STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Merritt Place Estates, LLC FHFC CASE NO.: 2021-087VW

_____/

ORDER GRANTING WAIVER OF 67-21.003(1)(b)

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 15, 2021, from Merritt Place Estates, LLC ("Petitioner"). Notice of the Petition was published on November 17, 2021, in Volume 47, Number 223, 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 9% housing tax credits in December, 2002 (Application No. 2002-010CS) along with a SAIL loan in 2003, to assist in the construction of a Development consisting of single-family homes serving low income families in Miami-Dade County, Florida. Petitioner alleges that the Development is now in need of rehabilitation.

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

3. Rule 67-21.003(1)(b), Fla. Admin. Code adopts and incorporates by reference the Non-Competitive Application (NCA) Package (Rev. 03-2021). Section A.7.c. of the NCA package includes the following requirement:

> The Applicant must select the Development Type for the proposed Development. . . .
>
> - Garden Apartments (a building comprised of 1, 2, or 3 stories, with or without an elevator)
> - Townhouses
> - Duplexes
> - Quadraplexes
> - Mid-Rise 4-stories (a building comprised of 4 stories and each residential building must have at least one elevator)
> - Mid-Rise 5-6-stories (a building comprised of 5 or 6 stories and each residential building must have at least one elevator)
> - High Rise (a building comprised of 7 or more stories and each residential building must have at least one elevator)

4. Petitioner applied for an allocation of 4% Housing Credits on November 5, 2021 to assist in the rehabilitation of the Development. However, Florida Housing staff was unable to process the application because the NCA no longer allows "single-family homes" to be selected as the Development Type when applying for funding. Petitioner alleges that it will suffer a substantial hardship if this waiver is not granted because it will be unable to recapitalize or rehabilitate the Development, a property currently in Florida Housing's portfolio.

5. 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.

6. 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.

7. 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.

8. 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(1)(b), Fla. Admin. Code (2021) and the cited portions of the Non-Competitive Application Package is hereby

GRANTED to permit Petitioner to apply for 4% housing tax credits with a Development Type of Single-Family Homes.

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

Florida Housing Finance Corporation

By: _____
Chair

Copies furnished to:

Hugh R. Brown, General Counsel
Marisa Button, Director of Multifamily Development
Florida Housing Finance Corporation
Hugh.Brown@floridahousing.org
Marisa.Button@floridahousing.org

Brian J. McDonough
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
bmcdonough@stearnsweaver.com

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.