STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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PUERTA DEL SOL VOA AFFORDABLE HOUSING, L.P., a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2021-082VW
Application No. 2019-537C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

**PETITION FOR WAIVER OF RULE 67-21.003(8)(g), F.A.C. (7/11/19)**

Petitioner Puerta Del Sol VOA Affordable Housing, L.P., (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of the prohibition under Rule 67-21.003(8)(g), Florida Administrative Code ("F.A.C.") effective July 11, 2019 (the "Rule") against changing the Development Type identified in the Application. Petitioner mistakenly identified the Development Type as High-Rise (8 stories). However, the Application pertains to the rehabilitation of units contained within a building that is only four stories tall. If the Petition is denied, Petitioner will be required to add four stories to that building, exponentially increasing expenses. In support, Petitioner states as follows:

**A. THE PETITIONER**

1. The address, telephone, facsimile numbers and e-mail address for Petitioner and its qualified representative are:

Puerta Del Sol VOA Affordable Housing, L.P.
ATTN: Kimberly Black King
1660 Duke St.
Alexandria, VA 22314
Telephone: 703-341-5081

Fax: N/A
Email: KKing3@voa.org

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

Brian J. McDonough, Esq.
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**B. WAIVER IS PERMANENT**

3. The waiver being sought is permanent in nature.

**C. THE RULE FROM WHICH WAIVER IS REQUESTED**

4. Petitioner requests a waiver of Rule 67-21.003(8)(g), effective July 11, 2019, which provides in pertinent part:

> (8) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and **cannot be revised, corrected or supplemented** after the Application is deemed complete. Those items are as follows:
>
> ***
>
> (g) **Development Type** . . . .

(emphasis added).

**D. STATUTES IMPLEMENTED BY THE RULE.**

5. Rule 67-21.003, F.A.C., implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"):

- Section 420.502, Legislative finding;
- Section 420.507, Powers of the corporation;

- Section 420.508, Special powers; multifamily and single-family projects;
- Section 420.509, Revenue bonds; and
- Section 420.5099, Allocation of the low-income housing tax credit.

6. Per Section 420.5099(1)-(2), Florida Housing acts as the State's housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

**E. DEVELOPMENT BACKGROUND.**

7. The following pertains to the development underlying this Petition (the "Development"):

- Development Name: Puerta Del Sol
- Development Address: 1765 W. 42nd Street Hialeah, FL 33012
- County: Miami-Dade
- Developer: Volunteers of America National Services Corporation
- Number of Units: 100 total units (98 affordable units plus 2 manager's units); rehab
- Type: High-Rise was mistakenly selected and this Petition seeks a waiver to change the development type to Mid-Rise (4 stories)
- Set Asides: 100% @ 60% AMI
- Demographics: Elderly
- Funding: $1,021,269 annual 4% Housing Credit allocation
- Application No: 2019-537C

The Development was originally constructed in 1987 as a HUD 202. Petitioner not only renovated and improved the physical asset of the property, but also the quality of life for its residents with numerous ADA upgrades. The Development is located within a walkable

community with other multi-family housing, family-owned businesses, and eateries. The Development's units are secure and gated with one primary entrance and exit. Parking is provided on-site, and public transportation is accessible. The community also contains medical facilities, banking institutions, groceries, and other socio-economic options for the Development's residents.

**F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.**

8. In Petitioner's 4% Housing Credit application, submitted on June 19, 2020, Petitioner mistakenly listed the Development Type as High Rise (8 stories) when it is in fact Mid-Rise (4 stories). *See* Application No. 2019-537C.

9. Petitioner never intended to develop a High-Rise. Indeed, the Application is limited to rehabilitating 100 units that were originally built in 1987 and that are contained within a single building that is only four stories tall.

10. If this Rule waiver is denied, Petitioner would be required to add at least four stories to the pre-existing building structures. Not only would this task be cost-prohibitive, but it would likely require the current elderly residents to relocate from their homes. Further, current zoning would likely prohibit such additional construction.

11. The requested waiver will not prejudice the Development, Florida Housing, nor any other applicant. Because there is no Total Development Cost ("TDC") limitation for Non-Competitive Applications, Petitioner's requested change in development type will not cause any negative effects with respect to TDC calculations.

12. 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.

13. For the reasons discussed above, the waiver should be granted to prevent Petitioner from suffering a substantial and unnecessary economic and operational hardship. The requested waiver will ensure that the elderly residents are not displaced in the process of adding four stories to the existing building. The strict application of the Rule will create a substantial hardship for Petitioner because adding four stories to the building due solely to a mistaken Development Type selection in the Application would necessitate a costly redesign**,** and development**,** not contemplated by Petitioner. Further, the waiver will serve the purposes 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.

**G. ACTION REQUESTED**

14. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver of the Rule such that Petitioner is able to amend the Development Type identified in its Application; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, 22nd Floor
Miami, Florida 33131

[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. *See* § 120.542(2), Fla. Stat.

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*Counsel for Petitioner*

By:___/s/ Brian J. McDonough_____
BRIAN J. MCDONOUGH, ESQ.

**CERTIFICATE OF SERVICE**

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 8th day of November, 2021.

By:___/s/ Brian J. McDonough_____
Brian J. McDonough, Esq.