

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

FHFC CASE NO. 2018-077VW

IN RE: SPT DOLPHIN PARK AVENUE LLC
SPT DOLPHIN AVALON RESERVE LLC
SPT DOLPHIN OSPREY RIDGE LLC
SPT DOLPHIN WEST POINTE LLC
SPT DOLPHIN GLEN OAKS LLC
SPT DOLPHIN MADISON CHASE LLC
SPT DOLPHIN MADISON COMMONS LLC
SPT DOLPHIN SPRING HARBOR LLC

**PETITION FOR WAIVER OF RULES 67-48.010(8)(a), 67-48.023(9), 67-48.020(14)(a)
F.A.C. (2014); 67-48.010(8)(a), 67-48.023(9), F.A.C. (2013); 67-48.010(8)(a), 67-48.023(9),
F.A.C. (2011); 67-48.010(8)(a), F.A.C. (2009); and 67-21.006(17), 67-21.008(1)(g), 67-
48.010(6)(a), F.A.C. (2002)**

Each of the following entities (each, a “Petitioner”, and collectively, the “Petitioners”) by and through the undersigned counsel, hereby petitions FLORIDA HOUSING FINANCE CORPORATION (“Florida Housing”) for a waiver of rules requiring audited financial statements.

In support, Petitioners state as follows:

A. THE PETITIONERS

1. The address, telephone number, and facsimile number for each of the Petitioners and their qualified representative are:

Petitioners’ names:

SPT DOLPHIN PARK AVENUE LLC
SPT DOLPHIN AVALON RESERVE LLC
SPT DOLPHIN OSPREY RIDGE LLC
SPT DOLPHIN WEST POINTE LLC
SPT DOLPHIN GLEN OAKS LLC
SPT DOLPHIN MADISON CHASE LLC
SPT DOLPHIN MADISON COMMONS LLC
SPT DOLPHIN SPRING HARBOR LLC

All Petitioners have the following address:

Attention: Andres Panza
591 W. Putnam Avenue
Greenwich, Connecticut 06830
Telephone: (202) 470-1548
Email: apanza@starwood.com

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

Gene E. Crick, Jr., Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4200
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3. In early 2018, each Petitioner acquired its respective Development (defined below) from the previous owner. Each of the Developments has received a loan from Florida Housing under the State Apartment Incentive Loan ("SAIL") Program, State Apartment Incentive Loan Extremely Low Income ("SAIL ELI") Program or the HOME Program, as applicable, and is therefore subject to the rules of the Florida Housing Finance Corporation, codified at Chapter 67-48, Florida Administrative Code. Moreover, each Development received an allocation of Low-Income Housing Tax Credits ("Tax Credits") to finance the construction of the Developments. With respect to Avalon Park Apartments, the Petitioner also assumed the Land Use Restriction Agreement under the MMRB Program (the "Avalon Bond LURA"). Additionally, the Petitioners have assumed the Florida Housing loans and the Extended Low Income Housing Agreement (hereinafter, "EUA") for the Tax Credits applicable to each Development. At this time, all of the Developments have reached the end of the initial 15-year compliance period, except for Avalon Reserve Apartments, which has three buildings in the compliance period until December 31, 2018

and ten buildings in the compliance period until December 31, 2019. The Petitioners and their respective developments (each, a “Development”, and collectively, the “Developments”) are as follows:

<u>Petitioner</u>	<u>Development</u>
SPT Dolphin Park Avenue LLC	Park Avenue Villas
SPT Dolphin Avalon Reserve LLC	Avalon Reserve Apartments
SPT Dolphin Osprey Ridge LLC	Osprey Ridge Apartments
SPT Dolphin West Pointe LLC	West Pointe Villas
SPT Dolphin Glen Oaks LLC	Glen Oaks Apartments
SPT Dolphin Madison Chase LLC	Madison Chase Apartments (a/k/a Saddlebrook)
SPT Dolphin Madison Commons LLC	Madison Commons Apartments (a/k/a Breckenridge Commons)
SPT Dolphin Spring Harbor LLC	Spring Harbor Apartments

4. As the Developments are not all subject to the same rules, each Petitioner is seeking a waiver of the rule applicable to each Development. Accordingly, Petitioner SPT Dolphin Park Avenue LLC now seeks a waiver of the provisions of Sections 67-48.010(8)(a), and 67-48.023(9), F.A.C. (2014) and Petitioner SPT Dolphin Glen Oaks LLC seeks a waiver of the provisions of Sections 67-48.020(14)(a), and 67-48.023(9), F.A.C. (2014) (collectively, the “2014 Rules”). Petitioners SPT Dolphin Osprey Ridge LLC, SPT Dolphin West Pointe LLC and SPT Dolphin Madison Chase LLC now seek a waiver of the provisions of Sections 67-48.010(8)(a), and 67-48.023(9), F.A.C. (2013) (collectively, the “2013 Rules”). Petitioner SPT Dolphin Madison Commons LLC now seeks a waiver of the provisions of Sections 67-48.010(8)(a), and 67-48.023(9), F.A.C. (2011) (collectively, the “2011 Rules”). Petitioner SPT Dolphin Spring Harbor LLC now seeks a waiver of the provisions of Section 67-48.010(8)(a), F.A.C. (2009) (the “2009 Rule”). Petitioner SPT Dolphin Avalon Reserve LLC now seeks a waiver of the provisions of Sections 67-48.010(6) (a), F.A.C. (2002) and with respect to the Avalon Bond LURA Sections 67-

21.006(17), 67-21.008(1) (g) (the “2002 Rules”). The 2002 Rules together with the 2009 Rule, 2011 Rules, 2013 Rules, and 2014 Rules hereinafter shall be referred to as the “Rule”) which requires an applicant to provide annual audited financial statements to Florida Housing and/or its servicer or a trustee, as applicable.

B. WAIVER IS PERMANENT

5. The waiver being sought is permanent in nature.

C. THE RULES FROM WHICH WAIVER IS REQUESTED

6. Petitioners now request a waiver of the 2014 Rules, which provide in relevant part as follows:

67-48.010(8)(a) “By the date that is 151 Calendar Days after the Applicant’s fiscal year end of each year of the SAIL loan term, the Applicant shall provide the Corporation’s servicer with audited financial statements and a certification detailing the information needed to determine the annual payment to be made ... The certification shall require submission of audited financial statements and any other financial reporting requirements as provided in a competitive solicitation. The audited financial statements are to be prepared in accordance with accounting principles generally accepted in the United States of America and audited in accordance with auditing standards generally accepted in the United States of America for the 12 month fiscal year period just ended and shall include:

1. Comparative Balance Sheet with prior year and current year balances;
2. Statement of revenue and expenses;
3. Statement of changes in fund balances or equity;
4. Statement of cash flows; and
5. Notes to financial statements.”

67-48.020(14) “Annually, within 151 Calendar Days following the Applicant’s fiscal year end, the Applicant shall provide an audited financial statement and any other financial reporting requirements as provided in a competitive solicitation ... The audited financial statement is to be prepared in accordance with accounting principles generally accepted in the United States of America and audited in accordance with auditing standards generally accepted in the United

States of America for the 12 month fiscal year period just ended and shall include:

- (a) Comparative Balance Sheet with prior year and current year balances;
- (b) Statement of revenue and expenses;
- (c) Statement of changes in fund balances or equity;
- (d) Statement of cash flows; and
- (e) Notes to financial statements.”

67-48.023(9) “Annually, within 151 Calendar Days following the Applicant’s fiscal year end, the Applicant shall provide the Corporation with an audited financial statement and any other financial reporting requirements as provided in a competitive solicitation ... The audited financial statement is to be prepared in accordance with accounting principles generally accepted in the United States of America and audited in accordance with auditing standards generally accepted in the United States of America for the 12 month fiscal year period just ended and shall include:

- (a) Comparative Balance Sheet with prior year and current year balances;
- (b) Statement of revenue and expenses;
- (c) Statement of changes in fund balances or equity;
- (d) Statement of cash flows; and
- (e) Notes to financial statements.”

7. Petitioners now request a waiver of the 2013 Rules, which provide in relevant part as follows:

67-48.010(8)(a) “By the date that is 151 Calendar Days after the Applicant’s fiscal year end of each year of the SAIL loan term, the Applicant shall provide the Corporation’s servicer with audited financial statements and a certification detailing the information needed to determine the annual payment to be made ... The audited financial statements are to be prepared in accordance with accounting principles generally accepted in the United States of America and audited in accordance with auditing standards generally accepted in the United States of America for the 12 month fiscal year period just ended and shall include:

- 1. Comparative Balance Sheet with prior year and current year balances;
- 2. Statement of revenue and expenses;
- 3. Statement of changes in fund balances or equity;
- 4. Statement of cash flows; and
- 5. Notes to financial statements.”

67-48.023(9) “Annually, within 151 Calendar Days following the Applicant’s fiscal year end, the Applicant shall provide the Corporation with an audited financial statement and a fully completed and executed Financial Reporting Form SR-1, Rev. 02-13 ... The audited financial statement is to be prepared in accordance with accounting principles generally accepted in the United States of America and audited in accordance with auditing standards generally accepted in the United States of America for the 12 month fiscal year period just ended and shall include:

- (a) Comparative Balance Sheet with prior year and current year balances;
- (b) Statement of revenue and expenses;
- (c) Statement of changes in fund balances or equity;
- (d) Statement of cash flows; and
- (e) Notes to financial statements.”

8. Petitioner now requests a waiver of the 2011 Rules, which provide in relevant part as follows:

67-48.010(8)(a) “By the date that is 151 Calendar Days after the Applicant’s fiscal year end of each year of the SAIL loan term, the Applicant shall provide the Corporation’s servicer with audited financial statements and a certification detailing the information needed to determine the annual payment to be made ... The certification shall require submission of audited financial statements and the fully completed and executed annual reporting form, Financial Reporting Form SR-1 ... The audited financial statements are to be prepared in accordance with accounting principles generally accepted in the United States of America and audited in accordance with auditing standards generally accepted in the United States of America for the 12 month fiscal year period just ended and shall include:

- 1. Comparative Balance Sheet with prior year and current year balances;
- 2. Statement of revenue and expenses;
- 3. Statement of changes in fund balances or equity;
- 4. Statement of cash flows; and
- 5. Notes to financial statements.”

67-48.023(9) “Annually, within 151 Calendar Days following the Applicant’s fiscal year end, the Applicant shall provide the Corporation with an audited financial statement and a fully completed and executed Financial Reporting Form SR-1, Rev. 01-

11 ... The audited financial statement is to be prepared in accordance with accounting principles generally accepted in the United States of America and audited in accordance with auditing standards generally accepted in the United States of America for the 12 month fiscal year period just ended and shall include:

- (a) Comparative Balance Sheet with prior year and current year balances;
- (b) Statement of revenue and expenses;
- (c) Statement of changes in fund balances or equity;
- (d) Statement of cash flows; and
- (e) Notes to financial statements.”

9. Petitioner now requests a waiver of the 2009 Rule, which provide in relevant part as follows:

67-48.010(8)(a) “By May 31 of each year of the SAIL loan term, the Applicant shall provide the Corporation with audited financial statements and a certification detailing the information needed to determine the annual payment to be made. The certification shall require submission of audited financial statements and the annual reporting form, Financial Reporting Form SR-1 ... The audited financial statements are to be prepared in accordance with accounting principles generally accepted in the United States of America and audited in accordance with auditing standards generally accepted in the United States of America for the 12 months ended December 31 and shall include:

- 1. Comparative Balance Sheet with prior year and current year balances;
- 2. Statement of revenue and expenses;
- 3. Statement of changes in fund balances or equity;
- 4. Statement of cash flows; and
- 5. Notes.”

10. Petitioner now requests a waiver of the 2002 Rules, which provide in relevant part as follows:

67-48.010(6)(a) “By May 31 of each year of the SAIL loan term, the Applicant shall provide the Corporation with audited financial statements and a certification detailing the information needed to determine the annual payment to be made ... The audited financial statements are to be prepared in accordance with generally accepted accounting principles for the 12 months ended December 31 and shall include:

1. Comparative Balance Sheet with prior year and current year balances;
2. Statement of revenue and expenses;
3. Statement of changes in fund balances or equity;
4. Statement of cash flows; and
5. Notes.”

67-21.006(17) “The Applicant shall provide annually to the Trustee not later than 120 days after the end of the Applicant’s fiscal year, audited financial statements prepared by an independent certified public accounting firm, consolidated or consolidating, on the Development and any other information required by Florida Housing to comply with continuing disclosure requirements imposed by law.”

67-21.008(1) “Each Mortgage Loan for a Development made by Florida Housing shall: ... (g) Require the submission to Florida Housing of an annual audited financial statement for the Development and for the Applicant if revenue from multiple projects is being pledged”

D. STATUTES IMPLEMENTED BY THE RULE

11. The applicable Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statute that created the SAIL Loan Program (*See* Section 420.5087), the statute that created the HOME Loan Program (*See* Section 420.5089), and the statute that designated Florida Housing as the housing credit agency responsible for the allocation of Low-Income Housing Tax Credits (*See* Section 420.5099).

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE

12. Petitioners request a waiver of the requirements found in the Rule to provide annual audited financial statements to Florida Housing and/or its servicer for the reasons set forth below.

13. 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,¹ 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.* (2018).

14. In this instance, Petitioners meet the standards for a waiver of the Rule. The requested waiver will not adversely affect the Developments or Florida Housing. The Rule requires the submission of audited financial statements in order to determine the annual payment to be made under the SAIL or HOME loan as these payments were initially determined based on Development Cash Flow. The purpose of requiring audited financial statements for soft pay loans was to determine whether a payment was due and in what amount. However, each of Petitioner's SAIL or HOME loans have converted from soft pay loans to hard pay loans. These hard pay loans have a fixed payment amount and are no longer determined based on Development Cash Flow. Therefore, the purpose of the Rule is no longer served by providing audited financial statements to determine the annual payment amount as this amount is now fixed.

15. Additionally, each Development (except Avalon Reserve Apartments) has reached the end of the initial 15-year compliance period. As all but one Development is outside of the initial 15-year compliance period, there is no longer any risk of recapture of the Tax Credits allocated to the Development. Additionally, there are no longer any tax credit investors involved in the Developments. Rather, each Petitioner is a single member limited liability company with no tax credit investor member. Therefore, Petitioners do not have an obligation to provide audited financial statements to any investor member or any other lender, other than the obligation to

¹ "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. § 120.542(2), *Fla. Stat.* (2018).

provide audited financial statements to Florida Housing and/or its servicer under the Rule. Additionally, the bonds on Avalon Reserve Development were redeemed on February 15, 2018 and the Trustee under the Avalon Bond LURA was released from its obligations thereunder. As such, Petitioner SPT Dolphin Avalon Reserve LLC no longer has to provide audited financial statements to the trustee.

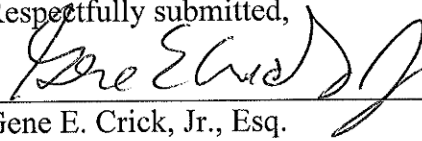
16. The strict application of the requirement to provide audited financial statements will create substantial hardship for Petitioners due to the financial burden of preparing the necessary audited financial statements in accordance with accounting principles generally accepted in the United States and audited in accordance with auditing standards generally accepted in the United States. Each Petitioner will incur costs of approximately \$10,000 per year to have audited financial statements prepared for each Development for the sole purpose of meeting the requirement under the Rule. It is unreasonable to require each Petitioner to incur these costs on an annual basis when the purpose of the Rule is no longer achieved. The purpose of the underlying statute can be achieved by allowing each Petitioner to submit the necessary unaudited financial statements to Florida Housing and/or its servicer at a more reasonable cost, which savings can be used for the benefit of the tenants of the Developments.

17. The requested waiver will not adversely affect the Developments or Florida Housing, but rather will prevent each Petitioner from spending thousands of dollars per year to prepare unnecessary audited financial statements for each Development. This waiver will serve the purpose of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State and if this waiver is granted, each Petitioner will have more funds available to better serve the Development and its residents.

F. ACTION REQUESTED

18. For the reasons set forth herein, Petitioners respectfully request Florida Housing (i) grant the requested waiver of the financial statement requirements found in the Rule; (ii) grant the Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,



Gene E. Crick, Jr., Esq.

Fla. Bar No. 972258

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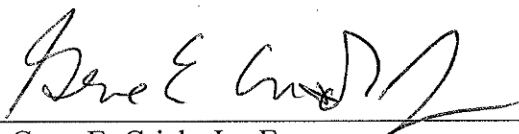
Facsimile: (407) 425-8377

Email: gene.crick@nelsonmullins.com

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 5th day of October, 2018.

By: 
Gene E. Crick, Jr., Esq.
Fla. Bar No. 972258