STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Independence Landing, LLC FHFC Case No.: 2021-052VW

_____/

ORDER GRANTING WAIVER FROM RULE 67-48.002(96), 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 September 10, 2021. On August 17, 2021 Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Florida Administrative Code Rule 67-48.002(96) and the 2019 QAP (the "Petition"). Notice of the Petition was published on August 19, 2021, in Volume 47, Number 161, 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") 2020-106 to assist in financing the

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/DATE: 9/13/2021

construction of a 60-unit family development named Independence Landing located in Leon County, Florida (the "Development").

3. Rule 67-48.002(96), Fla. Admin. Code (2019), adopts and incorporates the 2019 QAP.

4. Subsection II.K of the 2019 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 such failure is due to circumstances beyond the Applicant's control, and the Applicant has returned its Housing Credit Allocation in the last 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 may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may 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) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant's control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, 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.

5. Petitioner requests a waiver of the timing provision in the QAP for the return and exchange of housing credits. On July 9, 2020, Petitioner was invited into credit underwriting. On October 22, 2020, Petitioner entered into a Carryover Allocation Agreement ("Carryover Agreement") with Florida Housing. Pursuant to the Carryover Agreement, Petitioner must (1) meet its 10% Test by April 30, 2021, (2) complete credit underwriting, commence construction, and close its tax credit partnership by July 31, 2021, and (3) be placed-in-service by December 31, 2022. On or before April 30, 2021, Petitioner requested an extension of its 10% test to October 22, 2021. Florida Housing approved Petitioner's request for extension. The CUR was completed on June 8, 2021 and approved by the Board on June 18, 2021, but the construction commencement and tax credit partnership deadlines were extended to January 31, 2022 at the request of the Petitioner.

6. In support of its request for a waiver, Petitioner states that over the last year the Development has suffered unforeseen events that have caused delays.

7. Petitioner states that the COVID-19 pandemic, associated precautionary measures, and its significant impacts on daily life and the industry has caused delays. Remote work and the new virtual work environment of Petitioner's team members and government agencies have

hindered previously seamless tasks such as document signatures, plan coordination, and the entitlement process, causing significant delays. Higher construction costs caused by the pandemic has limited the ability to order construction materials prior to closing.

8. In addition, Petitioner and the City of Tallahassee have spent months coordinating a drainage agreement before Petitioner could finalize design and piping on site, leading to a delay in permitting and in overall closing.

9. Further, due to the nature of the land contract (a land lease), Petitioner has not incurred land costs that can be contributed toward the 10% requirement of the reasonably expected basis.

10. Despite these delays, Petitioner has been working diligently to complete predevelopment activities and has to date completed the construction building drawings, started the bidding process, completed all third parties' reports (e.g., geotechnical, environmental, appraisal and plan and cost review), and a number of initial permit approvals have been issued.

11. Petitioner states that due to circumstances beyond its control, the 10% Test cannot be met. Petitioner requests to exchange its 2020 Housing Credits for an allocation of 2021 Housing Credits now rather than wait until

the last quarter of 2020 and, thereby, extend the placed-in-service deadline to December 31, 2023.

12. 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.

13. 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.

14. 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.

15. 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. (2019) and the timing provisions in subsection II.K of the 2019 QAP, is hereby **GRANTED** to allow Petitioner to exchange

its 2020 housing credits for an allocation of 2021 housing credits and thereby extend the associated deadlines.

DONE and ORDERED this 10th day of September 2021.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

Lawrence E. Sellers Jr., Esq.
larry.sellers@hklaw.com

Hugh R. Brown, General Counsel
Hugh.Brown@floridahousing.org

Marisa Button, Director of Multifamily Programs
Marisa.Button@floridahousing.org

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.