STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Timbers Preservation, LP FHFC Case No.: 2021-048VW

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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 July 31, 2021. On July 14, 2021 Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.002(96) (the "Petition"). Notice of the Petition was published on July 15, 2021, in Volume 47, Number 136, 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 2019-115 to assist in financing the preservation of a 32-unit family development named Timbers Apartments located in Dixie County, Florida (the "Development").

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
DATE: 8/2/2021

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. Petitioner was invited into

credit underwriting on February 5, 2020. Petitioner entered into a Carryover Allocation Agreement ("Carryover Agreement") with Florida Housing on August 21, 2020. Pursuant to the Carryover Agreement, Petitioner must meet its 10% Test by February 28, 2021, commence construction by May 31, 2021, and be placed-in-service by December 31, 2022. On March 2, 2021, Florida Housing approved Petitioner's request to extend its 10% test to August 21, 2021, and to extend its construction commencement to December 31, 2021.

6. In support of its request for a waiver, Petitioner states that over the last year the Development has suffered unforeseen events that have caused delays. Specifically, as a condition of the RFA Petitioner must assume an existing RD515 loan administered by the United States Rural Development Administration ("RD"). In 2020, RD conducted a reorganization that impacted RD's ability to process requests.

7. Petitioner submitted an application to RD on another development, Heritage Apartments, in June of 2020 and did not receive a response until August of 2020. Petitioner states that it continues to follow up with RD routinely, but the Heritage Apartments application has not been assigned to an underwriter nor does it have a target closing date. Petitioner states that the timeframe for RD's processing of the Heritage Apartments application is indicative of how the Development's application will be

processed by RD. Petitioner asserts that it has a complete RD submission package prepared for the Development and is ready to submit it pending final feedback from RD on the submission for Heritage Apartments. Additionally, Petitioner states that the remote working conditions attributed to the COVID-19 pandemic have also delayed RD's processing the Development's RD515 application.

8. Petitioner states that due to circumstances beyond its control, the 10% Test cannot be met. Petitioner requests to exchange its 2020 Housing Credits for an allocation of 2021 Housing Credits now rather than wait until the last quarter of 2020 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. (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 31st day of July 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.