STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: SOUTHWEST HAMMOCKS, LLLP

FHFC Case No.: 2022-049VW

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ORDER GRANTING WAIVER OF RULE 67-48.002(96), FLORIDA ADMINISTRATIVE CODE, OF THE 2020 QUALIFIED ALLOCATION PLAN'S REQUIREMENT FOR RETURNING HOUSING CREDIT ALLOCATIONS

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on August 5, 2022. On July 20, 2022, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of the 2020 Qualified Allocation Plan's Requirement for Returning Housing Credit Allocations (the "Petition"). Notice of the Petition was published on July 22, 2022, in Volume 48, Number 142, 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 competitive housing credits in Request for Applications ("RFA") 2021-106 to assist in financing the

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Ann McAlamory DATE: 8/8/2022

construction of a 100-unit development to be known as Southwest Hammocks, located in Broward County, Florida (the "Development"). The Petitioner has also submitted an application in response to the Construction Housing Inflation Response Program.

3. Rule 67-48.002(96), Fla. Admin. Code (2020), adopts and incorporates the 2020 Qualified Action Plan (the "2020 QAP").

4. Subsection II.K of the 2020 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: 67-48.002(96), F.A.C. (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. A Development located in a HUD-designated DDA or QCT at the time of original allocation may retain its designation as such.

(emphasis added)

5. Petitioner requests a waiver of Rule 67-48.002(96), Florida Administrative Code (2020), and of Section II.K of the 2020 QAP to allow the immediate return of its 2021 Housing Credit Allocation, and an immediate allocation of new Housing Credits (2022 or later).

6. Under Rule 67-48.028(1), Florida Administrative Code, if an applicant cannot complete its development by the end of the year in which the preliminary allocation of Housing Credits is issued, such applicant must enter into a "carryover allocation agreement" with Florida Housing by December 31 of the year in which the preliminary allocation is issued. On September 17, 2021, Petitioner and Florida Housing entered into the carryover allocation agreement for the Development. The carryover allocation may (under Section 42 of the Internal Revenue Code) allow the applicant until the end of the second year following the year in which the carryover allocation is issued to

place the development in service; in the instant case, Florida Housing mandated in the carryover allocation agreement that the development be placed in service by December 31, 2023. The carryover allocation agreement requires satisfaction of the 10% test by March 31, 2022 (extended to September 17, 2022, upon Petitioner's request) (collectively, the "Deadlines"). In order to meet the 10% test, Petitioner will need to have closed debt and equity financing, which may not occur by that date.

7. Petitioner indicates there is uncertainty as to whether or not the Development will be able to meet the Deadlines, and as such Petitioner is requesting an exchange of Housing Credits in order to effectuate an extension of such deadlines.

8. Petitioner states that since being preliminarily selected for funding and invited to credit underwriting, the Development has suffered unforeseen events outside of its control that make it clear that the Development may not be able to meet its December 31, 2023 deadline, or meet the 10% test by September 17, 2022:

(a) Petitioner commenced pre-development activities and entered into credit underwriting in May 2021, after resolution of all appeals pertaining to RFA 2021-106. Petitioner indicates that it has been processing all necessary pre-development and development

approvals diligently since that time. In the second quarter of 2022, it became obvious (due to the significant increase in construction costs encountered throughout the affordable housing industry) to Petitioner that a budgetary gap existed that could not be bridged without further assistance from Florida Housing. Without additional assistance, Petitioner was unable to proceed towards closing the financing for the Development.

(b) On May 9, 2022, Florida Housing issued the 2022 Construction Housing Inflation Response Program ("CHIRP") Invitation to Participate ("ITP"). The purpose of ITP is to fill the funding gap experienced due to increased construction costs, such as those currently encountered by Petitioner.

(c) Petitioner filed its ITP application on May 11, 2022. As of the date hereof, the final credit underwriting report for the CHIRP funding for Petitioner is being finalized as comments to the draft report have been provided by Petitioner.

(d) Petitioner indicates that as a result of the foregoing, it is progressing towards closing the debt and equity financing sources for the Development and commencing construction. Petitioner has been advised that final building permits are now available, pending only the

payment of applicable permit fees. Closing on funding and commencement of construction is expected to occur in late August 2022.

(e) Petitioner states that based upon the construction schedule attached to the general construction contract for the Development, construction completion is scheduled to occur late in the fourth quarter of 2023. The tax credit investor for the transaction requires a cushion of three months between scheduled construction completion and the required placed in service date (December 31, 2023) in order to proceed to closing on the equity financing.

(f) Petitioner further argues that due to the delays described above, the estimated completion date for the Development does not fall within the tax credit investor's required scheduling parameters. As such, the tax credit investor will not close on the agreed funding unless Petitioner obtains an exchange of 2021 Housing Credits for later Housing Credits (2022 or later).

(g) Petitioner argues that this situation is not an issue for other similarly situated developers who, pursuant to the CHIRP program, are expected to receive an additional tax credit allocation and an exchange of previous tax credits for 2022 or 2023 tax credits. The RFA that

Petitioner originally submitted under is one that Florida Housing has determined is not eligible to receive an additional allocation of tax credits under the CHIRP program but rather is permitted to be allocated additional loan funds, Petitioner is (as a result) not receiving a later allocation of tax credits as are other CHIRP recipients.

9. Petitioner has been working diligently and has completed pre-development activities and has secured an executed construction contract for the Development. In addition, the issuance of building permits is pending only the payment of permit fees.

10. Petitioner argues that due to the events above, the delays have been caused by circumstances outside its control. As a result, the delay makes it difficult to meet the September 17, 2022, 10% test deadline, and places in jeopardy Petitioner's ability to meet the December 31, 2023, placed in service deadline.

11. Petitioner argues that the requested waivers and variance will not adversely affect the Development. A denial of the Petition, however, would (a) result in substantial economic hardship to Petitioner as set forth herein, (b) deprive the City of Pembroke Pines and Broward County of new constructed rental units set aside for low-income and very low-income tenants, and (c) violate principles of fairness. Petitioner has invested over $1,350,000 to date

in the development, and argues that the waiver would allow the Development of this badly needed new construction of affordable housing to move forward.

12. Petitioner states that Section 42(m) of the Internal Revenue Code requires each state allocating agency to adopt an allocation plan for the allocation and distribution of federal low income housing tax credits. Florida Housing, as the allocating agency for the State of Florida, must distribute housing credits to applicants pursuant to its qualified allocation plan.

13. Petitioner alleges that the requested waiver serves the purposes of Section 420.5099, Florida Statutes, and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households by ensuring:

> The maximum use of available tax credits in order to encourage development of low-income housing in the state, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low- income housing and the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.

14. Further, Petitioner argues that by granting the requested waiver, Florida Housing would recognize principles of fundamental fairness in the development of affordable rental housing. In addition, grant of the requested waiver will permit the construction of much needed

housing for low-income and very low-income elderly tenants. Finally, grant of the request to waiver will enable Petitioner to utilize (and not lose) its significant investment in due diligence expenses that cannot be recouped if the requested waiver is not granted.

15. 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.

16. 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.

17. 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.

18. 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), F.A.C. (2020) and the provisions in subsection II.K of

the 2020 QAP, is hereby **GRANTED** to allow Petitioner to exchange its 2021 housing credits for an allocation of 2022 (or later) housing credits and thereby extend the associated deadlines.

DONE and ORDERED this 5th day of August 2022.

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.