STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: 2022-019VW
APPLICATION NO.: 2021-282H

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FLORIDA HOUSING
FINANCE CORPORATION

SAN ALFONSO HOUSING, INC.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.004(3)(i), FLORIDA ADMINISTRATIVE CODE

San Alfonso Housing, Inc., a Florida not for profit corporation (the "**Petitioner**"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "**Corporation**") for a waiver of, or variance from, Rule 67-48.004(3)(i), Florida Administrative Code (Effective June 23, 2020) (the "**Rule**") so that Petitioner may reduce the total number of units in the proposed Development, as defined below, from 24 units to 21 units.

This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code. In support, the Petitioner states as follows:

A. THE PETITIONER

1. The mailing address, telephone number and email of the Petitioner is as follows:

San Alfonso Housing, Inc.
Attn: Matt Miller
511 W Bay Street, Suite 350 -Unit 10
Tampa, Florida 33606
Telephone: (239) 275-8029
Email: mmiller@national-development.com

2. The mailing address, telephone number and email of the Petitioner's legal counsel is as follows:

Nicholas W. Heckman, Esq.
Nelson Mullins Riley and Scarborough, LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4241
Email: nick.heckman@nelsonmullins.com

3. On November 19, 2020, the Petitioner timely submitted an application in response to RFA 2020-206 HOME Financing for the Construction of Small, Rural Developments (the "**RFA**") and requested $5,450,000.00 in HOME funding (the "**Application**") to finance the construction of a 24-unit single family home development to be known as Casa San Alfonso located in Zolfo Springs, Hardee County, Florida (the "**Development**").

4. On March 18, 2021, the Board selected Petitioner for funding, and Petitioner was subsequently invited to enter credit underwriting. Petitioner accepted that invitation and has subsequently been working with First Housing Development Corporation ("**First Housing**"), one of the Corporation's designated credit underwriters.

5. In April of 2021, Petitioner informed the Corporation that it was experiencing construction cost overruns that were jeopardizing the Development. The Petitioner then submitted

a revised budget to the Corporation on June 8, 2021, in response to the Corporation's survey to developers. On July 29, 2021, at the Corporation's retreat in Orlando, Florida, Petitioner met with Members of the Corporation's Federal Loan Programs team and conveyed to them that the Development's construction costs have further increased since Petitioner submitted its survey on June 8, 2021. This eventually led to a conference call with the Corporation's Federal Loan Programs team on November 3, 2021, in which the parties discussed the process associated with the HOME Viability Loan terms. On December 20, 2021, Petitioner had another conference call with the Corporation's Federal Loan Programs team. On this call, Petitioner informed the Corporation's Federal Loan Programs team that the Development was experiencing even higher costs than originally reported back in November and detailed that the Development may need to maximize 100 percent of HUD's 2020 maximum subsidy limit.

6. On October 28, 2021, the Corporation offered to Petitioner viability HOME loan funds in response to the current market construction cost increases and shortfalls to help cover possible financing gaps. Petitioner intends to accept such funds in the amount of $810,000.00, as an additional financing source to help the Development cover gaps caused by unexpected cost increases as discussed below.

7. Currently, Petitioner's sources of funding include first mortgage proceeds, HOME loan proceeds, grant proceeds, and deferred developer fees. In the Application, Petitioner proposed to build 24 HOME-assisted units, consisting of five Low HOME Rent Units and 19 High HOME Rent Units. At the time of the Application, the requested amount was sufficient to cover the costs of constructing the Development; however, due to the current market conditions and significant increases in the costs of construction and materials the Petitioner costs were soon exceeding what was projected in the original budget. In order to accommodate these volatile changes in the market,

Petitioner worked with its architect, civil engineer, and other third-party consultants to redesign the project multiple times, incurring approximately $50,000 in redesign fees in order to make the Development more cost effective; however, additional funding was still needed for the Development to be financially feasible.

8. Petitioner soon spent countless hours meeting with many city, county, and economic development officials to receive additional funding to fill this gap in financing but was informed that such additional funding was unavailable. Without receiving additional financing, Petitioner performed value engineering and sought to defer more than 40 percent of its developer fee in order to make the Development feasible; however, Petitioner still needed additional funding.[1] Petitioner, while working on its budget, came to the conclusion that the Development would be feasible if Petitioner were able to reduce the number of units in the Development. Therefore, in order to make the project financially feasible, Petitioner wishes to reduce the total number of units listed in the Application from 24 units to 21 units[2], to reduce the overall cost of constructing the Development.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

9. Petitioner requests a waiver of, or variance from, Rule 67-48.004(3)(i) F.A.C. (2020), which provides, in relevant part, as follows:

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[1] The total percentage of the deferred developer fee will not be known until construction bids are received in mid-February. At which time, the Petitioner will provide its revised sources and uses budget to the Corporation. Petitioner is simply trying to make the Development viable and will defer a greater percentage of its deferred developer fee, if necessary, to ensure that the Development is feasible so that it can provide much needed affordable housing to Hardee County.

[2] Petitioner proposes reducing its original units listed in Exhibit A.6.a of the Application from 24 units to 21 units. This proposal will change the Unit Mix Chart as provided in Exhibit A.6.c of the Application from 4 units (3 Bedrooms/2Bathrooms) and 20 units (4Bedrooms/2Bathrooms) to 4 units (3Bedrooms/2Bathrooms) and 17 units (4Bedrooms/2Bathrooms). The proposed change will provide 21 HOME-assisted units, consisting of 5 Low HOME Rent Units and 16 High HOME Rent Units.

Rule 67-48.004(3)(i):

"(3) For the SAIL, HOME and Housing Credit programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:

(i) Total number of units; notwithstanding the foregoing, the total number of units may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development, as well as review of 24 CFR Part 92 to ensure continued compliance for the HOME Program;"

C. STATUTES IMPLEMENTED BY THE RULES

10. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the "**Act**"), the statute that designates the Corporation to administer the HOME program in accordance with the HOME Investment Partnership Program. *See* Fla. Stat. § 420.5089.

D. JUSTIFICATION FOR PETITIONER'S REQUESTED WAIVER

11. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the power and 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. A waiver 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[3] or violate principles of fairness, and (2) the

[3] "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. Further, "principles of fairness" are violated when the literal application of a rule

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

12. Strict adherence to Rule 67-48.004(3)(i) would impose a hardship on Petitioner because the Development will not be financially feasible, unless the total number of units in the Development are reduced. The costs and materials to construct the Development have greatly increased, outside of Petitioner's control. The Petitioner has gone through great lengths to avoid reducing the number of units and hedging such cost increases by implementing multiple redesigns, performing value engineering, and spending countless hours seeking additional gap funding from the city, county, and economic development officials. Petitioner has invested a great deal of time into making the Development feasible. It has incurred approximately $50,000 in redesign fees, has filed all necessary paperwork, and is expecting to receive its environmental clearance, site approval and building approval in time to finalize the Credit Underwriting Report in March in order to meet the Corporation's deadline to make the April 29, 2022 board meeting. Further, Petitioner intends to defer 40 percent of its developer fee, if not more, to ensure that the Development is feasible.

Hardee County is in dire need of affordable housing, and the proposed elimination of the three units (i.e., reducing the total number of units from 24 units to 21 units) would ensure that the proposed Development will be successfully constructed and operated in a manner consistent with the requirements and purpose of the RFA. Reducing the number of units would allow the Development to be financially feasible and would allow Petitioner to construct 21 much needed affordable units in Hardee County.

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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* Fla. Stat. § 120.542.

13. The Petitioner believes that a waiver will serve the underlying purpose of Section 420.5089 and the Act that are implemented by Chapter 67-48 F.A.C., because one of the goals is for the proceeds of Corporation financing to be used to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. The Act (Section 420.501, et seq.) was passed in order to create inducements and opportunities for private and public investment in rental housing to increase the supply of affordable housing for low-income persons and households. By granting this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing units via the construction of new developments throughout Florida and will provide much needed affordable housing units to Hardee County.

14. The requested waiver will not adversely affect Petitioner, the Development, or any other party that applied to receive funding in the RFA or the Corporation.

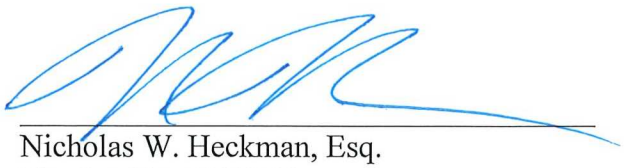
E. TYPE OF WAIVER

15. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

16. For the reasons set forth herein, the Petitioner respectfully requests the Corporation (i) grant a waiver of, or variance from, Rule 67-48.004(3)(i) F.A.C. (2020) to allow the Petitioner to reduce the number of units from 24 units to 21 units; (ii) grant this Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,



Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356
Nelson Mullins Riley & Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4241
Email: nick.heckman@nelsonmullins.com
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
Email: corporationclerk@floridahousing.org

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Email: joint.admin.procedures@leg.state.fl.us

This 15th day of February, 2022.

By: 

Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356