

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Rosemary Village Apartments, LLLP

FHFC CASE NO.: 2019-023VW

ORDER GRANTING WAIVER OF RULE 67-48.004(3)(j)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on March 22, 2019, pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on March 4, 2019, from Rosemary Village Apartments, LLLP (“Petitioner”). Notice of the Petition was published on March 6, 2019, in Volume 45, Number 45, 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 funding and 9% housing credits (HC) under RFA 2018-103 to assist in the construction of a development serving homeless individuals and families and persons with special needs in Melbourne, Florida.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Tom Clamery DATE: *3/25/2019*

3. Rules 67-48.004(3)(i) and (j), Fla. Admin. Code, provide:

(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:

* * *

(i) Total number of units; notwithstanding the foregoing, the total number of units 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;

(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.

4. Petitioner has requested approval from the Corporation to increase the total number of units from 80 to 108, pursuant to Rule 67-48.004(3)(i), Fla. Admin. Code. Petitioner now seeks a waiver from Rule 67-48.004(3)(j), Fla. Admin. Code, to reduce the Total Set-Aside Percentage from 100% to 74.1%. This would have the effect of allowing the development of 28 additional units and for these units to be rented at market rate. Without this waiver, these additional units would also have to be limited to low-income tenants, which the Petitioner asserts would negatively affect the financial viability of this Development. Petitioner has committed to provide an additional 5 ELI units (limited to tenants with income at or below 35%

AMI) out of the total 80 set-aside units so that it will meet the 15% ELI set aside requirement.

5. Additionally, Petitioner is seeking a waiver of Section Four A.2.a.(1) of RFA 2018-103, which states:

(1) Demographic Commitment

Applicants that commit to serve the Homeless demographic commitment will be required to make the following set-aside commitments for a minimum of 50 years:

At least 70 percent of the total units for Homeless individuals and families as defined in Section 420.621(5), F.S.;

AND

At least 20 percent of the total units for Persons with Special Needs as defined in Section 420.0004(13), F.S., (which may be the same units set aside for Homeless individuals and families).

6. Petitioner is also seeking a waiver of Section Four A.6.d.(2)(a) of RFA 2018-103, which states:

(a) Total Income Set-Aside Commitment

The Applicant must set aside a total of at least 80 percent of the Development's total units at 60 percent AMI or less.

7. If the rule waiver is granted, the Applicant will only set aside 51.85% of the Development's total units for homeless persons, will only set aside 14.81% of the Development's total units for persons with special needs, and will only set aside 74.1% of the Development's total units at 60 percent AMI or less. However, the

Applicant will maintain the total number of set-aside, Homeless, and Special Needs units originally committed to in the application. The length of the set-aside commitment (50 years) will not be changed.

8. 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.

9. 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.

10. Petitioner has demonstrated that it would suffer a substantial hardship if the waiver is not granted. 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.

11. 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 to increase the total number of units from 80 to 108 pursuant to Rule 67-48.004(3)(i), Fla. Admin. Code, is hereby **GRANTED**. Petitioner's request for a waiver of Rule 67-48.004(3)(j), Fla. Admin. Code, is hereby **GRANTED**. Petitioner's request for a waiver of Sections Four A.2.a.(1) and Four A.6.d.(2)(a) of RFA 2018-103 is hereby **GRANTED** so that Petitioner will be able to reduce its Total Set-Aside Percentage from 100% to 74.1% and add 28 additional units at market rate. As a condition of this waiver, Petitioner must provide five additional ELI units. This waiver will not decrease the total number of units set aside for low-income tenants, for homeless individuals or families, or for persons with special needs, and will not decrease the set-aside commitment duration of 50 years.

DONE and ORDERED this 22nd day of March, 2019.



Florida Housing Finance Corporation

By:


Chair

Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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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.