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STATE OF FLORIDA
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IN RE: INDEPENDENCE LANDING, LLC

FHFC CASE NO. 2021-052VW
Application No. 2020-450CG
RFA No. 2020-106

PETITION FOR WAIVER OF FLORIDA ADMINISTRATIVE CODE RULE 67-48.002(96) AND THE 2019 QAP

Petitioner, Independence Landing, LLC (Petitioner), pursuant to section 120.542, Florida Statutes, and chapter 28-104, Florida Administrative Code, petitions Florida Housing Finance Corporation (Florida Housing) for a waiver of the timing provisions of the 2019 Qualified Allocation Plan ("2019 QAP") as incorporated and adopted in Rule 67-48.002(96), Florida Administrative Code (2019), pertaining to a tax credit exchange. Due to forces outside of Petitioner's control, Petitioner cannot meet the Placed-ln-Service and the 10% Test deadlines as required by the Carryover Allocation Agreement. In support of this Petition, Petitioner states:

A. Petitioner and the Development

1. The name, address, telephone, and email address for Petitioner is:

   Independence Landing, LLC
   P.O. Box 3208
   Tallahassee, FL 32315
   Telephone; 850-509-7886
   Email: gil@ziffberry.com

2. The contact information for Petitioner's counsel is:

   Lawrence E. Sellers, Jr.
   Holland & Knight LLP
   315 S. Calhoun Street, Suite 600
   Tallahassee, FL 32301
   Phone: 850-425-5670
   Email: larry.sellers@hklaw.com

3. Petitioner submitted Application No. 2020-450CG in response to Request for Applications No. 2020-106, Financing for the Development Of Housing for Persons with A Disabling Condition or Developmental Disabilities (the "RFA"), for competitive housing credits to assist in the construction of a 60-unit development located in Tallahassee, Leon County, Florida, known as Independence Landing (the "Development") to serve low-income individuals with developmental disabilities ("IDD").

4. Here is the requested background information regarding the Development:

Application Number:	2020-450CG
RFA No.	2020-106
Development Name:	Independence Landing
Applicant/Borrower:	Independence Landing LLC
Developer/Principal:	Southport Community Development, Inc. (J. David Page)
Number of units:	60
County of Development:	Leon
Development/Type:	Garden Apartments
Set Asides:	15% of residential units at 33% of AMI, 85% of residential units at 60% of AMI
Demographics:	Persons with Developmental Disabilities
Funding Amounts:	$1,620,000 in Competitive Housing Credits; $4,000,000 grant

5. The Development will be built on county-owned land. The non-profit principal of the Applicant, Independence Landing, LLC, has a long-term ground lease with the City of Tallahassee with the lease describing the construction of a residential community for intellectually disabled and developmentally disabled adult individuals with a range of cognitive and other disabilities. Petitioner was awarded $1.62 million in annual 9% tax credits and a $4 million grant in RFA 2020-106.

6. Petitioner was invited into credit underwriting on July 9, 2020. On October 22, 2020, Petitioner entered into a 2020 Carryover Allocation Agreement with Florida Housing for the allocation of tax credits.

7. Pursuant to 26 U.S.C. 42(h)(1)(E)(i), the Development is required to be placed In Service not later than the close of the second calendar year following the calendar year in which the allocation is made. Pursuant to 26 U.S.C. 42(h)(1)(E)(ii), and Florida Housing' s requirements, Petitioner's deadline to meet the 10% Test was April 30, 2021. Petitioner requested, and Florida Housing granted, an extension of the 10% Test to October 22, 2021. To meet the 10% Test, Petitioner will need to have closed financing, which will not be completed, by October 22, 2021.

B. Type of Waiver

8. The waiver being sought is permanent in nature.

C. Rule For Which a Waiver Is Requested

9. Petitioner requests a waiver of subsection k. of Section II of the 2019 QAP as incorporated and adopted in Rule 67-48.002(96) (the Rule), which provides:

> 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.

Emphasis added.

10. The process in the 2019 QAP requires an applicant to return its allocation of housing tax credits in the last calendar year in which it was otherwise required to be Placed In Service before a tax credit exchange can be approved by the Executive Director of Florida Housing. Petitioner is requesting a waiver of this limitation on the timing of the tax credit exchange, to allow a credit exchange to be approved by the Executive Director, or the Board of Directors of Florida Housing, at this time rather than in the last calendar quarter of 2022.

D. Statutes Implemented by the Rule

11. The 2019 QAP and the Rule implement, among other sections of the Florida Housing Finance Corporation Act, the statutes relating to the allocation of Low-Income Housing Tax Credits contained in section 420.5099, Florida Statutes.

E. Justification for Granting the Requested Waiver From the Rule

12. Under Section 120.542(1), Florida Statutes, Florida Housing has the authority to grant waivers to or variances from its requirements when strict application of the requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, section 120.542(2) States:

> 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. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

13. Petitioner requests a waiver of the timing requirements found in the 2019 QAP to permit Florida Housing to approve the tax credit exchange prior to the fourth quarter of 2022.

Petitioner cannot satisfy the requirement in the Carryover Agreement, as extended, to spend 10% of the reasonably expected basis of the Development by October 22, 2021.

14. Over the last year, the Development has suffered unforeseen hardships that make it clear that the Development will not meet the 10% Test by October 22, 2021. These challenges are summarized as follows:

(a) Due to the nature of the land contract (a land lease), there are no land costs that can be contributed toward the 10% requirement of the reasonably expected basis.

(b) Further, the COVID-19 pandemic and associated precautionary measures had a significant impact on daily life and the industry as a whole. Most of Petitioner's project team members were working from home and many government agencies have been working remotely. Document signatures, plan coordination, and the entitlement process have been hindered by challenges to complete previously seamless tasks with the new virtual work environment, which caused significant delays. Higher construction costs have been a result of the COVID-19 pandemic, limiting the ability for Petitioner to order construction materials prior to closing.

(c) Lastly, a legal issue and unforeseen easement coordination has delayed the possibility of closing by October 22, 2021. The City of Tallahassee constructed stormwater drainage improvements upon land that was intended for the Development, for the benefit of the City's park design on the adjacent site. Petitioner and the City attorney have spent months coordinating a drainage agreement before Petitioner and its civil engineer could finalize design and piping on site. This delay in design has led to a delay in permitting and a delay in overall closing.

15. Despite these delays, Petitioner has been working diligently to complete predevelopment activities and has to date completed the construction building drawings, started the bidding process, completed all third parties reports (e.g., geotechnical, environmental, appraisal and plan and cost review), and a number of initial permit approvals have been issued.

The remaining permits and approvals are expected by the Fall of 2021. The Petitioner hopes to close by December of 2021, with construction completed by December 2022; however the contractor has indicated it may take more than 12 months to complete.

16. With these delays, it is evident that Petitioner may not meet a placed-in-service deadline of December 31, 2022. With a credit exchange, Petitioner is confident that it will be able to meet the 10% Test and Placed-in-Service deadline, as extended due to the credit exchange, as , the requested 2021 credit exchange would extend the Development's Placed-ln-Service date to December 31, 2023.

17. Under section 120.542(1), Florida Statutes, and chapter 28-104, Florida Administrative Code, Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (l) create a substantial hardship or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat. (2018).

18. In this instance, Petitioner meets the standards for a waiver of the Rule and the timing limitations in the 2019 QAP. The requested waiver will not adversely affect the Development or Florida Housing and will ensure that 60 much needed affordable housing units will be made available for a vulnerable segment of the population in Leon County, Florida. Specifically, 80% or at least 48 units in the Development will be set aside for individuals with IDD. The 48 units will be rented on a preferential basis to households eligible for voluntary services appropriate for individuals with IDD. Supportive services available at the Development will be coordinated by Specialized Support Services, Inc., an experienced, professional community-based support and service coordinator, which will serve as the Services Coordinator and will ensure residents have the tools they need to live independent, self-determined lives. On-site resource counselors will be available to help residents connect with resources in the

community and to empower them to do so. An onsite community center will welcome the participation of the people from the neighborhood and greater community alongside the residents of the Development.

19. This Development will assist Florida Housing with fulfilling its statutory mandate to provide safe, sanitary, and affordable housing to the citizens of Florida. See § 420.502(2), Fla. Stat. Florida Housing is required by section 420.507(48), Florida Statutes, to reserve up to 5% of its annual allocation of low-income housing tax credits to allocate by competitive solicitation for high-priority affordable housing developments, such as housing for Persons with a Disabling Condition and their families or Persons with Developmental Disabilities, in communities throughout the state. The strict application of the 2019 QAP and the credit exchange requirements will create substantial hardship for Petitioner because it likely will not be able to satisfy the 10% Test or Placed-In-Service deadlines.

20. The requested waiver further serves the purpose of the statute because one of the primary goals of the statute is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida for low-income households. *Id*. By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing in persons of low-income and the economic realities and principles of fundamental fairness in developing affordable rental housing. See § 420.5099(2), Fla. Stat.

F. **Action Requested**

WHEREFORE, Petitioner respectfully requests that Florida Housing:

(i) Grant the requested waiver of Rule 67-48.002(96) (2019) and the timing requirements in subsection II.k. of the 2019 QAP to allow Petitioner to exchange its 2020 allocation of housing credits for an allocation of 2021 housing credits and thereby extend the associated deadlines;

(ii) Grant this Petition and all of the relief requested herein; and

(iii) Grant such further relief as may be deemed appropriate.

Respectfully submitted this 17th day of August, 2021.

Lawrence E. Sellers, Jr.
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Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed on this 17th day of August, 2021 by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

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