STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Woodland Grove Apartments, LLC

FHFC CASE NO.: 2019-063VW

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ORDER GRANTING WAIVER OF Rules 67-21.027(1), 67-21.003(1)(a), 67-21.003(8)(j), 67-48.004(3)(j), and 67-48.023(2)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 20, 2019, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on July 15, 2019, from Woodland Grove Apartments, LLC ("Petitioner"). Notice of the Petition was published on July 16, 2019, in Volume 45, Number 137, 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 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 SAIL and ELI funding in conjunction with non-competitive housing tax credits and Multifamily Mortgage Revenue Bonds (MMRB) under Request for Applications (RFA) 2017-108, to assist in the

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Jennifer L Marshall /DATE: 9/23/2019

construction of a Development serving low income families in Miami-Dade County, Florida known as Woodland Grove.

3. Rule 67-21.003(8)(j), Fla. Admin. Code (2017) 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. . . .

4. Rule 67-48.004(3)(j), Fla. Admin. Code (2017), provides in relevant part:

> (3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, 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:
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> * * *
>
> (j) For the SAIL and HC Programs, 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. . . .

5. Rules 67-21.027(1), 67-21.003(1)(b) and 67-48.023(2), Fla. Admin. Code (2017) required that each Development comply with the minimum Housing Credit Set-Aside provisions as specified in the version of Section 42(g)(1) of the Internal Revenue Code (IRC) that was in effect at the time the rule was adopted.

Prior to March 23, 2018, this Section of the IRC did not allow income averaging, and therefore Rules 67-21.027(1), 67-21.003(1)(b) and 67-48.023(2) also did not allow income averaging.

6. In accordance with the terms of the RFA, Petitioner was required to set-aside 80% of the units at 60% AMI. Petitioner indicated in its application that it would commit to set aside 100% of the units at or below 60% AMI for MMRB and non-competitive housing credits, and that it would set-aside 10% of the units at or below 28% AMI and 90% of units at or below 60% AMI for SAIL. Petitioner now seeks to amend these set-aside commitments in order to use the average income test. Petitioner proposes that its set-aside commitments should be 18.4% (35 units) at 30% AMI, 40% (76 units) at 60% AMI, 27.9% (53 units) at 70% AMI, and 13.7% (26 units) at 80% AMI. These set-asides would be allowed using the average income test, and would include six additional units set aside at 30% AMI than would be required using the average income test. In order to use the average income test, the bond set-asides would have to be decreased to 40% at 60% AMI.

6. The Board finds that granting the waivers 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 waivers are needed in order to efficiently serve low-income families, and that Petitioner would be at a competitive disadvantage with other Developments if it was not allowed to use the average income test solely because of when its application was submitted. 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 waivers are granted.

9. The Board finds that strict application of the above Rules under these circumstances would violate principals of fairness, 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 Rules 67-21.027(1), 67-21.003(1)(b), and 67-48.023(2), Fla. Admin Code (2017) is hereby **GRANTED** to allow for calculation of the minimum set aside percentage based on income averaging. Petitioner's request for a waiver of Rule 67-21.003(8)(j), Fla. Admin Code (2017) is hereby **GRANTED** to allow it to change the total set-aside percentages stated in its Application for MMRB from 100% at 60% AMI to 40% at 60% AMI.

Petitioner's request for a waiver of those provisions of the RFA requiring that applicants set aside at least 80% of the Development's total units at 60% AMI, and set aside at least 10% of the total units at 28% AMI is hereby **GRANTED**. Petitioner's set-aside commitments are changed to 18.4% (35 units) at 30% AMI, 40% (76 units) at 60% AMI, 27.9% (53 units) at 70% AMI, and 13.7% (26 units) at 80% AMI. These waivers are contingent on receiving a positive recommendation in the Credit Underwriting Report.

DONE and ORDERED this 20th day of September, 2019.

Florida Housing Finance Corporation

By: _____
Chair

Copies furnished to:

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Joint Administrative Procedures Committee
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL 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.