STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: The WM at the River FHFC CASE NO.: 2021-95VW

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ORDER GRANTING WAIVER OF RULE

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 of Rule 67-21.026(9)" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on November 22, 2021, from The WM at the River, Ltd ("Petitioner"). Notice of the Petition was published on November 23, 2021, in Volume 47, Number 227, 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 is applying for non-competitive housing credits to assist in the rehabilitation and RAD conversion of a 298-unit public housing development, comprised of two separate towers to be located in Volusia County, Florida (the "Development").

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

3. Rule 67-21.026(9), Fla. Admin. Code, in relevant part provides:

(9) An appraisal report conforming to the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal and reported in a comprehensive format, and a separate market study shall be ordered by the Credit Underwriter, at the Applicant's expense, from an appraiser qualified for the geographic area and product type not later than completion of Credit Underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the proposed Development's financial feasibility. If the Tax-Exempt Bonds are issued by the Corporation or by a County Housing Finance Authority, appraisals which have been ordered and submitted by third party credit enhancers, first mortgagors or Housing Credit Syndicators and which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal referenced above. If the Tax-Exempt Bonds are issued by an entity other than the Corporation or a County Housing Finance Authority, the appraisal must be ordered by the Credit Underwriter. The market study must be completed by a disinterested party who is approved by the Credit Underwriter. The Credit Underwriter shall consider the market study, the Development's financial impact on Developments in the area previously funded by the Corporation, and other documentation when making its recommendation of whether to approve or disapprove a Housing Credit Allocation. The Credit Underwriter shall also review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application. For the Credit Underwriter to make a favorable recommendation, the submarket of the proposed Development must have:

(a) An average physical occupancy rate of 92 percent or greater; and,

(b) For Developments with new construction units, an average market rental rate, based on unit mix and annualized rent concessions, of 110 percent or greater of a 60 percent of Area Median Income rental rate.

4. The subject property is currently subject to a Declaration of Trust with the HUD and is subsidized public housing. The associated Federal requirements

mandate that the property must remain the property of Daytona Beach Housing Authority (DBHA) while subject to the Declaration and other legal requirements, which will remain following the rehabilitation. In this circumstance, DBHA is not issuing bonds as a county housing finance authority but the issuer of private activity bonds from the State of Florida. Accordingly, the Rule requires a separate appraisal ordered by the Corporation's Credit Underwriter. Petitioner requests a waiver of this Rule to permit the use of a third-party appraisal.

5. As grounds for its request, Petitioner states that the RAD approval by HUD is based on a 2019 appraisal prepared by Novogradac & Co., and that HUD has set a closing deadline for this Development of December 31, 2021. Given the timeframe, Petitioner asserts that obtaining a new appraisal now would cause Petitioner to miss its closing deadline with HUD, and thus delay or terminate the rehabilitation of this Development.

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 elderly persons. 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 67-21-026(9), Florida Statutes, is hereby **GRANTED** to the Credit Underwriter assigned to its 4% housing credit application to evaluate an appraisal obtained by the DBHA and accept the appraisal if it complies with applicable underwriting standards.

DONE and ORDERED this 10th day of December, 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.