STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: LRC DESERT-SILVER, LLC FHFC Case No.: 2020-058VW

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ORDER GRANTING WAIVER FROM RULE 67-21.003(8)(j), FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on October 16, 2020. On September 15, 2020, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of the Rule 67-21.003(8)(j) (7-8-2018) For A Change In The Total Set-Aside Percentage (the "Petition"). Notice of the Petition was published on September 16, 2020, in Volume 46, Number 181, 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 hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner applied for non-competitive housing credits to assist in the acquisition and rehabilitation of Desert Winds and Silver Creek

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/DATE: 10/16/2020

Apartments, a family, affordable housing development in Duval County, Florida (the "Development").

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; 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 requests waiver of the above cited rule to allow Petitioner to reduce its Total Set-Aside Percentage from 100% of the units (304 units) at or below 60% AMI to 99.01% of the units (301 units) at or below 60% AMI.

5. Petitioner states that in its application it selected a set-aside of 100% at or below 60% AMI. However, the Development involves the

rehabilitation of units currently occupied and three of the residents are above 60% AMI which precludes satisfaction of the 100% set-aside requirement.

6. According to Petitioner, those three residents were in-place Section 8 residents that qualified at move-in (prior to the tax credit application) and cannot be forced to leave their residences. Petitioner asserts that these residents are either unable or unwilling to move.

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. The Board finds that granting the requested waiver will not impact other participants in funding programs administered by Florida Housing, nor will it detrimentally impact Florida Housing.

9. The Board also finds that Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver is not granted.

10. The Board further finds that 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.

IT IS THEREFORE ORDERED: Petitioner's request for a waiver of Rule 67-21.003(8)(j), Fla. Admin. Code (2018) is hereby **GRANTED** to allow Petitioner to reduce its Total Set-Aside Percentage from 100% (304 units) at 60% AMI to 99.01% (301 units) at 60% AMI.

DONE and ORDERED this 16th day of October 2020.

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.