STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: PACES GATEWAY MANOR, LLC FHFC Case No.: 2021-037VW

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ORDER GRANTING WAIVER FROM RULE 67-48.0072(26), FLORIDA ADMINISTRATIVE CODE AND RFA 2019-109 EXHIBIT C, PART 3(d)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on June 18, 2021. On June 2, 2021, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.0072(26) and RFA 2019-109 Exhibit C, Part 3(d), Incorporating the Loan Closing Timeframe (the "Initial Petition"). On June 8, 2021, Florida Housing Finance Corporation received an Amend Petition in this matter (collectively with the Initial Petition, "Petition"). Notice of the Petition was published on June 3, 2021, in Volume 47, Number 107, 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.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/DATE: 6/18/2021

2. Petitioner successfully applied for HOME Financing under RFA 2019-109 to finance the construction of a multifamily complex to be known as Gateway Manor located in Gulf County, Florida (the "Development").

3. Rule 67-48.0072(26) Fla. Admin. Code (2018), in relevant part, states:

> For SAIL, EHCL, and HOME, unless stated otherwise in a competitive solicitation, these Corporation loans and other mortgage loans related to the Development must close within 120 Calendar Days of the date of the firm loan commitment(s), unless the Development is a Tax-Exempt Bond-Financed Development which then the closing must occur within 180 Calendar Days of the firm loan commitment(s). Unless an extension is approved by the Board, failure to close the loan(s) by the specified deadline outlined above shall result in the firm loan commitment(s) being deemed void and the funds shall be de-obligated. Applicants may request one (1) extension of the loan closing deadline outlined above for a term of up to 90 Calendar Days. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The Board shall consider the facts and circumstances of each Applicant's request, inclusive of the Applicant's ability to close within the extension term and any credit underwriting report, prior to determining whether to grant the requested extension. The Corporation shall charge an extension fee of one (1) percent of each Corporation loan amount if the Board approves the request to extend the loan closing deadline beyond the applicable 120 Calendar Day or 180 Calendar Day period outlined above. If an approved extension is utilized, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original loan closing deadline. In the event the Corporation loan(s) does not close by the end of the extension period, the firm loan commitment(s) shall be deemed void and the funds shall be de-obligated.

(emphasis supplied).

4. RFA 2019-109 Exhibit C, Part 3(d), in relevant part, provides:

> 3. Fees
>
> d. Credit Underwriting and Loan Closing Extension Fees In the event the firm commitment is not issued, or the loan does not close within the prescribed timeframes, extension fees will be assessed. The firm commitment must be issued with the timeframes outlined in subsection 67-48.0072(21). Loans must close within the timeframes outlined in subsection 67-48.0072(26), F.A.C. The Corporation shall charge an extension fee of 1 percent of each Corporation loan amount if the Board approves the request to extend the loan closing(s).

(emphasis supplied).

5. Florida Housing issued a firm loan commitment for the loan to Petitioner on December 10, 2020. Petitioner's deadline to close the loan was April 9, 2021. On April 9, 2021, Petitioner requested an extension of ninety (90) days pursuant to Rule 67-48.0072(26), F.A.C. (2018). On April 30, 2021, Florida Housing's Board of Directors (the "Board") approved the request thereby extending the closing deadline to July 8, 2021.

6. Petitioner states that due to an unexpected increase in contactor's costs, Petitioner will not be able to close by July 8, 2021. Specifically, Petitioner asserts that the construction costs increased from approximately $4.2 million to approximately $4.7 million due to increases in the cost of materials and labor shortages. In an effort to address the rising costs,

Petitioner states that it is working to increase the construction loan amount and the corresponding mortgage to help fill the financing gap. Petitioner states that this will require additional time to coordinate the final construction loan amount and additional time for the credit underwriter to review and approve such changes. Therefore, Petitioner requests that the closing deadline be extended from July 8, 2021 to January 8, 2022.

7. 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.

8. 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.

9. 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.

10. 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 67-48.0072(26), F.A.C. (2018) and RFA 2019-109 Exhibit C, Part 3(d), is hereby **GRANTED** to allow the loan closing deadline to be extended from July 8, 2021 to January 8, 2022.

DONE and ORDERED this 18th day of June 2021.

Florida Housing Finance Corporation

By: _____
Chairperson

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.