STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: MEADOW PARK APARMENTS, LLC

FHFC CASE NO.: 2022-018VW

_____/

ORDER GRANTING WAIVER OF RULE 67-48.004(3)(d) & (i), FLORIDA ADMININSTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on March 4, 2022, pursuant to a "Petition for Waiver of Rule 67-48.004(3)(d) & (i), Florida Administrative Code, Section Four A.3.c.(3) of RFA 2020-206" (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on February 15, 2022, from Meadow Park Apartments, LLC (the "Petitioner"). Notice of the Petition was published on February 17, 2022, in Volume 48, Number 33, of the Florida Administrative Register. Florida Housing has received no comments concerning 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 for financing in response to RFA 2020-206 HOME Financing for the Construction of Small, Rural Developments (the "RFA"). Petitioner was invited into Credit Underwriting in March 2021.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
ATTEST: _____ DATE: 3/4/2022

3. Rule 67-48.004(3), Fla. Admin. Code (2020) provides, in relevant part:

> (3) For the SAIL, HOME and Housing Credit programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant after the applicable submission, unless provided otherwise below…
>
> (d) Applicant applying as Non-Profit or for-profit organization, unless provided otherwise in a competitive solicitation; …
>
> (i) Total number of units; …

4. Petitioner requests a waiver of the above Rule to permit changes to the Applicant's and the Developer's ownership structure, to reduce the number of units in the Development, and to change its Applicant status to Non-Profit.

5. Petitioner reports that it began experiencing construction cost overruns in April 2021, necessitating a revised budget. Further cost overruns resulted in meetings with Corporation staff and the offer of a viability HOME loan ($920,000) to address the financing shortfalls.

6. Additionally, during Credit Underwriting, it became apparent that the Development was not viable due to the first mortgage debt sizing requirements for HOME in Rule 67-48.0072(11), Fla. Admin. Code. This Rule requires that the minimum debt service coverage be 1.10x on HOME interest plus all superior debt service. As a for-profit Applicant, Petitioner is subject to a 1.5 percent per annum interest rate on the HOME loan principal

under Rule 67-48.020(2)(a), Fla. Admin. Code. Under these conditions, Petitioner asserts it cannot achieve the required HOME Debt Sizing, even with the deferral of 100% of the developer fee, and that the Development will not be financially feasible as a result.

7. In consultation with Corporation staff, Petitioner proposes to address this situation by admitting a qualified section 501(c)(3) Non-Profit entity as manager and member of the Petitioner, and to add this entity as a co-Developer entitled to 25 percent of the Developer Fee. This Non-Profit entity will own a 99 percent equity interest in Petitioner. The current owner of Petitioner and its sole member and manager, Meadow Park Inc., would then own a 1 percent equity interest in Petitioner and act as co-manager with the Non-Profit entity. Approval of this proposed restructuring would establish Petitioner as a Non-Profit Applicant eligible for a 0 percent interest rate under Rule 67-48.020(d), Fla. Admin. Code.

8. Petitioner also requests a reduction in the number of units from 27 to 23, citing continuing construction cost overruns. With no additional funding available, Petitioner deferred more than 40 percent of its Developer Fee and redesigned the Development but asserts it cannot complete the development with 27 affordable units with current resources.

9. Petitioner also requests staff approval of a waiver of Section Four A.3.c.(3) of the RFA, which governs changes to the Applicant entity, to add the Non-Profit entity to its ownership structure.

10. 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.

11. 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.

12. Petitioner has demonstrated that the waiver is needed to avoid substantial hardship and 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.

13. The Board finds that strict application of the above Rule 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 waiver of Rule 67-48.004(3)(d) and (i), Fla. Admin. Code is **GRANTED** to reduce the number of affordable units in the Development from 27 to 23. Petitioner's request to add a Non-Profit entity to the Development ownership structure as described in the Petition is also **GRANTED**.

DONE and ORDERED this 4th day of March, 2022.

Florida Housing Finance Corporation

By: _____
Chair

Copies furnished to:

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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.