STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: SP Lake, LLC FHFC CASE NO.: 2021-043VW

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ORDER GRANTING WAIVER OF RULES
67-21.003(8)(j) and 67-48.004(3)(j)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on July 30, 2021, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on July 1, 2021, from SP Lake, LLC ("Petitioner"). Notice of the Petition was published on July 2, 2021, in Volume 47, Number 128, 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 was selected to receive SAIL and ELI funding in conjunction non-competitive housing tax credits and tax-exempt bonds under Request for Applications (RFA) 2018-116, to assist in the construction of a Development serving low income families in Polk County, Florida known as Lake Wales Gardens.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION
DATE: 8/2/202

3. Rule 67-21.003(8)(j), Fla. Admin. Code (2018) 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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> * * *
>
> (j) The Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application. . . .

4. Rule 67-48.004(3)(j), Fla. Admin. Code (2018) 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 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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> * * *
>
> (j) For the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application. . . .

5. In accordance with the terms of the RFA, Petitioner committed in its SAIL application to set-aside 90% of the 96 units (86 units) at 60% AMI and 10% of the 96 units (10 units) at 40% AMI. Petitioner also committed in its application for MMRN and 4% Housing Credits to set aside 100% of the units at or below 60% AMI. Petitioner seeks a waiver that will allow it to reduce the Total Set-Aside Percentage from 100% to 97%. This would have the effect of allowing 2 units out

of 96 units to be rented to tenants with income exceeding 60% AMI. The total number of units set-aside for tenants with income at or below 40% would not change.

6. Petitioner is seeking this waiver because 2 units do not comply with the tenant income requirements since their total household incomes exceed 60% of AMI. Petitioner states that these tenants were not officially deemed over income until after buildings in the Development had been placed in service. Petitioner also states that it cannot make these residents leave. Guidelines from the Department of Housing and Urban Development (HUD) have the effect of preventing Petitioner from terminating the tenancies of these HUD-assisted tenants. Unless the waiver is granted, Petitioner will be out of compliance with its Total Set-Aside Percentage yet will be prohibited from coming into compliance.

7. 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.

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. Petitioner has demonstrated that the waiver is needed in order to efficiently serve low-income families. 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.

10. 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)(j) and 67-48.004(3)(j), Fla. Admin. Code (2018), is hereby **GRANTED** to allow to allow Petitioner to reduce its Total Set-Aside Percentage from 100% (96 units) to 97% (94 units). More specifically, the SAIL/ELI set-asides will reflect 10% (10 units) at 40% AMI or less and 87% (84 units) at 60% AMI or less and the MMRN and 4% Housing Credits set-asides will reflect 97% (94 units) at 60% AMI or less, so that Petitioner will be able to continue renting 2 units to tenants with incomes over 60% AMI.

DONE and ORDERED this 30th day of July, 2021.

FLORIDA HOUSING FINANCE CORPORATION Tallahassee Florida

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.