STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: 414 East Pine Street, LP FHFC CASE NO.: 2021-089VW

_____/

ORDER GRANTING WAIVER OF 67-21.003(8)(j)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on December 10, 2021, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on November 18, 2021, from 414 East Pine Street, LP ("Petitioner"). Notice of the Petition was published on November 19, 2021, in Volume 47, Number 225, 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 awarded 4% Housing Credits in conjunction with local bonds to assist in the acquisition and rehabilitation of a Development serving low income families in Orange County, Florida known as Baptist Terrace.

3. Rule 67-21.003(8)(j), Fla. Admin. Code (2020) provides in relevant part:

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
DATE: 12/13/2021

(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:

* * *

(j) 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. . . .

4. In its application, Petitioner selected the Average Income Test and committed to set-aside 27 units at 30% AMI, 17 units at 40% AMI, 97 units at 60% AMI, 55 units at 80% AMI, and 1 unit at market rate, for a total set-aside percentage of 99.492%. Petitioner seeks a waiver that will allow it change its set-aside commitments to 27 units at 30% AMI, 17 units at 40% AMI, 98 units at 60% AMI, 53 units at 80% AMI, and 2 units at market rate, thus reducing the Total Set-Aside Percentage to 98.985%. With these changes Petitioner would still satisfy the Average Income Test.

5. Petitioner is seeking this waiver because one unit does not comply with the tenant income requirements since its total household income exceeds 80% of AMI. Petitioner states that this tenant was not officially deemed over income until after Petitioner had received its Preliminary Determination Certificate. Petitioner also states that it offered the tenant a relocation package but the tenant refused. Guidelines from the Department of Housing and Urban Development (HUD) have the effect of preventing Petitioner from terminating the tenancy of this HUD-assisted

tenant. 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.

6. 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.

7. 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.

8. 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.

9. 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 67-21.003(8)(j), Fla. Admin. Code (2020) is hereby **GRANTED** to allow Petitioner to reduce its Total Set-Aside Percentage from 99.492% to 98.985% and change its set-aside commitments as noted above so that Petitioner will be able to continue renting one unit to a tenant with income over 80% AMI.

DONE and ORDERED this 10th day of December, 2021.

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.