STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Beacon at Creative Village Partners, Ltd.

FHFC Case No.: 2022-50VW

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ORDER GRANTING WAIVER OF RULES 67-48.004(3)(i) AND (j), 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 September 16, 2022. On August 26, 2022, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Variance from Rule 67-48.004(3) to Allow a Decrease in the Total Set-Aside Percentage, and Request for Approval of Increase in Total Number of Units (the "Petition") from Beacon at Creative Village Partners, Ltd. (the "Petitioner") to allow Petitioner to add additional units to the Development which results in a decrease to the Total Set-Aside Percentage. Notice of the Petition was published on August 30, 2022, in Volume 48, Number 169, 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.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
DATE: 9/19/22

2. Petitioner successfully applied for competitive housing credits in RFA 2021-202 to assist in the construction of a 79-unit family housing development named The Beacon at Creative Village in Orange County, Florida (the "Development").

3. Rule 67-48.004(3), Fla. Admin. Code, in relevant part, provides:

> (3) For the SAIL, HOME, and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:
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> ...
>
> (i) Total number of units; notwithstanding the foregoing, the total number of units may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development,...
>
> (j) For the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application... Notwithstanding the foregoing, the Total Set-Aside Percentage... may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development...

4. Petitioner requests waiver and approval, as applicable, of the above cited Rules to allow Petitioner to add six units to the development: one Extremely Low Income ("ELI") unit and five market rate units. This would increase the total number of units from seventy-nine (79) to eighty-five (85). The thirteen (13) ELI units would still account for over 15% of the total number of units in the Development as required by the RFA. The number of units at 60% AMI and 80% AMI would remain unchanged at forty-five (45) units and eighteen (18) units respectively.

5. Petitioner states that adding the market rate units will enhance the financial viability of the Development going forward, in terms of providing additional revenue for debt service and operational costs. Rule 67-48.004(3)(j), Fla. Admin. Code, permits an Applicant to submit a written request to the Corporation to increase the Total Set-Aside Percentage, but does not allow an Applicant to decrease the Total Set-Aside Percentage. Petitioner seeks to add both affordable and market rate units to the Development, which has the result of decreasing the Total Set-Aside Percentage, even though it increases the actual number of affordable units and increases the number of ELI units. The total Set-Aside Percentage will decrease from 94% to 89%, but the number of affordable units will increase from seventy-five (75) to seventy-six (76).

6. Petitioner requests a variance from the rule to allow it to request a change in the number of affordable and market rate units that will have the effect of lowering the Total Set-Aside Percentage of affordable units.

7. 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.

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

9. The Board also finds that Petitioner has demonstrated that the waiver and approval is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver and approval were not granted.

10. 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" would still be achieved if the waiver and approval are granted. §420.5099, Fla. Stat.

IT IS THEREFORE ORDERED that Petitioner's request for waiver and approval, as applicable, of Rule 67-48.004(3), Fla. Admin. Code, is

hereby **GRANTED** to allow Petitioner to decrease the Total Set-Aside Percentage from 94% to 89% while increasing the total number of units as stated in the Petition.

DONE and ORDERED this 16th day of September 2022.

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.