

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Cape Morris Cove II Partners, L.L.L.P.

FHFC Case No.: 2013-020VW

**ORDER GRANTING PETITION FOR WAIVER
OF RULE 67-48.010(8)(a) FLORIDA ADMINISTRATIVE CODE
(2008)**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 20, 2013, pursuant to a "Petition for Waiver or Variance from Rule 67-48.010(8)(a) F.A.C" (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on July 24, 2013, from Cape Morris Cove II Partners, L.L.L.P. ("the Petitioner"). On August 1, 2013, the Notice of the Petition was published in Volume 39, Number 149, 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.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION



/DATE: 09/23/13

2. During the 2008 Universal Cycle, Cape Morris Cove II Partners, L.L.L.P. ("Petitioner") applied for and was awarded State Apartment Incentive Loan (SAIL) funding to finance the construction of Cape Morris Cove Phase II (the "Development"), located in Volusia County, Florida, to provide family housing.

3. Rule 67-48.010(8)(a), Fla. Admin. Code (2008) provides, in pertinent part:

(a) By May 31 of each year of the SAIL loan term, the Applicant shall provide the Corporation with audited financial statements and a certification detailing the information needed to determine the annual payment to be made...The audited financial statements are to be prepared in accordance with generally accepted accounting principles for the 12 months ended December 31...

4. Petitioner has requested a waiver of the above Rule which requires it use a calendar fiscal year ending December 31. Petitioner requests that it be allowed to have the reporting flexibility permissible under current Rule 67-48.010(8)(a), Fla.Admin.Code (2011), which allows Petitioner to select its fiscal year end and requires that audited financial statements be provided 151 days after that fiscal year end date.

5. The requested change would neither affect the scoring of Petitioner's application nor allowed Petitioner to gain an unfair advantage

over other applications submitted by other developers in the 2008 Universal Cycle.

6. 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.

7. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner and violate the principles of fairness. Petitioner demonstrated that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner and violate the principles of fairness. In May of 2012, the Development's limited Partner, who has majority ownership interest, transferred its interest to an entity whose fiscal year ends October 31st. Petitioner must change its fiscal year to comport with the new limited partner's fiscal year. Denying the waiver will force Petitioner to conduct two audits, with significant accounting expense. Granting the waiver will provide Petitioner more flexibility in reporting and allow it to continue to provide much needed housing.

IT IS THEREFORE ORDERED:

Petitioner's request for waiver of Rule 67-48.010(8)(a) Fla. Admin. Code (2008) is hereby **GRANTED**. Petitioner is to comply with Rule 67-48.010 (8)(a), Fla. Admin. Code (2011), in setting its fiscal year.

DONE and ORDERED this 20th day of September, 2013.



Florida Housing Finance Corporation

By: _____

Chairperson

Copies furnished to:
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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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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.