STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: AMBAR TRAIL, LTD. FHFC Case No.: 2020-071VW

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ORDER GRANTING WAIVER FROM RULE 67-21.013, FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on January 22, 2021. On December 14, 2020, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-21.013, F.A.C. (July 11, 2019) to Implement the Self-Sourced Financing Initiative (the "Petition). Notice of the Petition was published on December 16, 2020, in Volume 46, Number 243, 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 hereby finds:

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

2. Petitioner successfully applied for State Apartment Incentive Loan ("SAIL") funding and corporation-issued Multifamily Mortgage Revenue Bonds ("MMRB") under RFA 2019-116 (the "RFA") to finance the

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Hans Klamoy DATE: 1/22/2021

construction of a multifamily complex to be known as Ambar Trail, in Miami-Dade County, Florida (the "Development").

3. Rule 67-21.013, Fla. Admin. Code provides in relevant part that "[a]ny issuance of non-Credit Enhanced revenue Bonds shall be sold only to a Qualified Institutional Buyer or a Freddie Mac Multifamily Targeted Affordable Housing Lender."

4. RFA 2019-116, Section Four, A.3.a.(1)(b), provides in relevant part that "[s]elf-sourced financing will be funded at closing of the SAIL loan via escrow account controlled by the SAIL loan servicer and will be dispersed pro rata along with SAIL funding."

5. RFA 2019-116, Section Four, A.3.c.(3), provides in relevant party that "[t]he Applicant entity…cannot be changed in any way (material or non-material) until after the closing of the loan(s)."

6. Petitioner requests waiver of the above cited Rule and sections of the RFA to allow Petitioner to implement its Self-Sourced financing commitment. Petitioner elected to compete as a Self-Sourced Applicant, as defined in the RFA.

7. Under the terms of the RFA, a Self-Sourced Applicant's Principals are required to invest their own funds to the Development in an amount that is at least half of the Applicant's eligible SAIL Request Amount,

which for Petitioner is $2,500,000. Within the tax-exempt bonds that will be issued by Florida Housing are Self-Sourced Bond Financing B Bonds (the "B Bonds").

8. In order to implement its Self-Sourced financing commitment, Petitioner's Principals are required to purchase the B Bonds. However, Petitioner's Principals are not Qualified Institutional Buyers as required by Rule 67-21.013, Fla. Admin. Code, but are Accredited Investors as such term is defined in Rule 501 of Regulation D of 17 CFR Section 230.501.

9. Accordingly, Petitioner requests a waiver to allow Petitioner's Principals to purchase the Corporation's B Bonds, and, in doing so, implement its Self-Sourced financing commitment. In support of this request, Petitioner asserts that the Corporation's tranche "A Bonds," which will be the first mortgage bonds in the anticipated amount of $25,5000,000, will be purchased by a designee of R4 Capital Funding, LLC that will be a Qualified Institutional Buyer, in accordance with Rule 67-21.013, Fla. Admin. Code.

10. Additionally, Petitioner requests staff to waive the above-cited sections of the RFA and in support thereof offers the following information:

(a) In connection with the purchase of the B Bonds by Petitioner's Principals, Petitioner asserts that the current members of the Petitioner's general partner, Ambar Trail GP, LLC, (the "General Partner") need to be

changed as set forth in the exhibit attached to the petition. According to Petitioner, General Partner changes are necessary, prior to or at closing, in order to meet the tax-exempt bond requirements. Petitioner states that the management and control of the General Partner will not change.

(b) Additionally, Petitioner requests that instead of fully funding the B Bonds at closing, the B Bonds will be funded pro-rata with the Development's other financing, otherwise, the increased construction loan interest would be an unnecessary construction expense to the Development.

11. Petitioner asserts that without the ability of Petitioner's Principals to purchase the B Bonds, the Corporation's Self-Sourced Financing Initiative would be frustrated, the financing for the Development would be delayed and made significantly more costly and inefficient.

12. Additionally, Petitioner states that the Corporation will not be harmed by granting this requested waiver because the tranche of A Bonds, which are senior to the B Bonds and significantly more than the B Bonds, will be purchased by a designee of R4 Capital Funding, LLC, a Qualified Institutional Buyer.

13. In support of Staff's positive recommendation, Staff finds it particularly compelling that the majority of the Florida Housing bond financing in the Development in tranche A is being purchased by a Qualified

Institutional Buyer, and that the Principals purchasing the B Bonds are Accredited Investors.

14. 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.

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

16. The Board also finds that 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.

17. The Board further finds that 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 67-21.013 Fla. Admin. Code is hereby **GRANTED** to allow the Principals of Petitioner to purchase the B Bonds. Additionally, staff approves the request to waive Section Four, A.3.a.(1)(b) and Section Four, A.3.c.(3) of

RFA 2019-116 to allow Petitioner to change the General Partner's members as noted in Exhibit 1 to the Petition, prior to or at closing in order to meet the tax-exempt bond requirements and use draw-down funding for the B Bonds.

DONE and ORDERED this 22nd day of January 2021.

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 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.