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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
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SILVER LAKES VILLAGE VOA AFFORDABLE HOUSING, LP,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

CASE NO. 2024-021VW

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 second[2] 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 April 30, 2024 an additional 6 months.[3] Petitioner experienced a series of delays beyond its control, primarily related to interactions with the U.S. Department of Housing and Urban Development ("HUD"), as outlined in more detail below. Accordingly, Petitioner is requesting a second waiver to extend the loan closing deadline. In support, Petitioner states as follows:

[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.

[2] On October 27, 2023, Florida Housing's Board granted a six-month extension to and including April 30, 2024.

[3] Petitioner is in need of at least 120 days to accommodate HUD's schedule and respectfully requests a 6-month extension in an abundance of caution.

1. THE PETITIONER

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

Silver Lakes Village VOA Affordable Housing, LP
Volunteers of America National Services
Attention: Kimberly Black King
1660 Duke Street
Alexandria, VA 22314
Telephone: (703)341-5081
Facsimile: N/A
E-Mail: kking3@voa.org

The address, telephone number, facsimile number, and e-mail address of Petitioner's counsel are:

Brian J. McDonough, Esq.
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106 East College Avenue, Suite 700
Tallahassee, FL 32301
Telephone: 850-329-4852
Fax: 850-329-4844
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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").[4]

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 Petitioner request a 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.

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

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. Due to circumstances beyond its control, primarily related to damage from Hurricane Ian, Petitioner needed an additional six-month extension of the loan closing deadline. Petitioner filed a petition for rule waiver[5] on September 28, 2023, which was granted by Florida Housing's Board on October 27, 2023 and which extended the loan closing deadline from October 31, 2023, to April 30, 2024.

[5] A petition for rule waiver was required because Petitioner had exercised the single extension allowed under the Rule.

k. The need for this second petition for rule waiver to extend the loan closing deadline an additional six months was caused by forces beyond Petitioner's control.

l. Specifically, Silver Lakes Village is 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. Delays occurred related to waiting for publication of the RAD Supplemental Notice, which governs 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. Unfortunately, HUD indicated that the RAD approval letter will not be ready until mid-May and HUD will require at least another 45 days after that to be ready to close. An extension of 120 days, at a minimum, is therefore necessary to accommodate HUD's schedule. In an abundance of caution, Petitioner is seeking a six-month extension.

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

n. Thus, Petitioner respectfully seeks a second Rule waiver to obtain an extension of the loan closing deadline of six months.

o. 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.

p. 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.

q. 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.

r. 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,[6] 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.

s. 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 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.

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

u. 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

[6] "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.

For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant a second waiver and extend the loan closing deadline six months (*i.e.*, through and including October 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*
BRIAN J. MCDONOUGH, ESQ.

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 19th day of April, 2024.

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