STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Creekside Manor VOA Affordable Housing, LP

FHFC CASE NO.: 2022-027VW

/

ORDER GRANTING WAIVER OF RULE 67-48.0072(26), FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on April 29, 2022, pursuant to a "Petition for Waiver of Rules 67-48.0072(26) F.A.C (7/11/19)" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on April 11, 2022, from Creekside Manor VOA Affordable Housing, LP ("Petitioner"). Notice of the Petition was published on April 12, 2022, in Volume 48, Number 71, of the Florida Administrative Register. Florida Housing has received no comments concerning the Petition. After careful review of the record and being otherwise fully advised on the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner successfully applied for financing under RFA 2019-118 (Elderly Housing Community Loan) and was subsequently invited into Credit Underwriting.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
Ann McMurray /DATE: 5/2/2022

3. Rule 67-48.0072(26), Fla. Admin. Code (Rev. 7-11-19), states in relevant part:

> (26) For SAIL, EHCL, and HOME, unless stated otherwise in a competitive solicitation, these Corporation loans and other mortgage loans related to the Development must close within 120 Calendar Days of the date of the firm loan commitment(s), unless the Development is a Tax-Exempt Bond-Financed Development which then the closing must occur within 180 Calendar Days of the firm loan commitment(s). Unless an extension is approved by the Board, failure to close the loan(s) by the specified deadline outlined above shall result in the firm loan commitment(s) being deemed void and the funds shall be de-obligated. Applicants may request one (1) extension of the loan closing deadline outlined above for a term of up to 90 Calendar Days. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The Board shall consider the facts and circumstances of each Applicant's request, inclusive of the Applicant's ability to close within the extension term and any credit underwriting report, prior to determining whether to grant the requested extension. The Corporation shall charge an extension fee of one (1) percent of each Corporation loan amount if the Board approves the request to extend the loan closing deadline beyond the applicable 120 Calendar Day or 180 Calendar Day period outlined above. If an approved extension is utilized, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original loan closing deadline. In the event the Corporation loan(s) does not close by the end of the extension period, the firm loan commitment(s) shall be deemed void and the funds shall be de-obligated.

4. On December 2, 2019, Petitioner timely submitted its Application for the Development, and, on January 30, 2020, Florida Housing

issued an invitation to enter credit underwriting to the Petitioner which stated that the firm loan commitment had to be issued within 12 months of the acceptance to enter credit underwriting.

5. Petitioner acknowledged the invitation on January 31, 2020, giving Petitioner a firm loan commitment issuance deadline of January 31, 2021.

6. On January 22, 2021, Petitioner was granted an extension of its firm loan commitment issuance deadline from January 31, 2021 until July 31, 2021 by Florida Housing's Board because issues related to the COVID-19 pandemic made it difficult for Petitioner to proceed with the development activities.

7. On July 30, 2021, the Florida Housing's Board approved Petitioner's final credit underwriting report with a positive recommendation for funding and directed Florida Housing's staff to proceed with closing activities. Florida Housing's Staff issued a firm commitment to the Petitioner giving Petitioner a loan closing deadline of January 31, 2022.

8. The RFA states, in pertinent part, "The loan must close within 180 Calendar Days of the date of the firm loan commitment(s). Unless an extension is approved by the Board… In the event the Corporation loan(s)

does not close by the end of the extension period, the firm loan commitment(s) shall be deemed void and the funds shall be de-obligated."

9. On December 10, 2021, Petitioner was granted an extension of the Elderly Housing Community Loan closing deadline by Florida Housing's Board, extending the loan closing deadline from January 31, 2022 until May 2, 2022.

10. The development is a HUD Section 202 senior project with two project-based Section 8 contracts. Petitioner asserts that it applied for HUD approval of the related contracts in April 2021; however, Petitioner has not received all of the required approvals from HUD that Petitioner must receive before closing.

11. Petitioner asserts that it has no control over the timeliness of the HUD contract approvals and Petitioner may not be able to close by the May 2, 2022 deadline. Petitioner requests a loan closing extension to allow time for Petitioner to receive the required HUD approvals before closing and requests a waiver of the above Rule to obtain the second 6-month extension.

12. The Board finds that granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

13. 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.

14. Petitioner has demonstrated that the waiver is needed in order to efficiently serve the elderly community. 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.

15. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary, and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

Petitioner's request for a waiver of Rule 67-48.0072(26), Fla. Admin. Code (Rev. 7/11/19), is hereby **GRANTED** to extend Petitioner's Elderly Housing Community Loan closing deadline to November 2, 2022.

DONE and ORDERED this 29th day of April, 2022.

Florida Housing Finance Corporation

By: _____
Chair

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.