STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: SEVEN ON SEVENTH, LTD. FHFC Case No.: 2020-066VW

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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 December 4, 2020. On November 12, 2020, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.002(96) and the 2018 QAP (the "Petition"). Notice of the Petition was published on November 13, 2020, in Volume 46, Number 222, 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 and State Apartment Incentive Loan ("SAIL") funding under RFA 2019-106 to finance the construction of a multifamily apartment complex to be known as Seven on Seventh in Fort Lauderdale, Florida (the "Development").

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION

/DATE: 12/4/2020

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

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

> 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.
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> (Emphasis added).

5. Petitioner requests waiver of the above cited section of the 2018 QAP to allow Petitioner to exchange its allocation now rather than wait until the last calendar quarter of the year it was required to be placed in service.

6. Petitioner entered into a 2019 Carryover Allocation Agreement (the "Carryover Agreement") on July 8, 2019 for the allocation of tax credits. The Carryover Agreement provides a placed-in-service date of July 31, 2021. Pursuant to 26 U.S.C. 42(h)(l)(E)(i), the federally mandated placed-in-service deadline is December 31, 2021. Petitioner's deadline to meet the 10% test was January 31, 2020. Florida Housing granted Petitioner's request to extend the 10% test to July 8, 2020. Florida Housing granted an additional extension of the 10% test to December 30, 2020 based on IRS Rev. Proc. 2014-49 (temporary relief from certain requirements of Section 42 of the IRC due to a Major Disaster). Petitioner asserts that it will not meet the December 30, 2020 deadline for the 10% test because it needs building permits to be issued, revised drawings to be finalized, and contracts to be formalized.

7. In support of its request, Petitioner asserts that over the last year the Development has suffered unforeseen hardships that make it clear that the Development will not meet the 10% test by December 30, 2020. Those hardships are:

(a) Petitioner has incurred costs in excess of $1.8 million but is still approximately $1 million short of satisfying the 10% test. Petitioner asserts that a commonly method of meeting the 10% test is purchasing the property, which is unavailable to Petitioner as it has a ground lease on the property.

(b) Petitioner asserts that the COVID-19 pandemic has resulted in the delay of issuance of building permits and the executing of a general contractor contract, both of which would facilitate meeting the 10% test. Additionally, Petitioner asserts that COVID-19 related building material shortages create challenges to a common method of meeting the 10% test by purchasing building materials.

(c) Petitioner asserts that COVID-19 has delayed the development site plan and elevations review by the City of Fort Lauderdale (the "City"). Petitioner asserts that it was ready to submit drawings for review in March of 2020, however the City was closed until April 1, 2020. Petitioner states it submitted those drawings in April but comments from the City were delayed and communication was uncertain given the remote working situation and the unprecedented situation.

(d) According to Petitioner, the architectural team was delayed by COVID-19 when several members were ill which slowed the progress of drawing production and negatively impacted Petitioner's timeline.

(e) Petitioner asserts that COVID-19 related building material shortages and associated price increases have caused delays in obtaining materials and have necessitated revising drawings in an effort to decrease construction costs, all of which have delayed the timeline of the Development. and

(f) According to Petitioner, the coordination of existing and new utilities is taking longer than usual due to COVID-19 which has forced teams to coordinate through video calls rather than in-person and on-site, leading to miscommunication and lack of coordination.

8. Petitioner asserts that in spite of the COVID-19 challenges, it has been steadily working to make progress. Petitioner anticipates receiving permits by late January 2021, if things proceed as planned. According to Petitioner, it is confident that it will be able to meet the extended timeframes for the 10% test and placed in service deadline if this petition is granted.

9. 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.

10. 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.

11. 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.

12. 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" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

IT IS THEREFORE ORDERED: Petitioner's request for a waiver of Rule 67-48.002(96), Fla. Admin. Code, and the timing provisions of Section II.K of the 2018 QAP is hereby **GRANTED** to allow Petitioner to exchange its 2019 housing credit allocation now rather than wait until the fourth quarter of 2021 and immediately receive an allocation of 2020 housing credits with a placed-in-service date of December 31, 2022.

DONE and ORDERED this 4th day of December 2020.

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.