STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: HERITAGE OAKS, LLLP FHFC Case No.: 2023-037VW

/

ORDER GRANTING WAIVER FROM RULE 67-48.002(96), FLORIDA ADMINISTRATIVE CODE (2021) AND THE 2021 QUALIFIED ALLOCATION PLAN

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on June 9, 2023. On May 11, 2023, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.002(96), F.A.C. (2021) and the 2021 QAP (the "Petition") from Heritage Oaks, LLLP ("Petitioner") to exchange its 2022 housing credits for an allocation of 2023 housing credits. Notice of the Petition was published on May 15, 2023, in Volume 49, Number 94, of the Florida Administrative Register. A corrected Notice of the Petition was published on May 16, 2023, in Volume 49, Number 95, 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.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION

Ann McNamara /DATE: 6/12/2023

2. Petitioner successfully applied for competitive housing credits in Request for Applications 2021-202 to assist in financing the construction of an 80-unit elderly development named Heritage Oaks located in Pinellas County, Florida (the "Development").

3. Rule 67-48.002(96), Florida Administrative Code (2021), adopts and incorporates the 2021 Qualified Allocation Plan ("QAP").

4. Subsection II.J of the 2021 QAP states:

> Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required pursuant to Section 42 of the IRC, or it is apparent that a Development will not be placed in service by the date required pursuant to Section 42 of the IRC, and the Applicant has returned its Housing Credit Allocation after the end of the second calendar quarter of the year in which it was otherwise required to be placed in service pursuant to Section 42 of the IRC, the Corporation will reserve allocation in an amount not to exceed the amount of Housing Credits returned, and will issue a Carryover Allocation Agreement allocating such Housing Credits to the Applicant for either the current year or the year after the year in which the Development was otherwise required to be placed in service pursuant to Section 42 of the IRC, provided the following conditions have been met: (i) The sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) A site inspection reflecting the percentage of Development completion must be completed. If the Development is at least fifty (50) percent completed, as reflected in the site inspection, the approval may be made by Corporation staff. If the Development is less than fifty (50) percent completed, as reflected in the site inspection, the approval must be made by the Board. In making such determination, the Board must find and determine that the

> delay was caused by circumstances beyond the Applicant's control, and that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay; and (iii) The Corporation or Board, as applicable, must find that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs.

5. Petitioner requests a waiver of the timing provision in the QAP so that it may exchange its housing credits now, rather than wait until the end of the second quarter of the year in which the Development was otherwise required to be placed in service.

6. The Development was invited to credit underwriting on January 21, 2022, and Florida Housing staff executed a 2022 Carryover Allocation Agreement ("CAA") on or about July 20, 2022, for the allocation of its housing credits. The CAA required Petitioner to incur at least ten percent of the reasonably expected basis of the Development (the "10% Test") and meet the Site Control requirement on or before January 31, 2023 (the "CAA Deadline"). This CAA Deadline was extended to July 20, 2023. Failure to comply with the CAA Deadline will cause the housing credits allocated within the CAA to be deemed returned to Florida Housing under Section 42(h)(3)(C), Internal Revenue Code.

8. Pursuant to Section 42(h)(l)(E)(i), Internal Revenue Code, the Development must be placed in service no later than the close of the second

calendar year following the calendar year in which the allocation is made; in this case, the federally mandated placed-in-service date would be December 31, 2024. Petitioner, however, estimates that the construction schedule, which includes major infrastructure improvements, will likely take approximately 18 months to complete. Thus, Petitioner estimates that the Development will be placed in service in the first quarter of 2025.

9. Petitioner states that cost overruns, and other associated issues, caused delays in credit underwriting. According to Petitioner, six months after the application deadline in August of 2021, construction costs increased statewide by 25-30%. At the same time, interest rates and insurance costs also skyrocketed. Petitioner commenced design work shortly after receiving its invitation to credit underwriting in March 2022. Because Petitioner's site and building plans were not yet complete, it did not have updated pricing prior to the deadline for CHIRP funding applications. When Petitioner received its designs and construction pricing in the fourth quarter of 2022, Petitioner realized that it had construction cost overruns, as well as increases in insurance and interest rates. To cover the cost increases, and mitigate delay, Petitioner took action to secure additional funding from Pinellas County.

10. Petitioner, however, does not anticipate that it will be able to satisfy the CAA Deadline, because it cannot close until a HUD approval is

obtained. Specifically, the Development involves the redevelopment of public housing, which requires HUD to terminate a Declaration of Trust. Before Petitioner could request such termination, it was required to perform an environmental review and a capital needs assessment. After such reviews, Petitioner requested the termination in November 2022. According to Petitioner, the termination approval is expected imminently, but has yet to occur. Petitioner cannot begin relocating current residents on the property until 90 days after obtaining that HUD approval and all residents must be relocated off site prior to closing per HUD requirements. Petitioner hopes to have HUD approval of the disposition in mid-May, such that it may complete relocation and close by August 2023. Accordingly, Petitioner states that it cannot meet the CAA Deadline for satisfaction of the 10% test or Site Control.

11. Due to circumstances outside of its control, Petitioner requests a waiver of the 2021 QAP to permit the housing credit exchange now as opposed to waiting until after the end of the second calendar quarter of 2024. Petitioner has used its best efforts to move the Development forward, but cannot take any further action until HUD approves termination of the Declaration of Trust.

12. Petitioner indicates that without the waiver the Development will be abandoned because Petitioner will not have sufficient time to satisfy the

CAA Deadline and will lose the allocated housing credits. Without this funding source, Pinellas County (the "County") will lose these 80 affordable housing units. In addition, Petitioner states that the County is currently experiencing a shortage of affordable housing units for the elderly, non-ALF, and Persons with Special Needs. Petitioner also states that the County stands firmly behind the Development and that, in April 2023, Petitioner received a conditional commitment from the County to provide gap funding of $2.75 million in addition to $610,000 in Local Government Area of Opportunity Funding committed in 2021.

13. 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.

14. 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.

15. 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.

16. 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: Petitioner's request for a waiver of Rule 67-48.002(96), Florida Administrative Code (2021), and the timing provisions of subsection II.J of the 2021 QAP is hereby **GRANTED** to allow Petitioner to exchange its 2022 housing credits for an allocation of 2023 housing credits now rather than waiting until the end of the second quarter 2024.

DONE and ORDERED this 9th day of June 2023.

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.