STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2020-066VW
Application No. 2019-371CS

SEVEN ON SEVENTH, LTD.

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.002(96) AND THE 2018 QAP

Petitioner, Seven on Seventh, Ltd. (the "Petitioner"), pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of the timing provisions of the 2018 Qualified Allocation Plan ("2018 QAP") as incorporated and adopted by Rule 67-48.002(96), Florida Administrative Code ("F.A.C.") (2018) (collectively, the "Rule") pertaining to a tax credit exchange. Due to forces outside of Petitioner's control, Petitioner cannot meet the 10% test as required by the Carryover Allocation Agreement. In support of this Petition, Petitioner states as follows:

A. THE PETITIONER

1. The name, address and telephone number for Petitioner and its qualified representative are:

SEVEN ON SEVENTH, LTD.
Attn: Oscar Sol
100 SE 3rd Avenue
Ft. Lauderdale, Florida 33394
Telephone: (305) 898-2188

Email: osol@greenmillsgroup.com

2. The mailing address, telephone number and email of the Petitioner's legal counsel is as follows:

Samantha D'Angelo, Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4218
Email: Samantha.dangelo@nelsonmullins.com

3. On February 4, 2019, Petitioner timely submitted its Application in response to RFA 2019-106 Housing Credit and SAIL Financing for the Development of Housing for Homeless Persons (the "RFA") and was assigned Application No. 2019-371CS (the "Application") to finance the construction of a multifamily apartment complex to be known as Seven on Seventh in Fort Lauderdale, Florida (the "Development"), which will serve low-income families in Broward County. On July 8, 2019, Petitioner entered into a 2019 Carryover Allocation Agreement (the "Carryover Agreement") with Florida Housing for the allocation of the Tax Credits.

4. 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. Therefore, while the Carryover Agreement provides a July 31, 2021 placed-in-service date, the federally mandated placed-in-service deadline is December 31, 2021. Furthermore, pursuant to 26 U.S.C. 42(h)(1)(E)(ii), and Florida Housing's requirements, the Petitioner's deadline to meet the 10% test was January 31, 2020. The Petitioner requested, and Florida Housing granted, an extension of the 10% test to July 8, 2020 based on Federal requirements and Florida Housing then provided a further extension of the deadline to December

30, 2020 based on IRS Rev. Proc. 2014-49. In order to meet the 10% test, the Petitioner will need building permits issued, revised drawing finalized and contracts formalized, which will not be done by December 30, 2020.

B. TYPE OF WAIVER

5. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

6. Petitioner requests a waiver of Subsection II.K. of the 2018 QAP. At the time the Application was submitted, Rule 67-48.002(96), F.A.C. (2018) provided:

> "QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2018 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the State of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits. The QAP is available on the Corporation's website under the Multifamily Programs link or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or from http://www.flrules.org/Gateway/reference.asp?No=Ref-09578.

Subsection II.K. of the 2018 QAP provided:

> K. 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.
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> (Emphasis added).

7. The process found in the 2018 QAP requires an applicant to return its allocation of housing tax credits in the last calendar quarter of the year in which it was otherwise required to be placed in service before a tax credit exchange request 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 2021.

D. STATUTES IMPLEMENTED BY THE RULE AND THE 2018 QAP

8. The 2018 QAP and the Rule implement, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statutes relating to the allocation of Low-Income Housing Tax Credits contained in Section 420.5099 of the Florida Statutes. *See* § 420.5099, *Fla. Stat. (2018)* (the "Statute").

E. FURTHER JUSTIFICATION FOR GRANTING WAIVER

9. Petitioner requests a waiver of the timing requirements found in the 2018 QAP to permit Florida Housing to approve the tax credit exchange prior to the fourth quarter of 2021. Petitioner cannot satisfy the requirement in the Carryover Agreement, as extended, to spend 10% of the reasonably expected basis of the Development, by December 30, 2020.

10. Over the last year the Development has suffered unforeseen hardships that make it clear that the Development will not meet the 10% test by December 30, 2020. These challenges are summarized as follows:

(a) To date, Petitioner has incurred costs in excess of $1.8 million. However, despite these substantial costs, Petitioner is still approximately $1 million short of the amount needed to be incurred to satisfy the 10% test. Because the Development's site control is established via a ground lease, Petitioner is unable to meet the 10% test by purchasing the property, which is a commonly used method of meeting the test.

(b) Additional reasons for the Petitioner's inability to meet the 10% test are a direct result of the COVID-19 global pandemic ("COVID"). COVID has resulted in a delay of the issuance of building permits and the execution of a general contractor contract, both of which would facilitate meeting the 10% test. COVID related building material shortages are also creating challenges to meeting the 10% test by purchasing building materials.

(c) The development site plan and elevations are still under the City of Fort Lauderdale (the "City") Development Review. This process, which usually takes several months to complete, has been further delayed due to COVID. Specifically, in March 2020, Petitioner was prepared to submit drawings for

Development Review Committee approval. However, when Petitioner attempted to submit the drawings electronically, Petitioner was notified that the City was closed until April 1, 2020. Moreover, Petitioner learned that the City would not review the drawings remotely and spent the following weeks attempting to communicate with the City Staff to gather information and determine how the delays would impact its timeline. In April, Petitioner was able to submit the drawings, but comments from the City were delayed and communication with City Staff was uncertain given the City Staff was working remotely and adjusting to the unprecedented situation.

(d) Most, if not all, of the teams collaborating on the Development have been affected by COVID. For instance, the architectural team experienced a period of very slow production because several team members became ill, causing a delay in progress. The architectural team attempted to work from home for several weeks, but due to challenges such as unreliable connection to the server necessary to develop, revise, and save drawings, the progress of the drawing production was slowed, and Petitioner's timeline was negatively impacted.

(e) COVID-related building material shortages have also created challenges for Petitioner to meet the 10% test. Several large national and local suppliers have provided notices that they are operating with reduced staff due to COVID, resulting in limited manufacturing capacity and increased delivery lead times necessary to have certain building materials delivered and stored. As a result, the common method of purchasing stored materials to meet the 10% test is being hindered by COVID. Specifically, Petitioner has received COVID-related notices

from suppliers of AC condenser units, flooring, windows, and electrical and plumbing parts regarding increased manufacturing and/or delivery times. These shortages have also led to cost inflation, which has directly increased Petitioner's budget. Consequently, Petitioner has redesigned certain components of the building in an effort to bring construction costs down. In turn, the drawings which were to be finalized, now need to be revised; impacting many different aspects of the project. Additionally, the cost inflation has delayed the negotiation of the final general contractor contract.

(f) During ordinary circumstances, the coordination of existing and new utilities is a complex component of development. However, COVID has made this coordination even more challenging by forcing various teams to coordinate through video calls rather than in-person and on site. The result has been miscommunication and an unintentional lack of coordination amongst the multiple teams. Coordinating existing and new utilities is multifaceted and requires many different aspects to cohesively come together in order to receive final approval for the proposed utility relocation plan and the weeks continue to pass with delayed answers and slow progress.

11. Despite the Petitioner's challenges in connection with COVID, the Petitioner has been working diligently to make steady progress. The architectural building plan review comments have been answered and plans have been resubmitted for review. The final Development Review Committee plans will be submitted to the City shortly and Petitioner anticipates receiving permits by late January 2021 if everything goes as planned. Petitioner intends to close the construction financing immediately after permits are approved and the final

Credit Underwriting Report is approved by Florida Housing shortly after Florida Housing's March board meeting. However, with a construction timeline of 16 months, ending approximately in June 2022, it is evident that Petitioner will not meet a placed in service deadline of December 30, 2021. With a credit swap, Petitioner is confident that it will be able to meet the 10% test and placed in service deadline, as extended due to the credit swap.

12. Under Section 120.542(1), *Fla. Stat.,* and Chapter 28-104, F.A.C., 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: (1) 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).

13. In this instance, Petitioner meets the standards for a waiver of the Rule and timing limitations in the 2018 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 72 much needed affordable housing units will be made available for a vulnerable segment of the population in Broward County, Florida. Specifically, at least 50 percent of the units in the Development will be set aside for homeless individuals and families and at least 15 percent of the units in the Development will be set aside for individuals with special needs. Such a result will assist Florida Housing with fulfilling its statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida. The strict application of the 2018 QAP and the credit swap requirements will create substantial hardship for Petitioner because it likely will not be able to satisfy the 10% test or placed in service deadline due to COVID.

14. The requested waiver 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. By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing in persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable rental housing. *See* § 420.5099(2), *Fla. Stat.* (2018).

F. ACTION REQUESTED

15. For the reasons set forth herein, Petitioner respectfully requests Florida Housing (i) grant the requested waiver of the timing requirements found in the 2018 QAP to allow the requested credit exchange to be approved before the fourth calendar quarter of 2021; and (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

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COUNSEL FOR PETITIONER

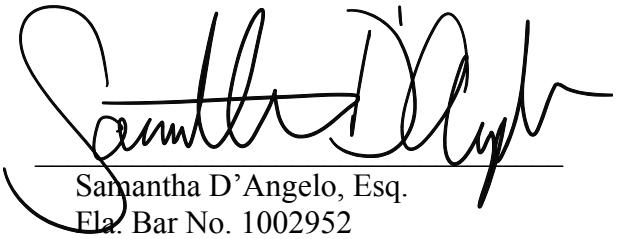
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed 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

This 11th day of November 2020.



Samantha D'Angelo, Esq.
Fla. Bar No. 1002952