STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: MHP FL X LLLP FHFC CASE NO.: 2022-030VW

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ORDER GRANTING WAIVER OF RULE 67-21.003(8)(i) TO DECREASE THE TOTAL SET-ASIDE PERCENTAGE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on April 29, 2022, pursuant to a "Petition for Waiver of Rule 67-21.003(8)(i) to Decrease the Total Set-Aside Percentage" ("Petition") under the Multifamily Mortgage Revenue Bond Program. Florida Housing Finance Corporation ("Florida Housing") received the Petition on April 12, 2022, from MHP FL X LLLP ("Petitioner"). Notice of the Petition was published on April 14, 2022, in Volume 48, Number 73, 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 for an award of State Apartment Incentive Loan funding ("SAIL") used in conjunction with Multifamily Mortgage Revenue Bonds ("MMRB"), Non-Competitive Housing Credits ("HC"), Extremely

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/DATE: 5/2/2022

Low Income Loan Funding , and National Housing Trust Funds under RFA 2020-205 to assist in the new construction of a 136 unit, 4 stories, mid-rise apartments, known as Arbor Park ("Development"), serving elderly, non-ALF, tenants in Sarasota County, Florida.

3. Rule 67-21.003(8)(i), Florida Administrative Code (2020), prohibits an Applicant from changing certain items identified in the application and provides in relevant part:

> (8) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application is deemed complete. Those items are as follows:
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> ....
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> (i) 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 seeks a waiver that will allow it to reduce the Total Set-Aside Percentage from 100% of units (136 units) at 60% area median income ("AMI") to 40% of units (55 units) at 60% AMI under the MMRB Program in order to adopt the Average Income Test for the Development.

5. Petitioner is seeking this waiver to permit a decrease the total set-aside percentage committed to in the Application under MMRB Program so Petitioner may elect the Average Income Test under SAIL and HC Programs and substitute a revised Total Set-Aside Breakdown Chart reflecting the Average Income Test for the chart contained in Section 6(d)(2)(a) of the Application.

6. The RFA requires applicants committing to the Average Income Test election to automatically commit to set-aside 40% of the units in the applicable development for rent to individuals whose income is at or below 60% AMI for the applicable county for the MMRB program. If the requested waiver is granted, 55 units in the Development will be set-aside for rental to individuals whose income is at or below 60% AMI for Sarasota County for the MMRB Program. Under the SAIL and Housing Credits Programs, 48 units in the Development will be offered for rental to individuals whose income is at or below 60% AMI for Sarasota County, 24 units in the Development will be offered for rental to individuals whose income is at or below 30% AMT for Sarasota County, and the remaining 64 units will be offered to rental to individuals whose income is at or below 70% of the AMI for Sarasota County. The Development will retain its 100% set-aside commitment under the SAIL and HC Programs, with the average AMI of the Development being at or below 60%, as required for Average Income Test.

7. Petitioner states that since it filed the Application, material interest rates for financing and the material costs of construction associated with the Development have both increased. Petitioner anticipates these amounts will continue to increase, which will put economic pressure on Petitioner and the Development such that there will be a substantial adverse impact on the economic feasibility of the Development. If the requested waivers or variances are granted, Petitioner will be able to seek additional financing to offset the economic impact of these inflations.

8. Further, the City of North Port have encouraged Petitioner making the affordable rental units of the Development available to individuals in a wider range of income bands in response to the recent development of neighboring residential developments which are committed to standard set-asides of 100% of their units at or below 60% AMI. The Average Income Test election would enable the Petitioner to offer decent, safe, sanitary, and affordable housing to low-income residents in the area that would be priced out of the 60% AMI limitation and also unable to afford to rent housing at the market rental rate of Sarasota County. Additional research identified a substantial market demand for higher set-aside units in Sarasota County and indicated the projected rents offered in connection with the Average Income Test election will maintain more than a 30% market rent advantage, despite the 70% AMI set-asides.

9. 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.

10. 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.

11. Petitioner has demonstrated that the waiver is needed in order to efficiently serve for homeless individuals or families and persons with a disabling condition and that, if the waiver were not granted, Petitioner would suffer a substantial hardship. 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 waivers are granted.

12. 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 Rules 67-21.003(8)(i), Florida Administrative Code, is hereby **GRANTED** to allow it to reduce the Total Set-Aside

Percentage from 100% of units (136 units) at 60% AMI to 40% of units (55 units) at 60% AMI for the MMRB Program in order to adopt the Average Income Test for the Development.

DONE and ORDERED this 29th day of April, 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.