STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: THE VILLAGE OF CASA FAMILIA, LTD.

FHFC Case No.: 2021-035VW

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ORDER GRANTING WAIVER FROM RULE 67-48.002(96), FLORIDA ADMINISTRATIVE CODE AND THE 2018 QAP

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 1, 2021 Florida Housing Finance Corporation ("Florida Housing") received a Petition for Variance from Florida Administrative Code Rule 67-48.002(96) and the 2018 QAP (the "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.

2. Petitioner successfully applied for competitive housing credits and grant funding to assist in the construction of The Village of Casa Familia, a 59-unit development located in Miami-Dade County, Florida to serve low-income individuals with developmental disabilities (the "Development").

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

3. Rule 67-48.002(96) Fla. Admin. Code (2018), in relevant part, adopts and incorporates the 2018 Qualified Allocation Plan ("QAP").

4. Subsection II.K. of the 2018 QAP Rule 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 limitation on the timing of the tax credit exchange, to allow a credit exchange to be approved by the

Executive Director or the Board at this time rather than wait until the last calendar quarter of 2022.

6. Petitioner was invited into credit underwriting on May 20, 2019. Petitioner entered into a 2019 Carryover Allocation Agreement on December 26, 2019. Pursuant to federal requirements, the Development is required to be Placed In Service no later than the close of the second calendar year following the calendar year in which the allocation is made. Also, pursuant to federal and Florida Housing requirements, Petitioner's deadline to meet the 10% Test was June 30, 2020. At Petitioner's request, Florida housing granted an extension of the 10% Test to December 26, 2020 per the provisions of the Carryover. Additionally, Petitioner was granted an additional extension of the 10% Test deadline to June 26, 2021 and the Placed-In-Service deadline to December 31, 2022 under Rev. Proc. 2014-49. In order to meet the 10% Test, Petitioner will need to have closed on financing, which will not be completed by the current deadline.

7. According to Petitioner, over the last year, the Development has suffered unforeseen hardships that make it clear that the Development will not meet the 10% Test by June 26, 2021, which are summarized below:

- A complaint was made to HUD suggesting that the Development may not comply with the Supreme

Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), which prohibits segregating individuals with development disabilities from integrated housing options. According to Petitioner, the other funding sources remain supportive of the Development, they will not issue a commitment for the funding until confirmation is received from HUD that the Development complies with the law. Petitioner cannot finalize credit underwriting, close on the financing, or start construction until it receives those funding commitments. Petitioner is in the process of obtaining HUD's approval for the Development by requesting approval to implement a limited selection preference for households that meet federal requirements. Petitioner estimates that it may take up to 12 months to receive the confirmation.

- Petitioner states that the resolution of the above issue could result in complete restructuring of the deal with Miami-Dade and Florida Housing. Because of the potential need to restructure the Development,

Petitioner states that it cannot purchase and store materials or make a capitalized ground lease payment to meet the 10% Test.

- Additionally, Petitioner asserts that the COVID-19 pandemic and the associated precautionary measures had a significant impact, which also caused significant delays.

8. Petitioner asserts that despite the delays, Petitioner has been working diligently to complete the pre-development activities and has completed the construction drawings and obtained an expedited permitting process, of which the permits are expected by the Fall of 2021. Additionally, Petitioner states that as soon as the issue with HUD is addressed and it receives the additional funding commitments, it will close on financing and commence construction. Although the timing of the resolution is uncertain, Petitioner states that it is hopeful to close by May of 2022 with construction completed by June of 2023.

9. Petitioner requests a credit exchange and is confident that it will be able to meet the 10% Test and Placed-In-Service deadline, as extended due to the credit exchange to a Placed-In-Service deadline of 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. (2018) and the timing provisions in Section II.K of the 2018 QAP, is hereby **GRANTED** to allow Petitioner to exchange its 2019 housing credits for an allocation of 2021 housing credits and thereby extend the associated deadlines.

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
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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.