STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: HERITAGE PRESERVATION, LP FHFC Case No.: 2022-021VW

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ORDER GRANTING WAIVER OF 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 March 4, 2022. On February 16, 2022 Florida Housing Finance Corporation ("Florida Housing") received a "Petition for Waiver of Rule 67-48.002(96) and for Waiver of Qualified Allocation Plan" (the "Petition"). Notice of the Petition was published on February 17, 2022, in Volume 48, Number 33, 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 the amount of $420,000 in Request for Applications ("RFA") 2018-113 to assist in financing the rehabilitation of a 50-unit family development named

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/DATE: 3/4/2022

Heritage Apartments located in DeFuniak Springs in Walton County, Florida (the "Development").

3. Rule 67-48.002(96), Fla. Admin. Code (2018), adopts and incorporates the 2018 QAP.

4. Subsection II.K of the 2018 QAP states:

> K. 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 Petitioner requests a waiver of the timing requirements found in the 2018 QAP to permit Florida Housing to approve the tax credit exchange. On March 4, 2019, Petitioner was invited into credit underwriting. On August 12, 2019, Petitioner entered into a Carryover Agreement for the allocation of its Tax Credits. Under the original Carryover Agreement, the Petitioner was to submit site control documentation and its 10% test certification by January 31, 2020; the Development must commence construction by April 30, 2020; and the Development must be placed in service no later than July 31, 2021. After multiple extensions to the above-mentioned dates, by request of the petitioner under the Revenue Procedure 2014-49, Florida Housing extended the Petitioner's deadline for its placed in service date to December 31, 2022.

6. As of January 31, 2021, the 10% test has been met, and site control documentation, construction commencement and limited partnership agreement deadlines are currently January 31, 2022. Furthermore, Petitioner has submitted a request to further extend these deadlines.

7. In support of its request for a permanent waiver, Petitioner states that over the last year the Development has suffered unforeseen events that have caused delays. Petitioner states that it has encountered delays in assuming an existing RD515 loan provided by the United States Rural

Development Administration ("RD"). RD was reorganized in 2020 and this reorganization has negatively impacted RD's ability to timely process request or to follow through with loan assignment and restructuring. In addition, RD's reorganization was further exacerbated by the Covid-19 and its related remote work issues, such as delayed responses from RD, despite regular follow up by Petitioner. Additionally, once contact with RD was made, the underwriting process has been delayed due to multiple transfers of Petitioner's application between RD underwriters and removal of employees. Recently, in in December 2021, Heritage's application was assigned to its current RD Underwriter and is currently progressing to finalizing its Preliminary Transfer Assessment Template ("PAT").

8. Petitioner additionally states that once the PAT is finalized, it still has additional steps until closing, which is anticipated to require an additional sixty to ninety days. Accordingly, based upon Petitioner's projected closing timeline and construction schedule, it will be unable to meet its current placed in service deadline of December 31, 2022.

9. Further, due to Petitioner's current anticipated closing date and its inability to meet its placed in service deadline of December 31, 2022, Petitioner's syndicator is requiring a credit swap prior to closing as opposed to waiting till the fourth quarter of 2022. Accordingly, Petitioner requests this

waiver from the credit swap timing requirements contained within the 2018 QAP in order to continue moving towards a closing, otherwise the redevelopment and preservation of the Development will not occur.

10. Petitioner states that due to unforeseen circumstances beyond its control, the requirements of the 2018 cannot be met and request this waiver.

11. 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.

12. 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.

13. 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.

14. 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. (2018) and the timing requirements in subsection II.K of the 2018 QAP, is hereby **GRANTED** to to permit Petitioner to exchange its 2019 housing credits for an allocation of 2022 housing credits and thereby extend the associated deadlines.

DONE and ORDERED this 4th day of March 2022.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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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.