STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Apollo Gardens, LLLP FHFC Case No.: 2024-004VW

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ORDER GRANTING WAIVER OF RULE 67-48.002(96), FLA. ADMIN. CODE (2021) AND SECTION II.J OF THE 2022 QUALIFIED ALLOCATION PLAN

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on March 26, 2024. On February 22, 2024, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.002(96), F.A.C. (5/18/21) and the 2022 QAP (the "Petition"), and on March 4, 2024 an Amended Petition ("Amended Petition") from Apollo Gardens, LLLP (the "Petitioner") to allow Petitioner the immediate return of its 2023 Housing Credit Allocation, and an immediate allocation of new Housing Credits for 2024 or later. Notice of the Petition was published February 23, 2024, in Volume 50, Number 38, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised on the premises, the Board hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
Ann F. Mamouz /DATE: 3/27/2024

2. Petitioner successfully applied for funding to assist in the construction of Apollo Gardens, an 84-unit development located in Brevard County, Florida (the "Development").

3. Rule 67-48.002(96), Fla. Admin. Code (2021), adopts and incorporates the 2022 Qualified Allocation Plan ("QAP"). Subsection II.J. of the 2022 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 the Applicant has returned its Housing Credit Allocation after the end of the second 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 will reserve allocation in an amount not to exceed the amount of Housing Credits returned, and will 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) A site inspection reflecting the percentage of Development completion must be completed. If the Development is at least fifty (50) percent completed, as reflected in the site inspection, the approval may be made by Corporation staff. If the Development is less than fifty (50) percent completed, as reflected in the site inspection, the approval must be made by the Board. In making such determination, the Board must find and determine that the delay was caused by circumstances beyond the Applicant's control, and that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay; and (iii) The

Corporation or Board, as applicable, must find 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.

4. Petitioner successfully applied for RFA 2022-210, competitive Housing Credits under the Low-Income Housing Tax Credit program (LIHTC) for a development located in Brevard County and was invited into credit underwriting in August 2022. Florida Housing staff executed a Carryover Allocation Agreement ("CAA") on April 13, 2023. The CAA mandated that the development be placed in service by December 31, 2025, and required satisfaction of the 10% test by October 31, 2023 (the "CAA Deadline"). The 10% Test required Petitioner to incur at least ten percent of the reasonably expected basis of the Development on or before October 31, 2023. Petitioner has been previously granted a CAA Deadline extension to April 13, 2024. Failure to comply with the CAA Deadline will cause the Housing Credits allocated within the CAA to be deemed returned to Florida Housing under Section 42(h)(3)(C), Internal Revenue Code.

5. Since being selected for funding and invited to credit underwriting, Petitioner states that it has been engaged in the pursuit of all necessary development approvals and permits from the necessary jurisdictional

authorities. However, in August 2023 litigation was initiated against the development. The complaint was dismissed and refiled. Petitioner is currently seeking to have the complaint dismissed with prejudice. The hearing on Petitioner's motion to dismiss is scheduled to be heard on March 15, 2024. Petitioner expects to submit drawings for permitting by late 2024. Due to the described delays, the estimated completion for the Development will not occur by December 31, 2025, as required by the CAA, nor will it satisfy the 10% test by April 13, 2024.

6. 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.

7. 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.

8. 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 that Petitioner's request for a waiver of Rule 67-48.002(96), Fla. Admin. Code (2021) and Subsection II.J

of the 2022 Qualified Allocation Plan is hereby **GRANTED** to allow Petitioner to exchange its present allocation of housing credits for an allocation of 2024 or later housing credits.

DONE and ORDERED this 26th day of March, 2024.

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.