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STATE OF FLORIDA
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In re: Casa Sant'Angelo, Ltd.

FHFC CASE NO. 2024-077VW
Application No. 2020-363C
RFA No. 2019-114

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PETITION FOR VARIANCE FROM FLORIDA ADMINISTRATIVE CODE RULE 67-48.023(5) and (7)

Petitioner, Casa Sant'Angelo, Ltd. ("Casa Sant'Angelo"), pursuant to section 120.542, Florida Statutes, and chapter 28-104, Florida Administrative Code, petitions Florida Housing Finance Corporation ("Florida Housing") for a permanent waiver of the requirements to complete the Final Cost Certification Application Package (Form FCCAP) as provided by RFA 2019-114 and Florida Administrative Code Rule 67-48.023(5) and (7). In support of this Petition, Petitioner states:

A. Petitioner and the Development

1. The name, address, telephone, and email address for Petitioner is:

Casa Sant'Angelo, Ltd.
3 Miami Central, 161 NW 6th Street, Suite 1020
Miami, Florida 33136
Telephone: 305-357-4725
Email: lwong@apcompanies.com

The name, address, telephone and email address of Petitioner's counsel is:

Jordann Wilhelm
Email: jwilhelm@radeylaw.com
Christopher B. Lunny
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Radey Law Firm
301 South Bronough Street, Suite 200
Tallahassee, Florida 32301

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2. Casa Sant'Angelo submitted Application No. 2020-363C in response to Request for Applications No. 2019-114, Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties (the "RFA"), for competitive housing credits to assist in the construction of a 113-unit mid-rise development located in Broward County, Florida, (City of Miramar) known as Casa Sant'Angelo Apartments (the "Development") to serve the low-income elderly, Non-ALF demographic.[1]

3. On March 6, 2020, Florida Housing's Board of Directors preliminarily selected Casa Sant'Angelo. Casa Sant'Angelo was subsequently invited to enter credit underwriting and submitted a signed acknowledgement accepting the invitation on April 15, 2020.

4. At this time, Casa Sant'Angelo is engaged in cost certification review with Florida Housing.

B. <u>Type of Waiver</u>

5. The waiver being sought is permanent in nature.

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[1] The following information regarding the Development is provided to facilitate staff's preparation of background material for the Florida Housing Board of Directors:

- Development Name: Casa Sant'Angelo Apartments
- Development Address: 16700 Miramar Parkway, Miramar
- Developer, including at least one natural person Principal: Casa Sant'Angelo Development, LLC, Howard D. Cohen
- County of Development: Broward
- Number of Units: 113
- Type: Mid-Rise, 5 to 6 stories Apartments
- Set Asides: 15.044% of residential units at 30% of area median income (AMI); 61.947% of units at 60% AMI; .885% of units at 70% AMI; and 22.124% of units at 80% AMI
- Demographics: Elderly, Non-ALF
- Funding Amounts: $2,882,000 in Competitive Housing Credits

C. Rule For Which a Variance Is Requested

6. Petitioner requests a waiver of Florida Administrative Code Rule 67-48.023(5) which requires that "[e]ach Housing Credit Development shall complete the final cost certification process as required in a competitive solicitation."

7. Similarly, Petitioner requests a waiver of Florida Administrative Code Rule 67-48.023(7) which states:

> Final cost certification documentation shall be submitted by an Applicant to itemize all expenses incurred in association with construction or Rehabilitation of a Housing Credit Development, including Developer's and General Contractor's fees as described in Rule 67-48.0072, F.A.C., along with the executed Extended Use Agreement, IRS Tax Information Authorization Form 8821 for all Financial Beneficiaries if requested by the Corporation, a copy of the syndication agreement disclosing the rate and all terms, the required certified public accountant opinion letter, an unmodified audit report prepared by an independent certified public accountant, photographs of the completed Development, the monitoring fee, and documentation of the placed-in-service date as specified in the competitive solicitation. The Final Housing Credit Allocation will not be issued until such time as all items required by a competitive solicitation are received and processed by the Corporation.

8. As part of the final cost certification process, RFA 2019-114 required that a Certified Public Accountant ("CPA") must perform verification procedures on the three largest dollar subcontractors. RFA 2019-114, Ex. C, ¶ 6(c); Form FCCAP GCCC Instructions (Rev. April 2019). In particular, the CPA must verify the amounts paid to the top three subcontractors in terms of dollar amount, as well as an additional five subcontractors who are randomly selected. *Id.*

9. The Certified Public Accountant performing the audit of the General Contractor's cost certification must send the following confirmation requests to the three largest dollar sub-contractors:

a. Confirm the construction contract amount;
b. Confirm any change orders;
c. Confirm what additional costs were incurred outside of the contract, if any;

d. Confirm the type of services provided (trade breakdown);
e. Confirm amounts paid to date and balance(s), if any, to be paid;
f. Request to clarify if it is related to the General Contractor; and
g. Request to clarify if it is related or affiliated to any other sub-contractor utilized on the job.

Form FCCAP GCCC Instructions (Rev. April 2019).

10. During the final cost certification process for Casa Sant'Angelo, the CPA has indicated that the third highest subcontractor in terms of dollar amount on the project – A.A. Drywall Finish Paint, Inc. – refused to return the cost certification citing to billing disputes with the general contractor.

11. As a result, the CPA is unable to verify the amounts paid to A.A. Drywall Finish Paint, Inc.

12. Due to the dispute over payments that A.A. Drywall Finish Paint, Inc. demanded, it was removed from the job after 90% of the scope was performed. The remaining scope of work was completed by the general contractor, in the amount of $103,607. The general contractor's self-performance was de minimis and, therefore, within the rule limitations. *See* Fla. Admin. Code R. 67-48.0072(17)(f)2. All monies that were drawn and claimed in the cost certification for A.A. Drywall Finish Paint, Inc.'s scope of work were paid to the subcontractor through the general contractor's pay application process during the course of the job. In total, A.A. Drywall Finish Paint, Inc. was paid $1,240,689.46. Casa Sant'Angelo is unaware of any outstanding litigation between A.A. Drywall Finish Paint, Inc. and the general contractor as a result of this job or associated payments.

D. <u>Statutes Implemented by the Rule</u>

13. RFA 2019-114 and Rule 67-48.023(5) and (7) implement Florida Statute section 420.5099 relating to the allocation of the low-income housing tax credit.

E. Justification for Granting Waiver From the Rule

14. Under section 120.542(1), Florida Statutes, Florida Housing has the authority to grant waivers to or variances from its requirements when strict application of the requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, section 120.542(2) states:

> 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. For purposes of this section, "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.

15. Petitioner requests a waiver of the requirements found in RFA 2019-114 and Florida Administrative Code Rule 67-48.023(5) and (7) to permit Florida Housing to complete the final cost certification process without the CPA providing verification to the amounts paid to A.A. Drywall Finish Paint, Inc.

16. Through no fault of its own, one of Casa Sant'Angelo's three largest paid subcontractors has refused to provide the necessary information so that the CPA can complete the required verifications.[2]

[2] Casa Sant'Angelo notes that the CPA has verified the payments to other subcontractors such that the same dollar amount has been reviewed and verified as would have been if the verification of payment to A.A. Drywall Finish Paint, Inc. had been completed. The general contractor provided a job cost which contained $1,240,689.46 paid to A.A. Drywall Finish Paint, Inc. The CPA requested the pay applications/invoices from the general contractor supporting this cost, and confirmed the next highest subcontractors, beginning with the fourth, onward, to exceed A.A. Drywall Finish Paint, Inc.'s costs proportionally on the job. There were no other deficiencies in the review.

17. Under section 120.542(1), Florida Statutes, and chapter 28-104, Florida Administrative Code, 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. (2024).

18. In this instance, Petitioner meets the standards for a waiver of the Rule and RFA 2019-114. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 113 much needed affordable housing units will be made available for a vulnerable segment of the population in Broward County, Florida.

19. This Development will assist Florida Housing with fulfilling its statutory mandate to provide safe, sanitary, and affordable housing to the citizens of Florida. *See* § 420.502(4)-(6), Fla. Stat. (2024). Florida Housing is required by section 420.507(48), Florida Statutes, to reserve up to 5% of its annual allocation of low-income housing tax credits to allocate by competitive solicitation for high-priority affordable housing developments, such as housing for the elderly, in communities throughout the state. § 420.507(48), Fla. Stat. (2024).

20. The strict application of the Rule and verification of the three largest dollar subcontractors will create substantial hardship for Petitioner because it likely will not be able to meet the requirement through no fault of its own.

21. The requested waiver further 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. § 420.502(4)-(6), Fla. Stat. 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.

F. Action Requested

WHEREFORE, Petitioner respectfully requests that Florida Housing:

i. Grant the requested waiver of the cost certification requirements found in RFA 2019-114 and Rule 67-48.023(5) and (7);

ii. Grant this Petition and all of the relief requested herein; and

iii. Grant such further relief as may be deemed appropriate.

Respectfully submitted this 25th day of November, 2024.

/s/ Jordann Wilhelm
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COUNSEL FOR CASA SANT'ANGELO, LTD.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by e-mail this 25th day of November, 2024:

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

/s/ Jordann Wilhelm
JORDANN WILHELM