STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Durham Place, Ltd. FHFC Case No.: 2021-085VW

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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 December 10, 2021. On November 15, 2021, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.002(96), F.A.C. (7/11/19) and the 2019 QAP (the "Petition") from Durham Place, Ltd. (the "Petitioner"). Notice of the Petition was published on November 16, 2021, in Volume 47, Number 222, 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, Extremely Low Income ("ELI") funding, State Apartment Incentive Loan ("SAIL") funding, and National Housing Trust Fund ("NHTF") loans in RFA 2020-103 to assist in the construction of a 102-unit affordable housing

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12/13/2021
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development named Durham Place to be located in Orange County, Florida (the "Development").

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 to permit an exchange of credits now instead of waiting until the last quarter of 2022. After accepting an invitation to credit underwriting, Petitioner entered into a Carryover Allocation Agreement ("Carryover Agreement") with Florida Housing on December 23, 2020. Pursuant to the Carryover Agreement, Petitioner must demonstrate site control and meet the 10% Test on or before June 30, 2021. This deadline was later extended to December 23, 2021 at Petitioner's request. The Carryover Agreement also required Petitioner to close its tax credit partnership and commence construction by September 30, 2021. At Petitioner's request that deadline was extended to December 31, 2021. The federally mandated placed-in-service deadline is December 31, 2022.

6. In support of its request for a waiver, Petitioner asserts that it is not possible to meet the above deadlines due to reasons outside of Petitioner's control. Specifically, Petitioner states that it is experiencing delays stemming from an increase in construction costs. According to Petitioner, it was forced to undergo value engineering and to renegotiate with contractors in order to execute a manageable construction contract. Petitioner asserts that the unprecedented escalation in construction costs over the past year resulted in a

domino effect of delays in the pre-development process which has also delayed Petitioner from commencing construction.

7. Petitioner also experienced delays associated with a "not in my back yard" ("NIMBY") group that raised numerous issues including building height, wildlife, archaeological impact, environment, and wetlands. According to Petitioner, it completed all applicable studies and permit applications required by law to address each issue and the Development is in full compliance with the County Code and ordinances and was able to successfully obtain variance to add a pitched roof and decrease the parking ratio. Petitioner attempted to mitigate the delays related to the NIMBY group by holding a community meeting to distribute information about the Development. Petitioner states that the meeting unfortunately only caused the NIMBY group to raise additional issues and resulted in further delay. Because of the NIMBY groups involvement, Petitioner asserts that issues that would normally be addressed at the County's staff level now must be brought to the Board of County Commissioners for public hearings, which has resulted in further delay. In another attempt to accommodate requests from the NIMBY group, Petitioner redesigned several items on the site plan, which required resubmittal and a new review of the entire package. Petitioner expects final approval of the revised site plan on November 30, 2021.

8. When Petitioner submitted its Application in March of 2020, COVID-19 had not yet impacted the supply chain nor the labor force. According to Petitioner, the Development could not have continued to be viable without the actions taken by Petitioner to lower costs. Petitioner states that those actions took time which prevented Petitioner from complying with the deadlines in the Carryover Agreement.

9. Petitioner asserts that despite the issues detailed above, it has exercised due diligence in attempting to move the Development towards construction. Additionally, Petitioner has invested over $737,000 in the Development and has successfully completed soil tests, executed a contract with the general contractor, and final approval is expected for the architectural plan, engineering plan, and site plan on November 30, 2021.

10. Petitioner anticipates an imminent completion of the credit underwriting report and that it will close on the tax credit partnership and commence construction in November of 2021. Due to circumstances beyond Petitioner's control, 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 Housing Credits now rather than wait until the last quarter of 2022 and, thereby, extend the placed-in-service deadline to December 31, 2023.

11. 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.

12. 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.

13. 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.

14. 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 (2019) and the timing provisions of 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 December 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.