

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: SP DOWNS, LLC
(Delphin Downs)

FHFC Case No.: 2018-032VW

**ORDER GRANTING WAIVER OF
RULE 67-48.0072(21)(b), FLA. ADMIN. CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on June 15, 2018, pursuant to a "Petition for Waiver or Variance of Rule 67-48.0072(21)(b), F.A.C." (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on May 16, 2018, from SP Downs, LLC. ("Petitioner"). Notice of the Petition was published on May 17, 2018, in Volume 44, Number 97, 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.
2. Petitioner successfully applied for an award of SAIL and ELI funding to be used in conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits under Request for Applications 2016-109 (the "RFA") to assist in the construction of a development serving families in Escambia County.

3. Petitioner now requests a waiver of the above Rule to extend the Firm Commitment Deadline to September 18, 2018.

4. Rule 67-48.0072(21)(b), Fla. Admin. Code, provides:

(21) Information required by the Credit Underwriter shall be provided as follows:

* * *

(b) For SAIL, EHCL, and HOME that is not in conjunction with Competitive HC, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued within nine (9) months of the Applicant's acceptance to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to achieve credit underwriting report approval and issuance of a firm loan commitment by the specified deadline shall result in withdrawal of the preliminary commitment. Applicants may request one (1) extension of up to six (6) months to secure a firm loan commitment. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting the extension and shall detail the time frame to achieve a firm loan commitment. In determining whether to grant an extension, the Corporation shall consider the facts and circumstances of the Applicant's request, inclusive of the responsiveness of the Development team and its ability to deliver the Development timely. The Corporation shall charge a non-refundable extension fee of one (1) percent of each loan amount if the request to extend the credit underwriting and firm loan commitment process beyond the initial nine (9) month deadline is approved. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

5. Petitioner has previously requested and was granted a six-month extension of the deadline for credit underwriting and firm loan commitment. Petitioner reports that reduction in equity funding, as well as changes in market pricing that were exacerbated by increased construction costs affected the viability of the

development. Florida Housing issued RFA 2018-109, Development Viability Loan funding, to provide additional funding to applicants with active awards. To be eligible for this additional funding, the applicant must not have received a final Credit Underwriting report. Petitioner could not achieve its final underwriting approval until it determined that additional viability funding would be received and finalized. Accordingly, Petitioner requests a variance of the above Rule to allow for an additional six-month extension of the deadline for credit underwriting and firm loan commitment.

6. Section 120.542(2), Fla, Stat., provides in pertinent part:

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.

7. The Board finds that strict application of the above Rule regarding the Firm Commitment Deadline under these circumstances would cause substantial hardship to Petitioner. The Board further finds that granting this request furthers the Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizen of Florida, and that it would have no impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental effect on Florida Housing.

IT IS THEREFORE ORDERED:

Petitioner's request for waiver of R. 67-48.0072(21)(b), Fla. Admin. Code is hereby **GRANTED** to establish January 5, 2019 as the credit underwriting and Firm Commitment Deadline.

DONE and ORDERED this 15th day of June, 2018.

Florida Housing Finance Corporation



By:


Chair

Copies to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE 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.