STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Ambar Riverview, Ltd. FHFC Case No.: 2021-064VW

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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 24, 2021 Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.002(96), F.A.C. (7/8/18) and the 2018 QAP (the "Petition"). Notice of the Petition was published on August 25, 2021, in Volume 47, Number 165, 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 2018-111 to assist in the construction of an 105-unit family, affordable housing development named The Ambar located in Miami-Dade County, Florida (the "Development").

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
DATE: 9/13/2021

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

4. Subsection II.K of the 2018 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 or about September 22, 2020. According to the time frame in 26 U.S.C. 42(h)(l)(E)(i), the development must be placed-in-service by December 31, 2022.

6. In support of its request for a waiver, Petitioner states that it experienced delays beyond its control due to COVID-19. According to Petitioner, building permit approval was requested in December 2020, and as of the date of the petition, the request has not yet been approved. Petitioner asserts that this delay has prevented Petitioner from closing on all financing and land necessary to meet the 10% Test and the site control requirements of the Carryover Agreement. Petitioner requested and was granted a six-month extension of the site control and 10% Test deadline to September 22, 2021. Petitioner also asserts that the delays prevented Petitioner from commencing construction. Petitioner requested and was granted an extension of the deadline for closing on the partnership and recording the notice of commencement to October 31, 2021.

7. Petitioner provided the following timeline of its efforts to move the Development forward:

- Submission of building permits for approval in December 2020.

- Due to COVID-19, the City of Miami was not operating at 100% capacity and was not open to the public for meetings until June 2021.
- Petitioner remained in regular contact requesting updates and trying to move the process forward.
- Petitioner obtained a plan and cost review consultant to expedite the process.
- By July 26, 2021, Petitioner obtained some plan approvals, but eleven approvals remained pending.
- Petitioner prepared for permit approval by drafting construction loan documents, obtaining credit approval, and providing a substantial final form of the Limited Partnership Agreement to Seltzer Management.
- On August 13, 2021, Petitioner met with a City of Miami Building official via Zoom and he agreed to do everything he could to get the permit ready letter for closing. Petitioner followed up with several reviewers but has been unable to obtain all necessary signatures.

8. Petitioner asserts that due to the delays in the permitting approval process, Petitioner will not be able to meet the 10% Test deadline. According to Petitioner it has been diligent in moving the Development forward and has expended approximately $4.9 million in its efforts. Petitioner states that due to circumstances beyond its control, the development will not 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. (2018) and the timing provisions in subsection

II.K of the 2018 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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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.