STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: NARANJA GRAND SENIOR, LTD.

FHFC Case No.: 2023-038VW

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ORDER GRANTING WAIVER FROM RULE 67-48.002(96), FLORIDA ADMINISTRATIVE CODE (2021) AND THE 2021 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 June 9, 2023. On May 11, 2023, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.002(96), F.A.C. (2021) and the 2021 QAP (the "Petition") from Naranja Grand Senior, Ltd. ("Petitioner") to exchange its 2022 housing credits for an allocation of 2023 housing credits. Notice of the Petition was published on May 15, 2023, in Volume 49, Number 94, 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 Request for Applications 2021-203 to assist in financing the construction of a

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Anne Mamoney /DATE: 6/12/2023

120-unit elderly development named Naranja Grand located in Miami-Dade County, Florida (the "Development").

3. Rule 67-48.002(96), Florida Administrative Code (2021), adopts and incorporates the 2021 Qualified Allocation Plan ("QAP").

4. Subsection II.J of the 2021 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.

5. Petitioner requests a waiver of the timing provision in the QAP so that it may exchange its housing credits now, rather than wait until the end of the second quarter of the year in which the Development was otherwise required to be placed in service.

6. The Development was invited to credit underwriting on December 17, 2021, and a 2022 Carryover Allocation Agreement ("CAA") was executed on or about July 19, 2022, for the allocation of its housing credits. The CAA required Petitioner to incur at least ten percent of the reasonably expected basis of the Development (the "10% Test") and meet the Site Control requirement on or before January 31, 2023 (the "CAA Deadline"). This deadline was later extended to July 19, 2022, as further discussed below. 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.

8. Pursuant to Section 42(h)(l)(E)(i), Internal Revenue Code, the Development must be placed in service no later than the close of the second calendar year following the calendar year in which the allocation is made; in

this case, the federally mandated placed-in-service date would be December 31, 2024.

9. Petitioner states that due to delays beyond its control, the 10% Test cannot be met. During the design and planning process, Petitioner learned for the first time that, because this site was previously owned by Miami-Dade County (the "County") and it abuts two properties owned and controlled by the County, the Administrative Site Plan Review process would require an extraordinary amount of coordination and negotiation with six different County departments. According to Petitioner, one of the major hurdles was that the only access to one of the County properties, occurs through Petitioner's site. Petitioner states that addressing those issues required numerous meetings with different departments, which could take weeks, especially since the County's new expediting policies did not apply. Petitioner realized that it would not have a complete credit underwriting report to submit to Florida Housing by April 30, 2023.

10. Anticipating this delay, on March 17, 2023, Petitioner requested an extension to the notice of commencement, credit underwriting report and tax credit partnership agreement deadlines. On February 1, 2023, the Corporation approved extensions to the CAA Deadline to July 19, 2023. On April 21, 2023, the Corporation also approved extensions to the deadline for

the notice of commencement, credit underwriting report and tax credit partnership agreement to December 31, 2023. However, the placed in service deadline remained December 31, 2024.

11. Per Petitioner, as of May 4, 2023, it has cleared all issues with the different County departments and has received the final comments for its site plan. Petitioner also began production of its full set of construction documents for permitting in February 2023. As such, Petitioner anticipates submittal to the County for permitting will occur in May 2023. Based on this, Petitioner expects to close in December 2023. However, Petitioner's states that the 10% Test deadline of July 19, 2023, is unachievable despite all best efforts since the land is being conveyed via a long-term ground lease at below-market value, which is a major cost component needed to meet this test.

12. Petitioner also states that other costs, such as purchasing materials or paying the developer fee, could not be incurred in an amount sufficient to satisfy the 10% Test prior to the deadline. While Petitioner must spend roughly $3.5 million in additional costs to meet the 10% Test, the accrual for the developer fee during pre-construction is limited to 20% of total fees, which is slightly more than $1 million for the Development. Moreover, Petitioner states that it was not able to request bids until May due to delays during its site plan review process.

13. Because Petitioner knows that circumstances outside of its control will prevent it from satisfying the 10% Test deadline, Petitioner requests a waiver of the 2021 QAP to permit Florida Housing to approve the housing credit exchange now as opposed to waiting until after the end of the second calendar quarter of 2024, which is the year the Development is required to be placed in service.

14. Petitioner indicates that without the waiver the Development will be abandoned because Petitioner will not have sufficient time to satisfy the 10% Test deadline and will lose the allocated housing credits. Without this funding source, the County will lose these 120 affordable housing units. In addition, Petitioner states that the County is currently experiencing a shortage of affordable housing units for the elderly, non-ALF, and Persons with Special Needs and granting the Petition will result in the delivery of 120 new affordable housing units much faster than would reallocating the funding to a new development.

15. 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.

16. 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.

17. 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.

18. 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), Florida Administrative Code (2021), and the timing provisions of subsection II.J of the 2021 QAP is hereby **GRANTED** to allow Petitioner to exchange its 2022 housing credits for an allocation of 2023 housing credits now rather than waiting until the end of the second quarter 2024.

DONE and ORDERED this 9th day of June 2023.

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.