary commitment. Applicants may request one (1) extension of up to six (6) months to secure a firm loan commitment. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting the extension and shall detail the time frame to achieve a firm loan commitment. In determining whether to grant an extension, the Corporation shall consider the facts and circumstances of the Applicant's request, inclusive of the responsiveness of the Development team and its ability to deliver the Development timely. The Corporation shall charge a non-refundable extension fee of one (1) percent of each loan amount if the request to extend the credit underwriting and firm loan commitment process beyond the initial nine (9) month deadline is approved. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

4. On May 9, 2018, Florida Housing issued an invitation to enter credit underwriting to Petitioner. The acceptance was acknowledged on May 14, 2018, which gave Petitioner a firm loan commitment issuance deadline of February 14, 2019. Per the Rule, applicants were permitted to request one extension of up to six months to secure a firm loan commitment. Petitioner requested that extension,

which was granted by the Board on February 1, 2019 and extended the deadline to August 14, 2019.

5. Petitioner is requesting a waiver of the Rule to extend the deadline to receive a firm loan commitment from August 14, 2019 to December 31, 2019. Petitioner asserts that it requires the extension due to extended delays in obtaining site plan/site permit approval and plat approval from the local government. Petitioner states that it has timely submitted all requests and information and the delays are outside of its control.

6. The Board finds that granting the waiver will not impact other participants in funding programs administered by Florida Housing, nor would it detrimentally impact Florida Housing or the Development.

7. 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.

8. Petitioner has demonstrated that the waiver is needed in order to obtain the firm loan commitment and, if the waiver were not granted, Petitioner would suffer a substantial hardship. 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.

9. The Board finds that strict application of the above Rule 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 Rule 67-48.0072 (21)(b), Fla. Admin. Code is hereby **GRANTED** to extend Petitioner's firm loan commitment deadline from August 14, 2019 to until December 31, 2019.

**DONE and ORDERED** this 2nd day of August 2019.



Florida Housing Finance Corporation

By:

  
Chair

**Copies furnished to:**

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## **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.**