STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: City Place Apartments Ltd. FHFC Case No.: 2022-51VW

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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 30, 2022, Florida Housing Finance Corporation ("Florida Housing") received a Petition for (1) Waiver of Rule 67-48.004(3)(i) (5.18.21) for a Change in the Total Number of Units and (2) Approval Pursuant to Rule 67-48.004(3)(j) (5.18.21) to Change the Total Set-Aside Percentage (the "Petition") from City Place Apartments Ltd. (the "Petitioner") to allow Petitioner to remove market rate units which decreases the total number of units and increases the total set-aside percentage. Notice of the Petition was published on August 31, 2022, in Volume 48, Number 170, 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 110-unit family housing development named City Place in Broward 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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> ...
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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 remove eleven (11) market rate units, which will increase the total set-aside percentage to 100% while decreasing the total number of units from one hundred ten (110) to ninety-nine (99).

5. On January 24, 2022, Petitioner accepted Florida Housing's invitation to enter credit underwriting. Since that time, Petitioner states that inflation and supply chain disruptions caused constructions cots to unexpectedly and drastically, increase.

6. On June 24, 2022, Petitioner applied for Florida Housing's Construction Housing Inflation Response Program ("CHIRP"). Petitioner states that even with the CHIRP program funding, additional measures must be taken to maintain the feasibility of the Development's completion. Petitioner is engaging in value engineering to lower the total development costs. Petitioner asserts that it is choosing to forego the eleven (11) market rate units instead of sacrificing any affordable housing units or amenities. If the Petition is granted, the total number of units will decrease from one hundred ten (110) to ninety-nine (99) while the total set-aside percentage will increase from 90% to 100%. The total number of affordable housing units will remain unchanged if the request is granted.

7. In addition, the Petitioner has committed to continue to provide 11 units, which equates to 11% of the new unit count as ELI units at or below 28% AMI.

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 and approval 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 and approval is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver were 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" would still be achieved if the waiver and approval is 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)(i) and (j), Fla. Admin. Code, is hereby **GRANTED** to allow Petitioner to decrease the total number

of units from 110 to 99 as stated in the Petition, while increasing the Total Set-Aside Percentage from 90% to 100% and maintaining a total of eleven (11) ELI units at or below 28% AMI.

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.