STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Naranja Lakes Housing Partners, LP

FHFC Case No.: 2021-051VW

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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 11, 2021 Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Provision of Rule 67-48.002(96), Florida Administrative Code (the "Petition"). Notice of the Petition was published on August 13, 2021, in Volume 47, Number 157, 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 2019-112 to assist in the construction of a 140-unit family, affordable housing development named the Residences at Naranja Lakes 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 (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 October 2, 2020. Pursuant to the Carryover Agreement, Petitioner must demonstrate site control by March 31, 2021, meet its 10% Test by March 31, 2021, commence construction by June 30, 2021, finalize credit underwriting by June 30, 2021, close on the tax credit partnership by June 30, 2021, and be placed-in-service by December 31, 2022. Upon request, Petitioner's deadlines for the 10% Test, site control, credit underwriting, notice of commencement, and tax credit partnership were extended to September 30, 2021. The Site Control requirement was satisfied on July 9, 2021.

6. In support of its request for a waiver, Petitioner states that the spread of the COVID-19 pandemic significantly impacted the progress of the Development. According to Petitioner, the public health emergency significantly disrupted many governmental and business operations. Petitioner states that it has diligently continued with development but encountered unavoidable delays. Petitioner asserts that in the wake of COVID, the construction reviews and approval of submissions in Miami-Dade were greatly delayed and the Miami-Dade Building Department did not conduct plan reviews within usual timeframes. Also, according to Petitioner, no in-person meetings with the County were allowed until June 7, 2021 and

then, only on one Monday a month. Additionally, Petitioner asserts that it had to address unanticipated comments and concerns from the County's Department of Environmental Management ("DERM").

7. In the Petition, Petitioner provided a detailed timeline from March of 2020 to June of 2021 which outlines Petitioner's construction efforts and unforeseen delays.

8. Petitioner asserts that despite the issues detailed in the Petition, it has worked diligently to make as much progress on the Development as possible. Petitioner attached a revised construction timeline to its Petition which demonstrates that 18 to 21 months are required before the final Certificate of Occupancy can issue for the Development. According to Petitioner, it has closed on the land to secure the site for the affordable housing development.

9. Petitioner states that due to circumstances beyond its control, the 10% Test cannot be met and 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 or 2022 Housing Credits now rather than wait until the last quarter of 2022 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 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.