STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: BDG Banyan East Town, LLC FHFC Case No.: 2022-056VW

_____/

ORDER GRANTING WAIVER
OF RULE 67-48.004(3)(i), F.A.C.

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on October 28, 2022. On October 11, 2022, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.004(3)(i), Florida Administrative Code, and an Amended Petition for Waiver of Rule 67-48.004(3)(i), Fla Admin. Code on October 17, 2022 (the "Petition"), from BDG Banyan East Town, LLC (the "Petitioner") to allow Petitioner to change the total number of units and set aside percentages proposed in its application. Notice of the Petition was published on October 13, 2022, in Volume 48, Number 200, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised on the premises, the Board hereby finds:

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION
/s/ Adams DATE: 10/28/2022

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

2. Petitioner successfully applied for 9% competitive housing credits to assist in the construction of a 111-unit affordable housing development named Banyan East Town Apartments to be located in Seminole County, Florida (the "Development"). Petitioner has also applied for CHIRP funding and is currently in credit underwriting for that funding.

3. Rule 67-48.004(3)(i), Fla. Admin. Code, in relevant part, provides:

> (3) For the SAIL, HOME and Housing Credit Programs ... 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 otherwise approved below:
>
> ***
>
> (i) Total number of units...

4. Rule 67-48.004(3)(j), Fla. Admin. Code, in relevant part, provides:

> (3) For the SAIL, HOME and Housing Credit Programs...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:
>
> ***
>
> (j) For the SAIL and HC Programs, 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. For the HOME Program, the total number of HOME-Assisted Units committed to in the Set-Aside Commitment section of the Application. **Notwithstanding the foregoing, the Total Set-Aside Percentage,** or total number of HOME-Assisted Units, as applicable, **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, as well as review of 24 CFR Part 92 to ensure continued compliance for the HOME Program; (emphasis added)

5. Petitioner has requested a waiver of the above rules to allow Petitioner to reduce the number of development units from the 111 submitted in its application to 92. As grounds for its request, Petitioner reports that it has encountered numerous complications due to new permitting processes and requirements imposed by the City of Altamonte Springs, Seminole County, and St. Johns River Water Management District. Petitioner maintains that these new requirements have led to a substantial increase in costs incurred and a decrease in the land available on the property for development. Petitioner's attempts to redesign the property to maintain the unit count proved cost prohibitive, even with the maximum CHIRP funding.

6. Petitioner further asserted that the reduction in set-aside units will not change the leveraging classification or overall scoring of the

Application. Florida Housing staff has confirmed that the Application would have been funded even with the requested reduction in set-aside units.

7. Petitioner's proposed unit decrease would remove fifteen market-rate units and four 60% AMI units from the current design, leaving twelve units at 30% AMI and eighty units at 60% AMI. This reduction changes the Development's set-aside commitment to 13% at 30% AMI and 87% at 60% AMI and increases the development's total set-aside percentage from 86% to 100%.

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. 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.

10. 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.

Marisa Button, Managing Director of Multifamily Programs
Florida Housing Finance Corporation
Hugh.Brown@floridahousing.org
Marisa.Button@floridahousing.org

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
Joint.admin.procedures@leg.state.fl.us

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.

11. 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," would still be achieved if the waiver is granted. §420.5099, Fla. Stat.

IT IS THEREFORE ORDERED that Petitioner's request for a waiver of Rule 67-48.004(3)(i), Fla. Admin. Code, is hereby **GRANTED** permitting Petitioner to reduce the number of units in the Development from 111 to 92 in the above manner. By granting this waiver, The Board also approves the Development's new set-aside commitment of 13% at 30% AMI and 87% at 60% AMI, increasing its total set-aside percentage from 86% to 100%, pursuant to Rule 67-48.004(3)(j), Fla. Admin. Code.

DONE and ORDERED this 28th day of October 2022.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

Yisell Rodriguez, Esq.
Nelson Mullins Riley & Scarborough, LLP
Yisell.rodriguez@nelsonmullins.com

Hugh R. Brown, General Counsel