STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Wells Landing Apartments, LLC FHFC Case No.: 2021-053VW

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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 September 10, 2021. On August 19, 2021 Florida Housing Finance Corporation ("Florida Housing") received a Petition for Variance from Florida Administrative Code Rule 67-48.002(96) and the 2019 QAP (the "Petition"). Notice of the Petition was published on August 20, 2021, in Volume 47, Number 162, 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 2019-114 to assist in the construction of a 124-unit family, affordable

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housing development named the Wells Landing to be located in Palm Beach 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. After accepting an invitation to credit underwriting, Petitioner entered into a Carryover Allocation Agreement ("Carryover Agreement") with Florida Housing on September 23, 2020. Pursuant to 26 U.S.C. 42(h)(1)(E)(i), 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 March 31, 2021. On Mach 19, 2021, Petitioner requested, and Florida Housing granted an extension of the 10% Test to September 23, 2021. On May 26, 2021, Petitioner requested, and Florida Housing granted an extension of the credit underwriting report, the notice of commencement and the limited partnership agreement deadlines to September 30, 2021. Petitioner states that it cannot satisfy the requirements of the Carryover Agreement to meet the extended deadlines.

6. In support of its request for a waiver, Petitioner states the Development has suffered unforeseen hardships, outside of Petitioners control which are summarized below:

- The Covid-19 pandemic had a significant impact on the industry including delays in many time sensitive processes such as site approval by the City, civil engineering plan review, utility connection approval, and approval for building permits.

- The Covid-19 pandemic and its associated precautionary measures had a significant impact on the total construction costs including dramatic cost increases to construction supplies and materials such as lumber. The associated cost increases lead to numerous construction budget adjustments and revisions which also caused a significant delay in the permitting process.

7. Petitioner asserts that in spite of the issues detailed above, it has worked diligently to make as much progress on the Development as possible. Petitioner states that it has completed the construction drawings and obtained an expedited permitting process, which are expected by the end of 2021. Additionally, Petitioner asserts that it is working diligently to close on financing with a target date to close of December 31, 2021 and anticipates construction completion by June 30, 2023. Petitioner states that as of the date of the Petition, it has incurred over $2 million in development/third party costs.

8. Petitioner asserts that due to circumstances beyond its control, the development will not be able to meet its 10% Test deadline of September 23, 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), F.A.C. (2019) and the timing provisions in 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 10th day of September 2021.

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.