

STATE OF FLORIDA  
HOUSING FINANCE CORPORATION

SOCIETY OF ST. VINCENT DE PAUL SOUTH PINELLAS, INC.,  
Petitioner,

vs.

FHFC Case No.: 2018-053VW

FLORIDA HOUSING FINANCE CORPORATION,  
Respondent.

**SOCIETY OF ST. VINCENT De PAUL SOUTH PINELLAS, INC.,**  
**AMENDED PETITION FOR WAIVER**  
**FOR RULES 67-48.0072(4)(c) (2014) and 67-48.004(3)(h) (2014)**

Petitioner, SOCIETY OF ST. VINCENT DE PAUL SOUTH PINELLAS, INC., ("Petitioner") petitions Respondent, Florida Housing Finance Corporation ("Corporation") for a waiver to extend the closing date due to extraordinary circumstances and states:

**PETITIONER**

1. The address, telephone number, facsimile number of the Petitioner is:  
  
SOCIETY OF ST. VINCENT DE PAUL SOUTH PINELLAS, INC.  
Attention: Michael J. Raposa, Executive Director  
384 15<sup>th</sup> Street  
St. Petersburg, FL 33705  
Telephone: (727) 954-7990  
Facsimile: (727) 821-6244
2. The address, telephone number, facsimile number of the Petitioner's Counsel is:  
DiVito, Higham & Vasti, P.A.  
Attention: Joseph A. DiVito, Esq.  
4514 Central Avenue  
St. Petersburg, FL 33711  
Telephone: (727) 321-1201  
Facsimile: (727) 321-5181
3. Petitioner successfully applied for financing from the Corporation as follows:

A total of FOUR MILLION NINE HUNDRED THOUSAND AND 00/100 DOLLARS (\$4,900,000.00) from the State Apartment Incentive Loan Program (SAIL) and ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00) from the Extremely Low-Income Program (ELI) that Corporation administers pursuant to Chapter 67-48 Florida Administrative Code. The Petitioner's Application No. is 2046-274S. Petitioner applied for SAIL/ELI funds to finance a

portion of the costs to develop a Smaller Permanent Supportive Housing for Persons with Special Needs known as "Ozanam Village II", located in the Pasco County, Florida area (the "Development").

4. On February 8, 2016, staff of the Corporation issued a preliminary commitment letter and an invitation to enter credit underwriting to Developer with a closing deadline of February 8, 2017.

5. On December 9, 2016, the Board of the Corporation approved a one-year extension of the loan closing deadline until February 8, 2018.

6. On February 24, 2017, staff approved a six-month extension of the credit underwriting deadline to August 28, 2017, and on August 22, 2017, an additional four-month extension of the credit underwriting deadline to December 8, 2017, and a third extension of the credit underwriting deadline to June 8, 2018.

7. On January 26, 2018 the Board of the Corporation approved an extension of the credit underwriting deadline to August 8, 2018

8. Petitioner will not be able to meet the deadlines due to extraordinary circumstances set forth herein and requests an extension.

9. While not directly relevant to this Petition, but relevant to the global development of the Petitioner's goals for affordable housing to serve Pasco County, Florida, Petitioner represents that the subject Development is part of the same campus for which it has been awarded funding for Ozanam Village II (application 2015-226S) and Ozanam Village III (application 2017-169S).

10. Should the Corporation have questions or require additional information, Petitioner is available to provide any additional information necessary for consideration of this Petition.

#### **RULES FROM WHICH WAIVER IS SOUGHT**

11. Petitioner requests a Waiver from Rule 67-48.0072(21), F.A.C. (2014), more specifically, Petitioner is seeking a Waiver from the provisions of the time deadline for closing the Development.

12. The Rules applicable: Rule 67-48.0072(4)(c) F.A.C. (2014)

"(4) If the invitation to enter credit underwriting is accepted:

(c) For SAIL, EHCL, and HOME Applicants, the loan must close within 12 months of the date of the invitation to enter credit underwriting. Applicants may request one (1) extension of up to 12 months. 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 written request will then be submitted to the Corporation's Board for consideration. The Board shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant the requested extension. The Corporation shall charge a non-refundable extension fee of 1 percent of each loan amount if the Board approves the request to extend the commitment beyond the initial 12 month closing deadline. In the event the loan does not close by the end of the 12-month extension period, the preliminary commitment or firm commitment, as applicable, will be deemed void and the funds will be de-obligated."

13. Petitioner also requests a Waiver from Rule 67-48.004(3)(h), F.A.C. (2014), more specifically, Petitioner is seeking a change to the demographics.

14. The Rules applicable: Rule 67-48.004(3)(h) F.A.C. (2014)

“(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 . . .

(h) Demographic Commitment. . .”

#### **STATUTES IMPLEMENTED BY THE RULES**

15. The Rule implements, among other sections of the Florida Housing Finance Corporation Act, the Florida Statute that created the SAIL Program. See Florida Statute 420.5087.

#### **PETITIONER REQUESTS WAIVER FROM THE RULES FOR THE FOLLOWING REASONS**

16. From Rule 67-48.0072(4)(c), F.A.C. (2014): Petitioner entered into a Developer Agreement with GHD Construction Services, Inc., (GHD). Petitioner selected GHD, based upon their representation of substantial experience with affordable housing, specifically the SAIL/ELI program and the requirements of those programs. Petitioner relied upon GHD to know the time line requirements for the Development, as well as the obligations of Petitioner, as set forth in the Commitment Letter. Petitioner makes no excuse but would offer that upon regular inquiry of GHD as to meeting the time line requirements, Petitioner was assured that the Development was proceeding diligently. As recently as November 7, 2017, Petitioner inquired of GHD about meeting the underwriting deadline, and was assured by Brian Smith of GHD, that he "had submitted everything to underwriting to meet the deadline. Petitioner relied upon this representation. Petitioner was unaware this statement was false. Petitioner further submits:

a. Upon learning of GHD's misrepresentation and the failure of GHD to fulfill the requirements of the Corporation and Rule 67-48.0072(4)(c) F.A.C. (2014) Petitioner declared a default and gave 30 days' notice to cure the non-performance of GHD or the Developer Agreement would be terminated, such notice as required by the Agreement.

b. GHD failed to cure said default and Petitioner terminated the Developer Agreement, effective December 7, 2017.

c. After termination of the GHD Developer Agreement, Petitioner immediately entered into negotiations with Shannon Nazworth of Ability Housing, Inc., to assume the role of co-Developer with Petitioner. Petitioner and Ability Housing, Inc., have executed a developer agreement with the Petitioner.

d. Upon reviewing the status of the development, it became apparent that multiple items that GHD had reported as completed, were not complete and some had not even been commenced. As a result, a redesign of the civil engineering was required. With Ability Housing's assistance, the Petitioner engaged the services of a new civil engineer to develop the site plan and other engineering work.

e. Those plans are being completed and submitted to the county building department. It will take an estimated 6 months to receive approval and permits from the various agencies that must review the plans.

f. Petitioner has also entered into a contract with a new general contractor in order to proceed with the Development.

g. Petitioner appeared at the Board meeting of the Corporation on December 8, to apologize for being able to meet the time line requirements for the Development. During the year 2017, the Petitioner made numerous inquiries of GHD, expressing concern as to the delays, and as repeatedly assured that the Development was proceeding well. Petitioner relied upon these representations that all was well, and reasonably believed such misrepresentations based upon the prior reputation and experience of GHD. Petitioner now believes such assurances were flagrant misrepresentations by GHD.

h. While not directly related to this Petition, Petitioner has terminated its relationship with GHD for Ozanam Village III, demonstrating that it intends to no longer be do business with GHD.

i. Petitioner has remained steadfast in making the Development a reality and has committed resources and reserve funds to pursue an aggressive timeline. Petitioner continues to stand ready and continues to commit its full attention to fulfilling the obligations of the Commitment and proceed with the Development if permitted to do so, and construct this much needed affordable housing in Pasco County, Florida.

17. From Rule 67-48.004(3)(h) F.A.C. (2014): The demographic population intended to be served at the time of application was "Persons receiving benefits under the Social Security Disability Insurance (SSDI) program or the Supplemental Security Income (SSI) program or from veterans' disability benefits." Applicant seeks to add an additional demographic selection for Adult person

requiring independent living services in order to maintain housing or develop independent living skills and who have a Disabling Condition that neither currently impairs nor is likely to impair their physical mobility, such as person with a mental illness. This additional demographic commitment will allow flexibility to populations served for this project.

18. The waivers will not adversely impact the Development for the following reasons:

a. The Development has a new and well-qualified co-Developer with Ability Housing, Inc., which has the requisite expertise and experience to successfully develop and complete the Development, as demonstrated by significant progress in completing the redesign so quickly;

b. The Development is adjacent to Ozanam Village III, and the development of the subject sites compliments Ozanam Village II and allows economies of scale for management and delivery of services.

19. The waivers will actually benefit the Development, as it will serve to meet the high demand for affordable housing in Pasco County, Florida, and compliments Ozanam Village II and will compliment and achieve further economies of scale for Ozanam Village III.

20. A pertinent statute relating to the granting of waivers provides:

"Waivers shall be granted when the Applicant demonstrates that the application of the rule would create a substantial hardship or would violate principles of fairness". (See Section 120.542(2) Florida Statute). The term "substantial hardship" is defined as a demonstrated economic, technological, legal and other type of hardship to the Applicant. The hardship in this case is related to "other type of hardship" in that the misrepresentations of GHD, which were reasonably relied upon by Petitioner, are directly related to Petitioner failing to meet the deadlines for the funding. Petitioner believed the deadlines were being met. Further, the failure to construct the Development will have an adverse impact to Ozanam Village III in that the economies of scale for management and delivery of services will be lost. Further, Applicant believes the additional demographic will further server the need for affordable housing for persons with a Disabling Condition.

**WAIVERS WILL SERVE THE UNDERLYING  
PURPOSE OF THE STATUTE**

21. Granting the requested Waivers will serve the purposes of the Statute which is implemented by the rules for which the Waiver is sought. The Florida Housing Finance Corporation Act (beginning at Section 420.501) was enacted to encourage sponsors, including nonprofit sponsors such as Petitioner, to participate in public investment in the State Apartment Incentive Loan Program for persons of very low income. The SAIL Program was created to assist eligible housing providers by providing quality housing to persons of very low income which the Development will meet.

**TYPE OF WAIVERS**

22. The Waivers being sought is to allow the time line for the firm loan commitment to be extended by eight (8) months and the time line for closing on the Development to be extended by twelve (12) months and for the additional demographic for Adult person requiring independent living services in order to maintain housing or develop independent living skills and who have a Disabling Condition that neither currently impairs nor is likely to impair their physical mobility, such as person with a mental illness.

**ACTION REQUESTED**

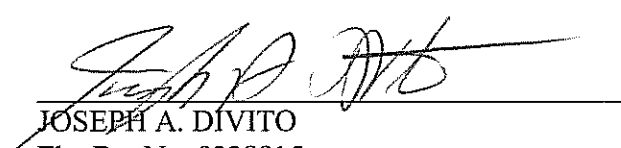
23. Petitioner requests the following: That the Corporation grant the Petition for Waivers and grant Petitioner a waiver from Rule 67-48.0072(4)(c) F.A.C. (2014), such that the Corporation permits a waiver for the time line for meeting the firm loan commitment deadline and extend the deadline for the firm loan commitment by eight (8) months and the time line for closing on the Development to be extended by twelve (12) months and grant Petitioner a waiver from Rule 67-48.004(3)(h) F.A.C. (2014) to allow the additional demographic for Adult person requiring independent living services in order to maintain housing or develop independent living skills and who have a Disabling Condition that neither currently impairs nor is likely to impair their physical mobility, such as person with a mental illness.

24. The waivers would be permanent as to the Petitioner.

25. Grant such further relief as may be deemed appropriate

26. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Respectfully submitted this 5<sup>th</sup> Day of July, 2018.

  
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JOSEPH A. DIVITO

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