STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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CREEKSIDE MANOR VOA
AFFORDABLE HOUSING, LP,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2022-053VW
Application No. 2020-378E
RFA 2019-118

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.0072(26) F.A.C. (7/11/19)

Petitioner Creekside Manor VOA Affordable Housing, LP (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of Rule 67-48.0072(26), Florida Administrative Code ("F.A.C.") (July 11, 2019) ("Rule") so that it may extend by six months the loan closing deadline for the Elderly Housing Community Loan ("EHCL"). Although the present deadline of November 2, 2022 has not expired, Petitioner cannot close without HUD approval and has no control over when such approval – requested in April 2021 – will issue. Accordingly, in an abundance of caution, Petitioner seeks an additional six-month extension to May 2, 2023. In support of this request for Rule waiver, Petitioner states as follows:

A. THE PETITIONER

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

Kimberly Black King
Volunteers of America National Services
1660 Duke Street
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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Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
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Telephone: 850-329-4852
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Email: BSmitha@stearnsweaver.com

B. DEVELOPMENT BACKGROUND

3. The following information pertains to the development underlying Petitioner's application:

- Development Name: Creekside Manor
- Development Address: 1318 Franklin Street AND 1335 Pierce Street, Clearwater, FL
- County: Pinellas
- Developer: Volunteers of America National Services
- Number of Units: 92 (rehabilitation)
- Type: Mid-Rise, 4-stories
- Set Asides: 20% at or below 50% AMI and 80% at or below 60% AMI
- Demographics: Elderly
- Funding: $750,000 EHCL, 4% Housing Credits

C. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

D. THE RULE FROM WHICH WAIVER IS REQUESTED.

5. Petitioner seeks a waiver of Rule 67-48.0072(26), effective July 11, 2019, which provides:

> (26) For SAIL, EHCL, and HOME, unless stated otherwise in a competitive solicitation, these Corporation loans and other mortgage loans related to the Development must close within 120 Calendar Days of the date of the firm loan commitment(s), unless the Development is a Tax-Exempt Bond-Financed Development which then the closing must occur within 180 Calendar Days of the firm loan commitment(s). Unless an extension is approved by the Board, failure to close the loan(s) by the specified deadline outlined above shall result in the firm loan commitment(s) being deemed void and the funds shall be de-obligated. Applicants may request one (1) extension of the loan closing deadline outlined above for a term of up to 90 Calendar Days. 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 Board shall consider the facts and circumstances of each Applicant's request, inclusive of the Applicant's ability to close within the extension term and any credit underwriting report, prior to determining whether to grant the requested extension. The Corporation shall charge an extension fee of one (1) percent of each Corporation loan amount if the Board approves the request to extend the loan closing deadline beyond the applicable 120 Calendar Day or 180 Calendar Day period outlined above. If an approved extension is utilized, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original loan closing deadline. In the event the Corporation loan(s) does not close by the end of the extension period, the firm loan commitment(s) shall be deemed void and the funds shall be de-obligated.

E. STATUTES IMPLEMENTED BY THE RULE.

6. The Rule implements Section 420.5087 (State Apartment Incentive Loan Program), Section 420.5089 (HOME Investment Partnership Program; HOME Investment Partnership Fund), and Section 420.5099 (creating the Housing Credits Program) of the Florida Housing Finance Corporation Act (the "Act").[1]

[1] The Act is set forth in Sections 420.50 through 420.55 of the Florida Statutes.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

7. Florida Housing issued a Request for Applications 2019-118 Elderly Housing Community Loan (the "RFA") on September 24, 2019.

8. Petitioner timely submitted its Application for the Development on December 2, 2019.

9. On January 30, 2020, staff issued an invitation to enter credit underwriting to the Petitioner, which stated that the firm loan commitment had to be issued within 12 months of the acceptance to enter credit underwriting. The acceptance was acknowledged on January 31, 2020, giving Petitioner a firm loan commitment issuance deadline of January 31, 2021.

10. A Firm Loan Commitment Issuance Deadline extension was subsequently granted by Florida Housing's Board on January 22, 2021 from January 31, 2021 to July 31, 2021 because the limitations related to the pandemic made it difficult to proceed with third party reports and building inspections as well as with other development activities for the Development.

11. The RFA states in pertinent part:

> **The loan must close within 180 Calendar Days of the date of the firm loan commitment(s)**. Unless an extension is approved by the Board, failure to close the loan by the specified deadline outlined above shall result in the firm loan commitment being deemed void and the funds shall be de-obligated. Applicants may request one (1) extension of the loan closing deadline outlined above for a term of up to 90 Calendar Days. 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 Board shall consider the facts and circumstances of each Applicant's request, inclusive of the Applicant's ability to close within the extension term and any credit underwriting report, prior to determining whether to grant the requested extension. The Corporation shall charge an extension fee of one half of one percent of each Corporation loan amount if the Board approves the request to extend the loan closing deadline beyond the 180 Calendar Day period outlined above. If an approved extension is utilized, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original loan closing deadline. Any such request must be made in writing to the Corporation. **In the event the Corporation loan(s) does not close by the end of the extension period, the**

firm loan commitment(s) shall be deemed void and the funds shall be de-obligated.

See RFA 2019-118 (as modified 10-24-19), pg. 35 (Ex C, section 4.b.) (emphasis added).

12. On December 10, 2021, Florida Housing's Board approved an additional extension of the EHCL loan closing deadline from January 31, 2022 to May 2, 2022.

13. The Development is a HUD Section 202 senior project with two project-based Section 8 contracts. To close on the property, Petitioner needs numerous approvals from HUD. Although Petitioner applied for HUD approval for the contracts in April 2021, it had not received that approval by the May 2, 2022 deadline. Accordingly, Petitioner was forced, through no fault of its own, to request an additional Rule waiver to extend the loan closing deadline six months to November 2, 2022.

14. Petitioner has done everything it must do in order to meet the November 2, 2022 loan closing deadline except obtain HUD approval. While Petitioner has contacted HUD numerous times, it has been unable to secure information related to when such approval may be granted or how Petitioner may expedite the approval. Because Petitioner has no control over whether the HUD approvals will be available in sufficient time to close before the November 2, 2022 deadline, Petitioner respectfully requests an additional 6-month extension of the loan closing deadline to May 2, 2023.

15. A Rule waiver is necessary because this is Petitioner's third request for an additional extension of the loan closing deadline.

16. As set forth above, this request was not necessitated through any fault of Petitioner. Rather, Petitioner exercised due diligence in attempting to move the Development towards construction and is delayed only by the need for HUD approval (which approval was requested 18 months ago).

17. If the Petition is denied, the firm loan commitment will be deemed void and the funds will be de-obligated per the RFA. Because the Development cannot move forward without this funding source, the denial would cause Pinellas County to lose the benefit of preserving 92 affordable housing units for the elderly as Petitioner would not be able to rehabilitate these units without EHCL funding. The units and building are more than 30 years old and in need of significant renovation. The EHCL funds will allow Petitioner not only to complete the renovations, but to also provide additional accessibility features and improvements for the elderly residents.

18. This Petition should be granted, as opposed to de-obligating the award, because Pinellas County is currently experiencing a shortage of affordable housing units for the elderly. Granting the Petition will enable 92 affordable housing units to remain available in the market, satisfying housing needs much faster than would reallocating the funding to a new development.

19. 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,[2] and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Fla. Stat.

[2] "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.

20. In this instance, Petitioner meets the standards for a waiver of the Rule. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 92 affordable housing units will be preserved and remain available for the target population in Pinellas County, Florida. The strict application of the Rule would cause the firm loan commitment to be deemed void and the funds de-obligated. Further, the waiver will serve the purposes of the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State. By granting this waiver, and further ensuring the rehabilitation of 92 affordable housing units in Pinellas County, Florida Housing would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable housing. *See* § 420.5099(2), Fla. Stat.

21. The foregoing demonstrates the hardship and other circumstances justifying this Petition.

22. Should Florida Housing require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

G. <u>ACTION REQUESTED</u>

23. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested waiver for an additional extension of the loan closing deadline 6 months (*i.e.*, through and including May 2, 2023); (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
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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 a copy served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 10th day of October, 2022.

By:___*/s/ Brian J. McDonough*_____
Brian J. McDonough, Esq.