STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: SP VILLAGE LLC FHFC Case No.: 2021-33VW

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ORDER GRANTING WAIVER FROM RULES 67-21.003(8)(j) AND 67-48.004(3)(j), 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 June 18, 2021. On May 27, 2021, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of the Rules 67-21.003(8)(j) and 67-48.004(3)(j) For A Change in The Total Set-Aside Percentage (the "Petition"). Notice of the Petition was published on May 27, 2021, in Volume 47, Number 104, 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 applied for non-competitive housing credits to assist in the acquisition and rehabilitation of Choctaw Village, a family affordable housing development in Okaloosa County, Florida (the "Development").

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
DATE: 6/18/2021

3. Rule 67-21.003(8)(j), Fla. Admin. Code (2018), provides in relevant part:

> (8) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application is deemed complete. Those items are as follows:
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> ...
>
> (j) The Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application; notwithstanding the foregoing, the Total Set-Aside Percentage may be increased after the Applicant has been invited to enter Credit Underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development;

Likewise, Rule 67-48.004(3)(j) provides in relevant part, as follows:

> (3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:
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> ...
>
> (j) For the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application.

4. Petitioner requests waiver of the above cited rule to allow Petitioner to reduce its Total Set-Aside Percentage from 100% of the units (48 units) to 95% of the units (46 units).

5. Petitioner states that in its application it selected a set aside 10% of the units (5 units) at 33% AMI or less and the remaining 90% of the 48 units (43 units) at 60% AMI or less. However, two families presently reside in the development with incomes greater than 60% AMI which precludes satisfaction of the 100% set-aside requirement.

6. According to Petitioner, these families initially qualified to reside in the development and still currently meet the income requirements imposed by HUD pursuant to the restrictions set forth in the project-based HAP Contract. HUD guidelines have the effect of preventing Petitioner from terminating the tenancies of these HUD-assisted tenants, and specifically from non-renewing the leases of tenants who exceed the income requirements imposed by LIHTC deed restrictions. The Petitioner could not change its minimum set aside election to Average Income to maintain the set aside commitment in the application to accommodate the over-income residents as the Development is a rehabilitation and the residents were living in the units prior to closing and initial tenant income certification. As such, unless the waiver is granted, Petitioner will be out of compliance with the Total Set-Aside Percentage, yet it will be prohibited from coming into compliance. While not

specifically stated within the Petition, Petitioner will be required to maintain its SAIL ELI requirements with 10% of the units (5 units) at 33% AMI or less and the remaining 85% of the units (41 units) set aside at 60% AMI. The MMRN and Housing Credit set-asides will reflect 95% of the units (46 units) at 60% AMI or less.

7. 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.

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" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

IT IS THEREFORE ORDERED: Petitioner's request for a waiver of Rules 67-21.003(8)(j) and 67-48.004(3)(j), Fla. Admin. Code (2017) is hereby **GRANTED** to allow Petitioner to reduce its Total Set-Aside Percentage from 100% (48 units) to 95% (46 units). More specifically, the SAIL/ELI set-asides will reflect 10% (5 units) at 33% AMI or less and 85% (41 units) at 60% AMI or less and the Housing Credit and MMRN set-asides will reflect 95% (46 units) at 60% AMI or less.

DONE and ORDERED this 18th day of June 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.