

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: EHDOC Pepper Towers Limited
Partnership, LTD.,

FHFC CASE NO.: 2017-001VW

ORDER GRANTING WAIVER OF RULE 67-48.004

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on May 5, 2017, pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on January 11, 2017, from EHDOC Pepper Towers Limited Partnership, LTD. (“Petitioner”). Notice of the Petition was published on January 12, 2017, in Volume 43, Number 08, 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 (generally referred to as “Housing Credits”) pursuant to the 2009 Universal Cycle to assist in the rehabilitation of Mildred & Claude Pepper Towers,

a 150-unit development serving low-income elderly tenants in Miami-Dade County, Florida. Petitioner's Application Numbers are 2009-092C and 2010-026CX.

3. Petitioner seeks a waiver from Rule 67-48.004(1), Fla. Admin. Code (2009), which adopted and incorporated the Universal Application Package.

4. At the time of Petitioner's award, Section III.B.2.E.(4) of the 2009 Universal Application required Applicants to select one of the following items:

- a. Attic insulation of R-30 or better; or
- b. Insulation of R-19 with radiant barrier on top floor only.

5. Petitioner chose to provide a radiant-barrier roof with an insulation R-19 rating, to earn one Application point. However, during pre-development planning, it was discovered that a radiant-barrier roof with an R-19 insulation rating was not permitted for this type of building under the Miami-Dade Building Code. AmeriNat, Florida Housing's current compliance consultant, has flagged the absence of a radiant-barrier roof with an R-19 insulation rating as a compliance issue.

6. Petitioner has no legal ability to install the R-19 roof which was called for in the Application. Consequently, if the waiver is not granted Petitioner may have to sacrifice one Application point, potentially subjecting its Tax Credit Exchange Program funds and Housing Credits to recapture. Petitioner requests that it be allowed to use a roof featuring a PVC membrane providing an R-28.25 insulation rating as a substitute. Petitioner asserts that the new proposed roof would

be an enhancement of the energy-conservation aspects of the Development and is in compliance with the Building Code.

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), 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.

9. Petitioner has demonstrated that the waiver is needed in order to efficiently serve low-income persons, 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 and incorporated 2009 Universal Application Package requirement in Section III.B.2.E.(4), 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 of waiver the 2009 Universal Application Package requirement in Section III.B.2.E.(4), adopted and incorporated in Rule 67-48.004(1), Florida Administrative Code (2009), is hereby **GRANTED** to permit the radiant-barrier roof with an insulation R-19 rating to be replaced with a roof featuring a PVC membrane providing an R-28.25 insulation rating.

DONE and ORDERED this 5th day of May, 2017.

Florida Housing Finance Corporation

By: _____

Chair



Copies furnished to:

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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.