STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Amelia Village, L.P. FHFC Case No.: 2021-040VW
_____/

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 July 31, 2021. On June 23, 2021 Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of the Qualified Allocation Plan's Requirement for Returning Housing Credit Allocations and Rule 67-48.002(96), Florida Administrative Code (2019) (the "Petition"). Notice of the Petition was published on June 24, 2021, in Volume 47, Number 122, 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 2019-115 to assist in financing the acquisition and preservation of 50-unit quadraplex named Amelia Village located in Indian River County, Florida (the "Development").

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
DATE: 8/2/2021

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. Petitioner was invited into

credit underwriting on February 5, 2020. In addition to the funding from Florida Housing, Petitioner also received funding from the United States Department of Agriculture RD 515 Program ("RD Program"). Petitioner entered into a Carryover Allocation Agreement ("Carryover Agreement") with Florida Housing on August 21, 2020 in which the Development was required to be placed-in-service by December 31, 2022.

6. In October of 2020, Petitioner was notified that an internal reorganization of the United States Department of Agriculture ("USDA") would impact the RD Program. Petitioner states that it submitted required approvals to the RD Program in November of 2020 with follow up in January and February of 2021. On February 16, 2021, Petitioner requested an extension and Florida Housing extended the deadline to August 21, 2021.

7. Petitioner states that on February 18, 2021, the USDA requested additional information which Petitioner produced on March 3, 2021. According to Petitioner, beginning in April of 2021, it held weekly calls with USDA in an effort to expedite the approval process. On May 24, 2021, Petitioner requested an extension of time from Florida Housing to complete the Notice of Commencement, Credit Underwriting Report, and the executed partnership agreement. Florida Housing approved the extension to November 30, 2021.

8. On June 2, 2021, Petitioner states that it was notified that part of their application to the RD Program had been approved. On June 14, 2021, Petitioner states that it was requested to submit a payment to the RD Program for further processing and Petitioner states that a check was remitted that same day. As of the date of filing the Petition, Petitioner states that it is still awaiting RD Program approval. Petitioner states that the reorganization within the USDA as well as COVID have delayed the reviews and approvals necessary for the Development to move forward.

9. Petitioner states that due to circumstances beyond its control, the 10% Test cannot be met, and the placed-in-service deadline of December 31, 2022 cannot be met. Petitioner requests to exchange its 2020 Housing Credits for an allocation of 2021 Housing Credits now rather than wait until the last quarter of 2020 and, thereby, extend the placed-in-service deadline to December 31, 2023.

10. 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.

11. 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.

12. 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.

13. 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 31st day of July 2021.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

Maureen McCarthy Daughton, Esq.
mdaughton@mmd-lawfirm.com

Hugh R. Brown, General Counsel
Hugh.Brown@floridahousing.org

Marisa Button, Director of Multifamily Programs
Marisa.Button@floridahousing.org

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
Joint.admin.procedures@leg.state.fl.us

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.