STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Silver Pointe Development Partners, LLC

FHFC CASE NO.: 2020-077VW

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ORDER GRANTING WAIVER OF RULE 67-48.002(95)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on January 22, 2021, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on December 21, 2020, from Silver Pointe Development Partners, LLC ("Petitioner"). Notice of the Petition was published on December 23, 2020, in Volume 46, Number 248, of the Florida Administrative Register. No public comments regarding the petition have been received. After careful review of the record and being otherwise fully advised in 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 was selected to receive an allocation of 9% Housing Tax Credits under Request for Applications 2016-110 (the "RFA") to assist in the construction of 90 new garden style units for low-income families in Marion County.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION

/DATE: 1/22/2021

Petitioner was also awarded additional funding under RFA 2018-109, Development Viability Loan Funding.

3. Rule 67-48.002(95), Fla. Admin. Code (2016), defines and incorporates by reference the following provision of the 2016 QAP at Section II.2:

> K. …where a Development has not been placed in service by the date required or it is apparent that a Development will not be placed in service by the date required, 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,** the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may allocate such Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service…

4. On August 2, 2017, Petitioner was invited to enter credit underwriting, and a 2017 Carryover Allocation Agreement was executed on December 22, 2017. On November 2, 2018, the Board approved Petitioner's request for a waiver to allow it to exchange its 2017 tax credits for 2018 credits, and a 2018 Carryover Allocation Agreement was executed on November 13, 2018. The federally mandated placed-in-service date was further extended to December 31, 2021 pursuant to Rev. Proc. 2014-49 due to COVID-related effects.

5. Petitioner requests a waiver of the above Rule and bolded selection of the QAP provision above to permit a second exchange of its tax credits now rather than in the last calendar quarter of 2021. Petitioner asserts that it no longer has the ability to obtain competitive equity commitments for the deal since losing their

senior level staff member for the state of Florida, and for this reason achievement of the scheduled placed in service deadline is extremely unlikely. To mitigate further delay in construction of the Development, Petitioner has an agreement in place with a qualified and experienced development team to convey the Development, including land and all work completed to date. If Petitioner is allowed to transfer the Development to a new owner as described below, Petitioner anticipates a 14-month construction period with the Development placed in service in February of 2023. Petitioner therefore requests that it be permitted to swap the allocated tax credits now instead of the last quarter of 2021.

6. In order to facilitate the transfer, Petitioner also seeks Board approval to change the applicant name, applicant principals, and developer principals pursuant to Rule 67-48.004(3)(a)-(b), Fla. Admin. Code (2016), which provides:

> (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:
>
> (a) **Name of Applicant entity;** notwithstanding the foregoing, the name of the Applicant entity may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit underwriting. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application documentation;
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> (b) **Principals of each Developer, including all co-Developers;** notwithstanding the foregoing, the Principals of the Developer(s) may

> be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit underwriting. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application documentation....

7. The RFA similarly provides for Board approval of the requested changes to the principals and applicant name.

8. To proceed, Petitioner asserts that it must be able to change the applicant name, applicant principals, and developer principals. Specifically, the applicant name would change from Silver Pointe Development Partners, LLC to Silver Pointe, Ltd. The sole member of Silver Pointe, Ltd is MW5 Holdings, LLC whose sole member is Martin Wohl. Martin Wohl has been an owner and developer of affordable housing in Florida since 2010 while developing his first housing tax credit project. All of the applicant's principals, and all of the Developer's principals, would change as described in detail in the Petition. The single developer would be replaced by two co-developers, affiliated entities of Marmer Construction and McDowell Housing Partners. In addition to being a co-developer, Marmer Construction will also act as a general contractor. The replacement of the experienced Principal of the Developer entity will meet the experience requirements set forth in the RFA that were met by the original Principal.

9. Petitioner has already been invited to credit underwriting and the 2018 Carryover Allocation Agreement was executed on November 13, 2018.

Accordingly, Petitioner is permitted under Rule 67-48.004(3)(a)-(b), Fla. Admin. Code, as well as the applicable RFA provisions, to change the principals and applicant name upon this written request and Board approval. If this request is denied, Petitioner will not be able to transfer the Development to the new owner.

10. 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.

11. Section 120.542(2), Fla. Stat. 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. Petitioner has demonstrated that the waiver is needed in order to efficiently serve low-income residents. 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.

13. 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 67-48.002(95), Fla. Admin. Code (2016) and the above-cited 2016 QAP provision is hereby **GRANTED** to permit Petitioner to exchange its 2018 credits for 2021 credits now rather than in the last calendar quarter of 2021. Petitioner's request to change the applicant name, applicant principals, and developer principals as described above and in the Petition is also **GRANTED.**

DONE and ORDERED this 22nd day of January, 2021.

Florida Housing Finance Corporation

By: _____
Chair

Copies furnished to:

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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.