STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: BDG BANYAN EAST TOWN, LLC

FHFC Case No.: 2023-032VW

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ORDER GRANTING WAIVER OF RULE 67-48.002(96)(2021) AND THE CHIRP ITP

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on April 28, 2023. On April 7, 2023, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.002(96) and the CHIRP ITP (the "Petition") from BDG Banyan East Town, LLC (the "Petitioner") to allow for an early tax credit exchange, waive the current deadline for closing its Limited Partnership Agreement and introduce a new deadline of July 21, 2023. Notice of the Petition was published on April 11, 2023, in Volume 49, Number 70, 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
/DATE: 4/28/2023

2. Petitioner successfully applied for funding to assist in the construction of Banyan East Town Apartments, a 92-unit development located in Seminole County, Florida (the "Development").

3. Rule 67-48.002(96), Fla. Admin. Code (2021), adopts and incorporates the 2021 Qualified Allocation Plan ("QAP") by reference, which states, in relevant part, under Subsection II.J::

> 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. The CHIRP ITP contains a deadline for closing Limited Partnership Agreements by the earlier of (i) the existing closing deadlines for the Active Award (excluding Rule extension requests that require Board approval), or (ii) January 31, 2023. On August 5, 2022, the Board approved a modification of the ITP, whereby the LPA closing deadline would be January 31, 2023; and the "earlier of the existing closing deadline" would not be enforced. On January 27, 2023, the Board approved a second modification of the ITP, whereby the deadline for closing the LPA was extended to March 10, 2023. On March 10, 2023, the Board approved a third modification of the ITP, whereby the deadline for closing the LPA was extended to April 28, 2023. During the March 2023 meeting, the Board noted that the April 28th deadline was the last global extension, and any further extension requests would be reviewed on a case-by-case basis.

5. Petitioner requests a waiver of the above tax credit exchange timing limitation to allow a credit exchange to be approved at this time rather than at the end of the second calendar quarter of 2024, a waiver of the current LPA closing deadline, and a new LPA closing deadline of July 21, 2023.

6. As grounds for its request, Petitioner cites several impacts from the permitting and planning process that caused delays to the Development timeline. Petitioner anticipates submittal of its final site/building plans and final plat on April 20, 2023, and an additional 90 to 150 days from that date for permitting approval. This timeline will push the estimated closing of Petitioner's limited partnership agreement to between July and September 2023.

7. As a condition to closing the limited partnership agreement, Petitioner's investor limited partner requires the expected placed-in-service ("PIS") date to be at least three (3) months before the PIS deadline. Petitioner's credit allocation requires a PIS deadline of December 31, 2024. Given the expected Development timeline, Petitioner does not anticipate that it can place the Development in service three (3) months before the current PIS deadline as required by the investor limited partner. Accordingly, Petitioner is seeking a credit swap to extend the PIS date from December 31, 2024, to December 31, 2025.

8. 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.

9. 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.

10. 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 the CHIRP ITP, is hereby **GRANTED** to (i) allow the requested credit exchange to be approved before the second quarter of 2024; (ii) waive the current limited partnership agreement closing deadline of April 28, 2023; and (iii) allow a new limited partnership agreement closing deadline of July 21, 2023.

DONE and ORDERED this 28 day of April, 2023.

FLORIDA HOUSING FINANCE CORPORATION Tallahassee Florida

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.