

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Coral Bay Cove, LLC

FHFC Case No.: 2017-049VW

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**ORDER GRANTING WAIVER  
OF RULES 67-21.026(13)(e) and 67-48.0072(17)(f)**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on June 15, 2018, pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on May 30, 2018, from Coral Bay Cove, LLC (“Petitioner”). Notice of the Petition was published on May 31, 2018, in Volume 44, Number 106, 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 successfully applied under Request for Applications 2016-109, for an award of State Apartment Incentive Loan (SAIL) program and Extremely Low Income program funds to assist in the construction of the Development described above. Petitioner also received local bonds and surtax funds.

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*Amey* DATE: 4/10/18

3. Petitioner requests a waiver of Rules 67-21.026(13)(e) and 67-48.0072(17)(f), Fla. Admin. Code of the Corporation's general prohibition on subcontracting more than 20% of the construction costs of a development to one subcontractor without the Corporation's approval. The Rules identically provide as follows:

The General Contractor must meet the following conditions:

\* \* \*

(e) Ensure that not more than 20 percent of the construction cost is subcontracted to any one entity, with the exception of a subcontractor contracted to deliver the building shell of a building of at least five (5) stories which may not have more than 31 percent of the construction cost in a subcontract, unless otherwise approved by the Board for a specific Development. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of construction costs and the General Contractor's fees;

4. The Development will consist of twelve building of fewer than five stories each, hence the approval process set forth in the Rule does not apply, necessitating this request for a waiver.

5. As grounds for the request, Petitioner states that it has entered into a guaranteed maximum price general contract for the construction of the Development (the "GC Contract"). This contract includes a shell work component. Due to the size and scope of the construction, the GC received bids from nine unaffiliated shell subcontractors, all of which exceeded the 20% limitation on cost. The GC Contract itself reflects shell construction costs of 23% of the total construction cost. Under

these circumstances, the Petitioner asserts it would suffer substantial hardship if the above Rules are strictly applied.

6. Granting the requested waiver would not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing. 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, and that it would otherwise suffer a substantial hardship. Additionally, the underwriter has reviewed the request and provided a positive recommendation.

7. 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

8. Section 120.542(2), Fla, Stat., 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.

9. Petitioner has demonstrated that the waiver is needed in order to efficiently serve low-income families, and that it would suffer a substantial hardship if the waiver is not granted. 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.

10. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner. The Board further finds that granting this request furthers the Florida Housing’s statutory mandate to provide safe, sanitary and affordable housing to the citizen of Florida.

**IT IS THEREFORE ORDERED:**

Petitioner’s request for waiver of Rules 67-48.004(3)(c) and 67-21.003(8)(c), Fla. Admin. Code, is hereby **GRANTED** to permit a single subcontractor entity to work in excess of 20% of total construction cost.

DONE and ORDERED this 15th day of June, 2018.



Florida Housing Finance Corporation

By:

  
Chair

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.**