

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Palm Breeze Partners, Ltd.

FHFC Case No.: 2014-072VW

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**ORDER GRANTING WAIVER OF RULE 67-48.004(3),
FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on August 8, 2014, pursuant to a “Petition for Waiver from Florida Administrative Code Rule 67-48.004” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on July 23, 2014, from Palm Breeze Partners, Ltd. (“the Petitioner”). On July 25, 2014, the Notice of the Petition was published in Volume 40, Number 144, of the Florida Administrative Register. Florida Housing received one comment in support of 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.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATE: 09.19.14

2. Petitioner applied for and was awarded tax credit funding under Request for Applications 2013-001 to help finance a development to be called Palm Coast Senior Living and located in Flagler County, Florida.

3. In its original Application Petitioner indicated that the Development Type was to be “Mid-Rise w/Elevator, 5-6 stories and concrete construction” and based estimates of its Total Development Cost on that designation.

4. Rule 67-48.004(3), Fla. Admin. Code (Rev. 8-1-2013) provides, in pertinent part:

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 Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempts to make changes to these items will not be accepted. Those items are as follows:

(g) Development Type;

5. Petitioner now wishes to change the designation of its Development Type from the above to Mid-Rise w/Elevator, four stories and wood construction rather than concrete.

6. Subsequent to Petitioner’s Application and award, the United States Department of Housing and Urban Development (HUD) changed

designated the area including Petitioner's Development Site as a Difficult to Develop Area (DDA).

7. HUD periodically designates areas as DDA based on the relatively high costs of construction, land and utilities as compared to the median gross income of the area. To facilitate and encourage the development of affordable housing in these areas, the DDA designation allows a development to increase the eligible basis by 130%, making development of tax credit properties more financially feasible.

8. The Board finds that HUD's designation of the development area as a DDA evidences the substantial hardship the Petitioner would experience without the granting of this rule waiver. The Board finds that granting Petitioner's request would reduce the Total Development Cost (TDC) with a resulting decrease in general contractor and developer fees, as well as lowering the Development's leveraging calculation per set-aside unit.

9. The Board finds that the granting of this rule waiver would not allow Petitioner to gain an unfair advantage over other applicants, given that the change in DDA status occurred post-Application and was an unforeseen event that evidences a substantial hardship not anticipated in the Application process.

10. 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.

11. The Board finds that the Petitioner has demonstrated that strict application of the above Rule under these specific circumstances would cause substantial hardship to Petitioner, and that the granting of this rule waiver will serve the underlying purpose of Chapter 420, Part V, Florida Statutes, by reducing the Total Development Cost (“TDC”) and increasing its financial viability in this difficult to develop area.

12. Rule 67-48.002(110), Fla. Admin. Code (Rev. 8-1-2013) defines “Total Development Cost” as:

[T]he total of all costs incurred in the completion of a Development, all of which shall be subject to the review and approval by the Credit Underwriter and the Corporation pursuant to this rule chapter, and as further described in Rule 67-48.0075, F.A.C.

13. As a condition of granting this rule waiver, Petitioner shall meet all credit underwriting requirements applying to the new Development Type and reduced TDC, as set forth in Rule 67-48.0075, Fla. Admin. Code (Rev. 8-1-2013) and RFA 2013-001.

IT IS THEREFORE ORDERED:

Petitioner's request for waiver of is hereby **GRANTED**, to allow the change of Development Type to "Mid-Rise w/Elevator, 4 stories and wood construction", conditioned upon Petitioner meeting the revised TDC requirements associated with that Development Type during Credit Underwriting.

DONE and ORDERED this 19th day of September, 2014.



Florida Housing Finance Corporation

By: _____

Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
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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.