STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Pinellas Affordable Living, Inc. FHFC Case No.: 2022-54VW

_____/

ORDER GRANTING WAIVER OF RULE 67-48.0072(21)(b), FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on October 28, 2022. On October 10, 2022, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.0072(21)(b), Florida Administrative Code (the "Petition") from Pinellas Affordable Living, Inc. (the "Petitioner") to allow Petitioner to extend the loan closing deadline. Notice of the Petition was published on October 11, 2022, in Volume 48, Number 198, 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.

2. Petitioner successfully applied for State Apartment Incentive Loan ("SAIL") and Extremely Low Income ("ELI") funding in RFA 2021-

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
Anne McNamara /DATE: 10/28/2022

102 to assist in the construction of a 20-unit housing development for Persons with Special Needs named Whispering Pines in Pinellas County, Florida (the "Development").

3. Rule 67-48.0072(21)(b), Fla. Admin. Code, provides:

> (b) For SAIL and HOME, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued within twelve (12) months of the Applicant's acceptance to enter credit underwriting, which may be automatically extended to the next scheduled meeting of the Board of Directors that is after the twelve (12) month deadline. Unless an extension is approved by the Corporation in writing, failure to achieve issuance of a firm loan commitment by the specified deadline shall result in withdrawal of the preliminary commitment. Applicants may request one (1) extension of up to six (6) months, which may be automatically extended to the next scheduled meeting of the Board of Directors that is after the six (6) month extension deadline, to secure a firm loan commitment. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting the extension and shall detail the time frame to achieve a firm loan commitment. In determining whether to grant an extension, the Corporation shall consider the facts and circumstances of the Applicant's request, inclusive of the responsiveness of the Development team and its ability to deliver the Development timely. The Corporation shall charge a non-refundable extension fee of one (1) percent of each loan amount if the request to extend the credit underwriting and firm loan commitment process beyond the initial twelve (12) month deadline is approved. If an approved extension is utilized, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original twelve (12) month deadline. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

4. Petitioner requests a waiver of the above cited Rule to allow Petitioner to extend the loan closing deadline for the EHCL loan. Petitioner accepted an invitation to credit underwriting on May 13, 2021, which provided a firm loan commitment issuance deadline of May 13, 2022. On April 29, 2022, at Petitioner's request, the firm loan commitment issuance deadline was extended from May 13, 2022 to November 13, 2022 by approval of Florida Housing Finance Corporation's Board of Directors (the "Board"). Petitioner now requests an additional six-month extension of the firm loan commitment issuance deadline from November 13, 2022 to May 13, 2023.

5. Petitioner states that current inflation caused some unexpected and unforeseen delays as well as increases in construction costs which prompted the need for additional resources and a further extension. In support thereof, Petitioner asserts that it solicited competitive bids from three general contractors to comply with secondary financing requirements imposed by the City of St. Petersburg. According to Petitioner, the lowest bid received was approximately 25% higher than originally anticipated resulting in increased constructions costs. In an effort to keep the Development viable, Petitioner states that it has successfully obtained additional funding from the City of St. Petersburg and is working with Pinellas County to secure additional funding. According to Petitioner, the Pinellas County funding requires approval by

Pinellas County Commission, which will not occur prior to November 13, 2022. Additionally, Petitioner applied to Florida Housing's Construction Housing Inflation Response Program ("CHIRP") and is still awaiting a determination on that funding.

6. Petitioner states that the waiver is necessary because the Development cannot move forward without these additional funding sources. According to Petitioner, denial of the waiver request would cause Pinellas County to lose the benefit of these 20 affordable units.

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. 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.

9. 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 were not granted.

10. 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 waiver of Rule 67-48.0072(21)(b), Fla. Admin. Code, is hereby **GRANTED** to allow Petitioner to extend its firm loan commitment issuance deadline from November 13, 2022 to May 13, 2023.

DONE and ORDERED this 28th day of October 2022.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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

Michael P. Donaldson, Esq., Counsel for Petitioner
mdonaldson@carltonfields.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.