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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

SILVER LAKES VILLAGE VOA AFFORDABLE HOUSING, LP,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

CASE NO. 2023-078VW

FHFC APPLICATION: 2021-189E
REQUEST FOR APPLICATIONS: 2020-101

PETITION FOR WAIVER OF RULE 67-48.0072(26) F.A.C. (6/23/20)

Petitioner Silver Lakes Village VOA Affordable Housing, LP.,[1] a Florida limited partnership (the "Petitioner"), by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of Rule 67-48.0072(26), Florida Administrative Code ("F.A.C.") (June 23, 2020) so that it may extend the Elderly Housing Community Loan ("EHCL") closing deadline of October 31, 2023. Petitioner experienced a series of delays beyond its control, primarily related to Hurricane Ian and interactions with the U.S. Department of Housing and Urban Development ("HUD"), as outlined in more detail below. Accordingly, Petitioner is requesting an additional six-month extension of the loan closing deadline. In support, Petitioner states as follows:

1. THE PETITIONER

The address, telephone, facsimile numbers and e-mail address for Petitioner and its qualified representative are:

[1] On August 2, 2021, Florida Housing staff received Petitioner's request to change the applicant/Petitioner's name from Orlando Volunteers of America Elderly Housing, Inc., to Silver Lakes Village VOA Affordable Housing, LP. Florida Housing's Board approved the name change at its September 10, 2021 meeting.

Silver Lakes Village VOA Affordable Housing, LP
Volunteers of America National Services
Attention: Kimberly Black King
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The address, telephone number, facsimile number, and e-mail address of Petitioner's counsel are:

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2. DEVELOPMENT BACKGROUND

The following information pertains to the development (the "Development") underlying Petitioner's application:

- Development Name: Silver Lakes Village Apartments
- Development Address: 5102 Cinderlane Pkwy, FL 32808
- County: Orange
- Developer: Volunteers of America National Services
- Number of Units: 104
- Type: Garden Apartments/Rehabilitation
- Set Asides: 20% at or below 50% AMI and 80% at or below 60% AMI
- Demographics: Elderly
- Funding: $750,000 Elderly Housing Community Loan (EHCL)

3. WAIVER IS PERMANENT

The waiver being sought is permanent in nature.

4. THE RULE FROM WHICH WAIVER IS REQUESTED

Petitioner seeks a waiver of Rule 67-48.0072(26), effective June 23, 2020, which provides:

> 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.

Id. (emphasis added).

5. STATUTES IMPLEMENTED BY THE RULE

The Rule implements Section 420.5087 (State Apartment Incentive Loan Program), Section 420.5089 (HOME Investment Partnership Program; HOME Investment Partnership Fund), and Section 420.5099 (creating the Housing Credits Program) of the Florida Housing Finance Corporation Act (the "Act").[2]

[2] The Act is set forth in Sections 420.50 through 420.55 of the Florida Statutes.

6. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE

a. Florida Housing issued RFA 2020-101 (the "RFA") on October 22, 2020.

b. Petitioner timely submitted its Application No. 2021-189E in response to the RFA on November 18, 2020.

c. On January 22, 2021, the Board approved the final scores and recommendations for the RFA and directed staff to proceed with all necessary credit underwriting activities.

d. Florida Housing staff issued an invitation to enter credit underwriting to the Petitioner on January 26, 2021.

e. Because Petitioner acknowledged the acceptance on February 2, 2021, the initial firm loan commitment issuance deadline was February 2, 2022.

f. On November 3, 2021, Petitioner requested a six-month extension of the firm loan commitment deadline due to an unforeseen delay. The EHCL funds are part of a financing plan that includes 4% housing credits, as well as tax-exempt bonds issued by the Orange County Housing Finance Authority ("OCHFA"). While the OCHFA Board approved an Intent Resolution for the Development, OCHFA had already exhausted its bond allocation for 2021 and could not allocate its bonds to the project until early 2022, necessitating the request for the six-month extension. This request was approved by Florida Housing's Board on January 21, 2022, thereby extending the deadlines from February 2, 2022 to August 2, 2022.

g. Construction cost and interest rate increases forced Petitioner to make significant changes to the Development's budget. As a result, the credit underwriting report could not be available in enough time for consideration at Florida Housing's June 17,

2022 Board meeting. Because subsection (21)(a) of the Rule prevented Florida Housing from issuing the firm loan commitment until after the Credit Underwriter's recommendation for funding was approved by Florida Housing's Board, and the final credit underwriting report would not come before the Board prior to the firm loan commitment issuance deadline of August 2, 2022, Petitioner requested another extension via a petition for Rule waiver. On June 17, 2022, Florida Housing's Board granted that petition, extending the deadline for issuance of the firm loan commitment to February 2, 2023.

h. The Rule provides that the EHCL must close within 120 Calendar Days of the date of the firm loan commitment (*i.e.*, within 120 days of February 2, 2023)

i. On June 22, 2023, as permitted under the Rule, Petitioner requested a 90-day extension of the loan closing deadline. On July 21, 2023, Florida Housing's Board approved this request, extending the deadline to and including October 31, 2023.

j. Unfortunately, Petitioner is in need of an additional six-month extension of the loan closing deadline.

k. Because Petitioner exercised the single extension allowed under the Rule, Petitioner must request via this Petition a waiver of the Rule to allow an additional extension.

l. The need for the additional extension was caused by forces beyond Petitioner's control.

m. The rehabilitation project experienced construction cost increases in part due to water infiltration from Hurricane Ian in the Fall of 2022. Subsequent to Hurricane Ian, the owner engaged a contractor, architect and structural engineer to perform several investigative penetrations to the exterior of the building to ascertain a more accurate

depiction of the rehabilitation needs, including any remediation measures needed to abate the water infiltration issues. The findings of this investigative study necessitated revisions to the scope of work for the project, and resulted in a material increase to the project's hard cost budget.

n. Silver Lakes Village is also going through the Rental Assistance Demonstration ("RAD") program for a Section 202 (*i.e.,* Housing for the Elderly) Project Rental Assistance Contract ("PRAC") conversion process with HUD. After completing the investigative studies, which substantiated the need for material increases to the scope of work and hard cost budget, the Owner needed to pursue additional project subsidies. For the past 12 months, the Owner has been awaiting the publication of a RAD Supplemental Notice, which would govern the allocation of $12 million in funding for RAD for PRAC conversions, appropriated by Congress. On July 27th, 2023, the Rental Assistance Demonstration – Supplemental Notice 4B (Notice H-2023-08 / PIH-2023-19) was released by HUD. The Notice was published in the Federal Register on August 21, 2023, effectuating the changes to the program and allowing PRAC owners going through the RAD conversion process to request supplemental rent subsidy increases. Given the extensive scope of work and projected hard costs for the rehabilitation of the Development, the project is eligible to receive an additional $250 per unit per month in rental subsidy, which will help support the additional debt needed to close the financial gap and complete the entirety of the expanded scope of work necessary to stabilize and preserve the building. The requested extension will allow Petitioner to continue to work through these HUD

processes for the construction close, including the submission and approval of the RAD Conversion Plan and supplemental rent subsidy increase.

o. There have been additional delays as a result of the damages incurred from Hurricane Ian in October 2022. Subsequent to the Hurricane, Volunteers of America National Services ("VOANS"), the project owner, requested and successfully received an insurance claim payment to replace the roof of the building, and make repairs to the affected dwelling units. VOANS worked diligently with the insurance adjuster, the General Contractor to develop a scope of work within the approved insurance claim budget, as well as a Recovery Plan for the property that needed to be approved by HUD. The critical repairs to the roof are currently underway and will be complete by October 31st, 2023. HUD would not reapprove the PRAC for the property, until the actions required under Recovery Plan were satisfied.

p. Due to delays related to the foregoing, Petitioner does not believe it will be able to satisfy the current loan closing deadline.

q. Thus, Petitioner is in need of a Rule waiver to obtain a second extension of the loan closing deadline.

r. As set forth above, this request was not necessitated through any fault of Petitioner. Rather, Petitioner exercised due diligence in attempting to move the Development forward.

s. If the Petition is denied, the firm loan commitment will be deemed void and the funds will be de-obligated pursuant to the Rule. Because the Development cannot move forward without this funding source, and because significant remediation measures are needed as a result of Hurricane Ian, the denial would likely cause the elderly

residents currently residing in the 104 affordable housing units to be displaced.

t. This Petition should be granted, as opposed to de-obligating the award, because Orange County is currently experiencing a shortage of affordable housing units for the elderly. Granting the Petition will allow 104 affordable housing units to be rehabilitated and provide housing much faster than would reallocating the funding to a new development.

u. 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,[3] and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Fla. Stat.

v. In this instance, Petitioner meets the standards for a waiver of the Rule. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 104 affordable housing units will be preserved and made available for the target population in Orange County, Florida. The strict application of the Rule would cause the funds to be de-obligated. Further, the waiver will serve the purposes of the Act, because one of the Act's primary purposes is to facilitate the availability of

[3] "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. *See* § 120.542(2), Fla. Stat.

decent, safe and sanitary housing in the State. By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable housing. *See* § 420.5099(2), Fla. Stat.

w. The foregoing demonstrates the hardship and other circumstances justifying this Petition.

x. Should Florida Housing require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

7. ACTION REQUESTED

For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested waiver to extend the loan closing deadline an additional six months (*i.e.*, through and including April 30, 2024); (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

By: */s/ Brian J. McDonough*

CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with a copy served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 28th day of September, 2023.

By: */s/ Brian J. McDonough*
Brian J. McDonough, Esq.