

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: MLF 2, Ltd.,

FHFC CASE NO.: 2017-0041VW

**ORDER GRANTING WAIVER OF SECTION III (B) (1) (b) OF
INSTRUCTIONS AND RULE 67-48.004(1)(a), FLA. ADMIN. CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on June 16, 2017, pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on May 26, 2017, from MLF 2, Ltd. (“Petitioner”). Notice of the Petition was published on May 31, 2017, in Volume 43, Number 105, 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 an award of Low Income Housing Tax Credits (“HC”) funding under the 2011 Universal Cycle to assist in the

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATE: 6-16-17

construction of MLF Tower (now 540 Town Center) (“the Development”), a 145-unit elderly housing development in Pinellas County, Florida.

3. Petitioner seeks a waiver from requirements of Section III (B)(1)(b) of Instructions, which is incorporated in Rule 67-48.004(1)(a), Fla. Admin. Code.

4. Rule 67-48.004(1)(a), Fla. Admin. Code provides the following:

(a) The Universal Application Package or UA1016 (Rev. 2-11) is adopted and incorporated herein by reference and consists of the forms and instructions available, without charge, on the Corporation’s Website under the 2011 Universal Application link labeled Instructions and Application, or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-00703>, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the HOME and HC Program(s).

5. Part III of the Instructions provides in pertinent part:

Part III. Proposed Development...

B. Construction Features and Amenities...

Units in buildings that are not eligible for Energy Star New Homes must include, at a minimum, the following:

- Water heating (choose gas, electric, gas tank less, or boiler/hot water marker):
- Electric
 - 40 gal = .93 EF; or
 - 50 gal = .92 EF; or
 - 80 gal = .89 EF

6. Petitioner requests a waiver of the requirement to provide a 40 gallon = .93 EF water heater in each unit of the Development, allowing it to install 30 gallon = .93 EF water heaters when needed. Furthermore, Petitioner requests that Florida Housing acknowledge that the capital needs assessment (“CNA”) for the Development indicated that existing water heaters in the Development were 40 gallons in size with an EF between 0.93 and 0.95., when the existing units were actually 19.9 gallon units. As justification for its request, Petitioner states, with support, that the existing 19.9 gallon units and proposed 30 gallon units can accommodate the required capacity for the 1 bedroom units, and that the required 40 gallon units are larger than needed and would result in substantial economic hardship to MLF, and removing properly sized heaters in good working condition would cause unnecessary expenditure of reserves.

6. The Board finds that granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on 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 strict application of the above Instructions adopted by Rule, under these circumstances, would constitute a substantial hardship and violate the principals of fairness. 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 Instructions adopted by 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 Section III (B)(1)(b) of Instructions, which is incorporated in Rule 67-48.004(1)(a), Fla. Admin. Code is hereby **GRANTED** to waive the requirement to install 40 gallon = .93 EF water heaters in each unit, thereby allowing Petitioner to install 30 gallon = .93 EF water heaters to replace the existing 19.9 gallon water heaters when such replacement is needed.

DONE and ORDERED this 16th day of June, 2017.

Florida Housing Finance Corporation

By: _____

Chair

Copies furnished to:

Hugh R. Brown
General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Ken Reecy
Director of Multifamily Development Programs
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301

Trey Price
Executive Director
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301

Michael P. Donaldson
Carlton Fields Jordan Burt
215 South Monroe Street, Suite 500
Tallahassee, Florida 32301

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
120 Holland Building
Tallahassee, Florida 32399-1300

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.