**STATE OF FLORIDA**
**FLORIDA HOUSING FINANCE CORPORATION**

In Re: MALIBU BAY PRESERVATION, LTD

FHFC Case No.: 2020-061VW

_____/

**ORDER GRANTING WAIVER FROM RULE 67-21.003(1)(b), 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 October 16, 2020. On September 28, 2020, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-21.003(1)(b), F.A.C. (7/11/2019) (the "Petition"). Notice of the Petition was published on September 30, 2020, in Volume 46, Number 191, 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 has applied for non-competitive housing credits to assist in the rehabilitation of Malibu Bay Apartments, a family, affordable housing development in Palm Beach County, Florida (the "Development").

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/DATE: 10/16/2020

3. Rule 67-21.003(1)(b), Fla. Admin. Code (2019), in relevant part, adopted and incorporated the Non-Competitive Application Package ("NCA").

4. In relevant part, section 14.k of the NCA provides:

> 14. Applicant Certification:
>
> By completing, executing and submitting this Application form and all applicable exhibits, the Applicant certifies and acknowledges that:
>
> ...
>
> k. The proposed equity amount to be paid prior to or simultaneous with the closing of construction financing is at least 15 percent of the total proposed equity to be provided (the 15 percent criteria), subject to the following:...

*See* Non-Competitive Application Form (Rev. 04-2019), pp. 14-15 (the "15% Criteria").

5. Petitioner requests waiver of the above cited rule which incorporates the 15% Criteria in the NCA.

6. Petitioner asserts that it closed on the construction financing on August 28, 2020 with the full intention of complying with all Florida Housing Rules, including the 15% Criteria. During the post-closing review, Petitioner asserts that it learned that, due to a mistake caused by multiple moving variables at the last minute leading up to closing (including final equity numbers), only 14.16% of equity was contributed.

7. Petitioner states that the 0.84% discrepancy in the equity will be noted on the credit underwriting report and that the next scheduled installment is expected to be completed within twelve months. Petitioner asserts that without the waiver of the 15% Criteria, Petitioner will not be able to rehabilitate the Development.

8. 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.

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

10. 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.

11. 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 67-21.003(1)(b), Fla. Admin. Code (2019) and Section 14.k of the Non-Competitive Application Form is hereby **GRANTED** to allow Petitioner to pay in 14.16% of equity during closing of the construction financing.

**DONE and ORDERED** this 16th day of October 2020.

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.**