STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: HTG Oak Villas, LLC FHFC CASE NO.: 2021-050VW

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ORDER GRANTING WAIVER OF RULE 67-48.002(96)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 10, 2021, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on August 11, 2021, from HTG Oak Villas, LLC ("Petitioner"). Notice of the Petition was published on August 13, 2021, in Volume 47, Number 157, of the Florida Administrative Register. An amended petition was received on August 19, 2021. Florida Housing has received no comments concerning the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner successfully applied for an award of competitive Housing Credits under Request for Applications 2019-113 (the "RFA") to assist in the construction of a 96 unit family development in Polk County. The Development was originally to be called Oak Park Villas, but the name has changed to Park Ridge.

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

3. Rule 67-48.002(96), Fla. Admin. Code (2019), defines and incorporates by reference the following provision of the 2019 QAP at Section II:

> K. …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 Application for either the current year or the year after the year in which the Development was otherwise required to be placed in service…

4. Petitioner received an award of 2020 tax credits and the carryover agreement was fully executed on October 26, 2020. Under the terms of the agreement and federal regulations, Petitioner was required to (1) meet its 10% Test requirement by April 30, 2021, which was extended by FHFC to October 26, 2021, and (2) place the development in service by December 31, 2022. Petitioner requests a waiver of the above Rule and the QAP provision above to permit it to exchange its tax credits now rather than in the last calendar quarter of 2022.

5. Petitioner asserts that because of unforeseen issues in obtaining wetland mitigation credits, the Petitioner was forced to find alternative routes to mitigate two small wetlands on the site. The current proposal took several months of negotiations with the land seller, which would require the land seller to grant a perpetual

conservation easement on the adjoining parcel of land. Southwest Florida Water Management District's (SWFWMD) review and approval process can take 30 to 90 more days after the Request for Additional Information response was delivered (August 9, 2021). Once SWFWMD has approved the mitigation plan, further surveying, designing and contracting will be required. In addition, the Petitioner is concerned about the potential of the COVID-19 pandemic to disrupt the Development's construction schedule and feels that it will not be able to place the development in service by December 31, 2022.

6. Petitioner therefore requests a waiver of the timing requirements found in the 2019 QAP to permit Florida Housing to approve a tax credit exchange now and to allow the allocation of 2021 tax credits pursuant to that exchange. This will have the effect of requiring Petitioners to place the development in service no later than December 31, 2023.

7. The Board finds that granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

8. 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.

9. Petitioner has demonstrated that the waiver is needed in order to efficiently serve low-income families. Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

10. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

Petitioner's request for a waiver of Rule 67-48.002(96), Fla. Admin. Code (2019) and the timing provisions of Subsection II.K of the 2019 QAP is hereby **GRANTED** to permit Petitioner to exchange its 2020 credits for an allocation of 2021 credits.

DONE and ORDERED this 10th day of September, 2021.

FLORIDA HOUSING FINANCE CORPORATION Tallahassee Florida

Florida Housing Finance Corporation

By: _____
Chair

Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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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.