STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In re: HERMOSA ARCADIA, LLC FHFC CASE NO.: 2022-017VW

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ORDER GRANTING WAIVER OF RULE 67-48.004(3)(d), FLORIDA ADMINISTRATIVE CODE AND SECTION FOUR A.3.c.(3) OF RFA 2020-206

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), Florida Administrative Code and Section Four A.3.c(3) of RFA 2020-206" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on February 15, 2022, from Hermosa Arcadia, LLC ("Petitioner"). Notice of the Petition was published on February 16, 2022, in Volume 48, Number 32, of the Florida Administrative Register. No public comments regarding the petition have been received. 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 awarded HOME funding under Request for Application ("RFA") 2020-206 HOME Financing for Construction of Small, Rural Development

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

to finance the construction of Hermosa Arcadia, a 27-unit multifamily apartment complex in Desoto County, Florida.

3. Rule 67-48.004(3)(d), Florida Administrative Code, 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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> (d) Applicant that applied as a Non-Profit or for-profit organization, unless provided otherwise in a competitive solicitation;

4. Section Four A.3.c.(3) of the RFA provides in relevant part:

> The Applicant entity shall be the borrowing entity and cannot be changed in any way (materially or non-materially) until after loan closing... Changes to the Applicant entity (material or non-material) prior to the loan closing... may result in disqualification from receiving funding and may be deemed a material misrepresentation.
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> The Principals of each Developer identified in the Application, including all co-Developers, may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit underwriting.

5. The Petitioner also requests a waiver of Rule 67-48.004(3)(a) and (b), Florida Administrative Code, which 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:
>
> (a) Name of Applicant or Developer entity(s); notwithstanding the foregoing, the name of the Applicant or Developer entity(s) may be changed only by written request of an Applicant to Corporation staff and approval of the Corporation after the Applicant has been invited to enter credit underwriting. With regard to said approval, the Corporation

shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application documentation;

(b) Principals of each Developer, including all co-Developers; notwithstanding the foregoing, the Principals of the Developer(s) may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit underwriting. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application documentation. Principals of a Public Housing Authority or officers and/or directors of a non-profit entity may be changed only by written request of an Applicant to Corporation staff and approval of the Corporation after the Applicant has been invited to enter credit underwriting. Any allowable replacement of a Principal that was identified as the experienced Developer in a competitive solicitation must meet the experience requirements met by the original Principal;

6. Petitioner requests waiver of the above cited Rule and RFA provisions to restructure the Petitioner to add a member, as sole manager, of the Petitioner, and to add an additional co-developer in order to remain in compliance with Rules 67-48.0072(11) and 67-48.020(2), Florida Administrative Code, while making the development financially feasible. Specifically, Petitioner requests to (i) admit AHA Hermosa Arcadia, LLC, a Florida limited liability company ("AHA Manager"), which is wholly owned by The Housing Authority of the City of Arcadia, Florida, a public housing authority ("AHA"), as a member and sole manager of Petitioner, and (ii) to add another separate developer entity, AHA Development, LLC, a Florida limited liability company ("AHA Developer"), which is also wholly owned by AHA.

7. As a result of these changes, AHA Manager will own a 25 percent equity interest in Petitioner and serve as Petitioner's sole manager. Revital Hermosa Arcadia, LLC and NDA Hermosa Arcadia, LLC, the Petitioner's current managers and members, will no longer serve as co-managers of Petitioner and will now each respectively own a 37.5 percent equity interest in Petitioner. Moreover, AHA Developer will serve as a co-developer of the Development, alongside Revital Development Group, LLC and National Development of America, Inc. AHA Developer will be entitled to 25 percent of the developer's fees earned by the developers. Attached to the Petition as Exhibit A is Petitioner's original structure of the Applicant (i.e., the Petitioner) entity and its developer structure reflecting the two co-developers, as stated in Petitioner's original application. Attached to the Petition as Exhibit B is Petitioner's Applicant (i.e., the Petitioner) proposed entity structure and the proposed Developer structure reflecting these changes that allow for the three separate co-developers.

8. Approval of Petitioner's proposed restructuring would mean that Petitioner would now have a Public Housing Authority included within its structure, which would in turn own 100 percent of the ownership interest in the Development held by the managing member of the Applicant. Therefore, Petitioner would be compliant with Rule 67-48.020(2)(d), relating to Terms and Conditions of Loans for Home Rental Developments. Attached to the Petition as Exhibit C is Petitioner's

new Principals Disclosure Form for the Applicant and Developers, reflecting the requested changes.

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), Fla. Stat. 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 low-income residents. 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.

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 Rule 67-48.004(a), (b), and (d), Florida Administrative Code, and a waiver of Four A.3.c.(3) of the RFA, is hereby **GRANTED** to allow Petitioner to (i) admit AHA Manager as a member and sole manager of Petitioner, and (ii) to add another separate developer entity, AHA Developer to Petitioner's organizational structure, as set forth in the Petition and its attachments.

DONE and ORDERED this 4th day of March 2022.

Florida Housing Finance Corporation

By: _____
Chair

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.