**STATE OF FLORIDA**
**FLORIDA HOUSING FINANCE CORPORATION**

In Re: Arbours at Merrillwood I, LLLP FHFC Case No.: 2021-070VW

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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 October 22, 2021. On September 22, 2021, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of the 2019 Qualified Allocation Plan's Requirement for Returning Housing Credit Allocations and Rule 67-48.002(96) (the "Petition") from Arbours at Merrillwood I, LLLP (the "Petitioner"). Notice of the Petition was published on September 24, 2021, in Volume 47, Number 186, 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 RFA 2019-113 to assist in the construction of a 40-unit elderly, affordable

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housing development named the Arbours at Merrillwood I to be located in Alachua 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. After accepting an invitation to credit underwriting, Petitioner entered into a Carryover Allocation Agreement ("Carryover Agreement") with Florida Housing on November 18, 2020. Pursuant to the Carryover Agreement, the Development is required to be Placed In Service no later than the December 31, 2022. Petitioner's deadline to meet the 10% Test was May 31, 2021, which was extended to November 18, 2021, upon Petitioner's request. In order to meet the 10% Test, Petitioner will need to close debt and equity financing which Petitioner asserts will not occur by the November 18, 2021 deadline.

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. Specifically, Petitioner asserts that it has encountered delays in requests of its site plan and other governmental approvals due in part to COVID-19 cautionary measures, which are detailed in the Petition.

7. Petitioner asserts that despite the issues detailed in its Petition, it has worked diligently to make as much progress on the Development as possible. Petitioner states that it has completed the building drawings and started the bidding process. Petitioner expects to have the remaining permits

and approvals by the end of the first quarter of 2022 and that construction will be completed by the end of the third quarter of 2023.

8. Petitioner asserts that due to circumstances beyond its control, the Development will not be able to meet its 10% Test deadline of November 18, 2021 or be placed in-service by December 31, 2022. Petitioner requests to exchange its 2020 Housing Credits for an allocation of 2021 Housing Credits now rather than wait until the last quarter of 2022 and, thereby, extend the placed-in-service deadline to December 31, 2023.

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" 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), Fla. Admin. Code (2019) and the timing provisions of 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 22nd day of October 2021.

FLORIDA HOUSING FINANCE CORPORATION Tallahassee Florida

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.**