

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: SOUTHERN VILLAS, LLC.

FHFC Case No.: 2016-010VW

**ORDER GRANTING WAIVER OF RULE 67-48.0072(13)(b),
FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on June 24, 2016, pursuant to a "Petition for Waiver of Rule 67-48.0072(13)(b), for Maintenance of Excess Reserve Funds" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on February 17, 2016, from Southern Villas, LLC ("Petitioner"). Florida Housing issued a Request for Additional Information on March 11, and Petitioner filed an amended Petition on May 24 that included the requested information. Notice of the Petition was published in Volume 42, Number 34, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATL: 6-24-16

2. Petitioner was selected to receive \$365,009 in competitive housing tax credits (HC) from Florida Housing under RFA 2014-104 to assist in the renovation of an existing Development serving low-income elderly tenants in Saint Augustine, Florida. Petitioner seeks a waiver that will allow it to fund a replacement reserve account in an amount greater than that allowed by rule.

3. Rule 67-48.0072, Fla. Admin. Code, requires an Applicant for competitive HC to include an estimate for replacement reserves.

(13) For Competitive HC, SAIL, and HOME, in addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves and operating expense reserves deemed appropriate by the Credit Underwriter when calculating the final net operating income available to service the debt. A minimum amount of \$300 per unit per annum must be used for all Developments.

(b) . . . An Applicant may choose to fund a portion of the replacement reserves at closing. The amount cannot exceed 50 percent of the required replacement reserves for two (2) years and must be placed in escrow at closing.

4. Petitioner is seeking this waiver because the acquisition of the Development was funded in part by assumption of existing loans made by the U.S. Department of Agriculture (USDA), Rural Housing Service to the then-current owner. A component of this included a replacement reserve account in the amount of \$486,515. The reserve account can only be used for planned expenditures authorized by USDA. USDA has agreed to allow Petitioner to expend approximately \$312,000 for certain site improvements, leaving a reserve account of

approximately \$150,000. Under Florida Housing's rules, the reserve amount would not be allowed to exceed \$24,540. Unless the waiver is granted, Petitioner will be out of compliance either with USDA requirements or Florida Housing rules, and funding for the Development will be jeopardized.

5. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, Fla. Admin. Code, Florida Housing has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Section 120.542(2) provides in pertinent part:

Variations 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

The principles of fairness are violated when 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.

6. The Board finds that granting the waiver would neither affect the scoring of Petitioner's application nor allow Petitioner to gain an unfair advantage over other applicants. The Board further finds that granting the waiver would have no detrimental impact on Florida Housing or any of its programs.

7. Petitioner has demonstrated that it would suffer a substantial hardship if the waiver is not granted. Petitioner has also demonstrated that the purpose of

the underlying statute, which is to “encourage development of low-income housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

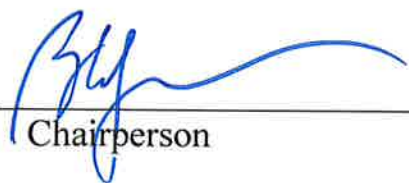
8. The Board finds that strict application of the above rules under these circumstances would cause substantial hardship to Petitioner. The Board further finds that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

Petitioner's request for waiver of Rule 67-48.0072(13)(b), Fla. Admin. Code, is hereby **GRANTED**, so that Petitioner will be able to fund its replacement reserve account in accordance with USDA requirements.

DONE and ORDERED this 24th day of June, 2016.

Florida Housing Finance Corporation

By: 
Chairperson

Copies furnished to:

Hugh R. Brown
General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Ken Reecy
Director of Multifamily Development Programs

Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, Florida 32301

Brian J. McDonough, Esq.
Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130

Joint Administrative Procedures Committee
Attn: Ms. Yvonne Wood
120 Holland Building
Tallahassee, Florida 32399-1300

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.