STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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SILVER LAKES VILLAGE VOA AFFORDABLE HOUSING, LP,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

CASE NO. 2022-035VW

FHFC APPLICATION: 2021-189E
REQUEST FOR APPLICATIONS: 2020-101

PETITION FOR WAIVER OF RULE 67-48.0072(4)(c) and (21)(b), F.A.C. (6/23/20)

Pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code, Petitioner Silver Lakes Village VOA Affordable Housing, LP.,[1] a Florida limited partnership, submits its Petition to Respondent Florida Housing Finance Corporation ("Florida Housing") for a waiver of Rule 67-48.0072(4)(c) and (21)(b), F.A.C. (6/23/20) (the "Rule") in effect at the time the Petitioner submitted its application in response to Florida Housing's Request for Applications 2020-101 for Elderly Housing Community Loan (the "RFA"). Petitioner seeks to extend the time allowed under the Rule for the Elderly Housing Community Loan ("EHCL") firm loan commitment issuance. As expressly permitted by the Rule, Petitioner previously obtained a six-month extension for the loan commitment through August 2, 2022. Pursuant to subsection (21)(a) of the Rule, Florida Housing may not issue the firm loan commitment until after the Credit Underwriter's recommendation for funding is approved by Florida Housing's Board. Due to construction cost and interest rate increases,

[1] On August 2, 2021, Florida Housing staff received Petitioner's request to change the applicant/Petitioner's name from Orlando Volunteers of America Elderly Housing, Inc., to Silver Lakes Village VOA Affordable Housing, LP. Florida Housing's Board approved the name change at its September 10, 2021 meeting.

Petitioner has been forced to make significant adjustments to the development's budget, which will prevent the credit underwriting report from being considered at the Board's June meeting and, therefore, will prevent Florida Housing from issuing the firm loan commitment prior to the August 2nd deadline. While Petitioner believes it will satisfy the Rule requirements by the Board's October meeting, it is requesting an additional six-month extension in an abundance of caution. In support of its Petition, the Petitioner states as follows:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for Petitioner and its qualified representative are:

Silver Lakes Village VOA Affordable Housing, LP
Volunteers of America National Services
Attention: Kimberly Black King
1660 Duke Street
Alexandria, VA 22314
Telephone: (703)341-5081
Facsimile: N/A
E-Mail: kking3@voa.org

2. The name, address, telephone and facsimile numbers, and email address for Petitioner's attorneys are:

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street
Suite 2200
Miami, Florida 33130
Telephone: 305-789-3350
Fax: 305-789-3395
Email: Bmcdonough@stearnsweaver.com

Bridget Smitha
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
106 East College Avenue, Suite 700
Tallahassee, FL 32301
Telephone: 850-329-4852
Fax: 850-329-4844
Email: BSmitha@stearnsweaver.com

B. THE DEVELOPMENT

3. The following information pertains to the development underlying Petitioner's application (the "Development"):

- Development Name: Silver Lakes Village Apartments

- Development Address: 5102 Cinderlane Pkwy, FL 32808
- County: Orange
- Developer: Volunteers of America National Services
- Number of Units: 104
- Type: Garden Apartments/Rehabilitation
- Set Asides: 20% at or below 50% AMI and 80% at or below 60% AMI
- Demographics: Elderly
- Funding: $750,000 Elderly Housing Community Loan (EHCL)

C. RULE FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from the Rule, which provides:

> (4) If the invitation to enter credit underwriting is accepted:…
>
> ***
>
> (c) For SAIL, EHCL, and HOME, the credit underwriting process must be completed within the time frame outlined in subsection 67-48.0072(21), F.A.C., below and the loan must close within the time frame outlined in subsection 67-48.0072(26), F.A.C., below.
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> ***
>
> (21) Information required by the Credit Underwriter shall be provided as follows:...
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> ***
>
> (b) For SAIL, EHCL, and HOME, unless stated otherwise in a competitive solicitation, **the firm loan commitment must be issued within twelve (12) months of the Applicant's acceptance to enter credit underwriting**. Unless an extension is approved by the Corporation in writing, failure to achieve 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 twelve (12) month deadline is approved. If an approved extension is utilized, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original twelve (12) month deadline. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

See Rule 67-48.0072(4)(c) and (21)(a)-(b), F.A.C. (6/23/20) (emphasis added).

D. STATUTES IMPLEMENTED BY THE RULE

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"),[2] Section 420.5087 (State Apartment Incentive Loan Program); Section 5089 (HOME Investment Partnership Program; HOME Investment Partnership Fund) and Section 420.5099 (allocation of the low-income housing tax credit).

E. JUSTIFICATION FOR REQUESTED WAIVER

6. Florida Housing issued the RFA on October 22, 2020

7. Petitioner timely submitted its Application in response to the RFA on November 18, 2020.

8. On January 22, 2021, the Board approved the final scores and recommendations for the RFA and directed staff to proceed with all necessary credit underwriting activities.

9. Florida Housing staff issued an invitation to enter credit underwriting to the Petitioner on January 26, 2021, which stated that the firm loan commitment had to be issued within 12 months of Petitioner's acceptance to enter credit underwriting. Because Petitioner acknowledged the acceptance on February 2, 2021, the initial firm loan commitment issuance deadline was February 2, 2022.

10. Per the Rule, applicants such as Petitioner are permitted to request one extension of up to six months to secure a firm loan commitment. On November 3, 2021, Petitioner

[2] The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes.

requested a six-month extension of the firm loan commitment deadline due to an unforeseen delay. The EHCL funds are part of a financing plan that includes 4% housing credits, as well as tax-exempt bonds issued by the Orange County Housing Finance Authority ("OCHFA"). While the OCHFA Board approved an Intent Resolution for the Development, OCHFA had already exhausted its bond allocation for 2021 and could not allocate its bonds to the project until early 2022, necessitating the request for the six-month extension. This request was approved by Florida Housing's Board on January 21, 2022, thereby extending the deadlines from February 2, 2022 to August 2, 2022.

11. Petitioner has worked diligently to move the Development forward. However, construction cost and interest rate increases have forced Petitioner to make significant changes to the Development's budget. As a result, the credit underwriting report will not be available in enough time for consideration at Florida Housing's June 17, 2022 Board meeting. Subsection (21)(a) of the Rule prevents Florida Housing from issuing the firm loan commitment until after the Credit Underwriter's recommendation for funding is approved by Florida Housing's Board. Accordingly, because the final credit underwriting report will not come before the Board prior to the firm loan commitment issuance deadline of August 2, 2022, Petitioner is in need of another extension.

12. While Petitioner believes the credit underwriting report will be considered by the Board by its October 28, 2022 meeting, Petitioner seeks a six-month extension in an abundance of caution.

13. Under Section 120.542(l), 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 these rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Waivers must be granted when: (1) the person who is subject to the rule demonstrates

that the application of the rule would create a substantial hardship or violate principles of fairness, 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.

14. As discussed above, Petitioner meets the threshold for granting a waiver of the Rule. The requested waiver will not adversely affect the Development, any other party that applied to receive funding in the RFA, or Florida Housing. A denial of the Petition, however, would: (a) result in substantial economic hardship to Petitioner, as it has incurred significant costs to date in an effort to ensure that the Development proceeds to completion; (b) deprive Orange County of essential housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness[3]. *See* § 120.542(2), Fla. Stat. The Development, built in 2004, has significant water intrusion due to faulty construction and requires substantial rehabilitation. If this Petition is not granted, the preliminary commitment will be withdrawn and the Development will not be rehabilitated.

15. As discussed herein, Petitioner is requesting a second extension of the deadline for issuance of the firm loan commitment from August 2, 2022 to February 2, 2023, which request requires a waiver of the Rule.

16. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. As demonstrated above, the requested waiver serves the purposes of Section 420.5087 and the Act, as a whole,

[3]"Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. "Principles of Fairness" are violated when 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* Section 120.542(2), Florida Statutes.

because one of their primary goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to this demographic. Further, by granting the requested waiver, Florida Housing would recognize principles of fundamental fairness in the development of affordable rental housing.

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

F. WAIVER IS PERMANENT

18. The waiver being sought is permanent in nature.

G. ACTION REQUESTED

19. Petitioner requests the following:

a. That Florida Housing grant Petitioner a waiver from Rule 67-48.0072(4)(c) and (21)(b), Florida Administrative Code, and extend the deadline for issuance of the firm loan commitment from August 2, 2022 to February 2, 2023;

b. That Florida Housing grant the Petition and all the relief requested therein; and

c. That Florida Housing grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Counsel for Petitioner
150 West Flagler Street, Suite 150
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@swmwas.com

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 1st day of June, 2022.

*s/ Brian J. McDonough*_____
BRIAN J. MCDONOUGH, ESQ.