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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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CASE NO. 2019-049VW

FLORIDA HOUSING
FINANCE CORPORATION

VENETIAN WALK
PARTNERS II, LLLP,

Petitioner,

vs.

FHFC APPLICATION: 2018-017S
REQUEST FOR APPLICATIONS: 2017-108

FLORIDA HOUSING FINANCE
CORPORATION,
Respondent

PETITION FOR WAIVER OF RULE 67-48.0072(4)(c) and (21)(b), F.A.C. (2017)

Pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code, Petitioner Venetian Walk Partners II, LLLP., a Florida limited liability 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. (5-24-17) (the "Rule") in effect at the time the Petitioner submitted its application in response to Florida Housing's Request for Applications 2017-108, for SAIL Financing of Affordable Multifamily Housing Developments to be Used in Conjunction with Tax-Exempt Bonds and Non-Competitive Housing Credits (the "RFA"). Petitioner seeks to extend the time allowed under the Rule for the issuance of a firm loan commitment. 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:

Venetian Walk Partners II, LLLP
200 South Division Street

Buffalo, NY 14204
Attention: Rick Higgins, Vice President
Telephone: (518)587-0270
Facsimile: N/A
E-Mail: rhiggins@norstarus.com

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

Brian J. McDonough
Stearns Weaver Miller Weissler Alhadeff & Sitterson
150 West Flagler Street
Suite 2200
Miami, FL 33130
bmcdonough@stearnsweaver.com
Tel: (305) 789-3350
Fax: (305) 789-3395

B. THE DEVELOPMENT AND ITS FINANCING

3. Florida Housing issued the RFA on August 31, 2017.

4. Petitioner timely submitted its Application in response to the RFA for the development named "Venetian Walk II," located in Sarasota County (the "Development"). The Development will comprise 52 new construction garden style units for families. The Developers are Norstar Development USA, LP and Venetian Walk Developers, LLC. Petitioner requested a SAIL of \$2,290,000, ELI of \$464,200, and an annual 4% housing credit of \$486,713. The set asides consist of 10% at 33%; and 90% at 60% area median income.

5. The FHFC Board approved the final scores and recommendations for the RFA on December 8, 2017 and directed staff to proceed with all necessary credit underwriting activities.

6. On March 8, 2018, FHFC staff issued a preliminary commitment letter and an invitation to enter credit underwriting to Petitioner, which stated that the firm loan commitment had to be issued within 9 months of the acceptance to enter credit underwriting. The acceptance was acknowledged on March 12, 2018, giving Petitioner a firm loan commitment issuance deadline of December 12, 2018. Per the Rule, applicants such as Petitioner were permitted to

request one extension of up to 6 months to secure a firm loan commitment. Petitioner requested that extension, which was granted on November 2, 2018 and which extended the firm loan commitment issuance deadline to June 12, 2019.

7. FHFC staff received a final credit underwriting report with a positive recommendation for funding on April 25, 2019. In preparation for the May 10, 2019 FHFC Board meeting, FHFC staff recommended that the Board approve the final credit underwriting report and direct staff to proceed with issuance of a firm commitment and closing activities.

8. However, Petitioner had to pull the matter from the agenda because Petitioner needed additional time to resolve an issue regarding the sharing of services between the construction company affiliated with the Developer entity and the general contractor – an issue that was not known until a few days before the Board’s May meeting. Accordingly, because the final credit underwriting report will not come before the Board until its next meeting on June 21, 2019, and because the firm loan commitment issuance deadline is June 12, 2019, Petitioner is in need of another extension.

9. Specifically, Petitioner is in need of a one-month extension of the firm loan commitment deadline through and including July 12, 2019, in order for the credit underwriting report to be approved.

10. The requested waiver is permanent in nature.

C. RULE FROM WHICH WAIVER IS SOUGHT

11. 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 that is not in conjunction with Competitive HC, 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.

(21) Information required by the Credit Underwriter shall be provided as follows:...

(b) For SAIL, EHCL, and HOME that is not in conjunction with Competitive HC, unless stated otherwise in a competitive solicitation, **the firm loan commitment must be issued within nine (9) months of the Applicant's acceptance to enter credit underwriting.** Unless an extension is approved by the Corporation in writing, failure to achieve credit underwriting report approval and 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 nine (9) month deadline is approved. 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)(b), F.A.C. (5-24-17) (emphasis added).

D. STATUTES IMPLEMENTED BY THE RULE

12. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"),¹ Section 420.5087 (State Apartment Incentive Loan Program); and Section 420.5099 (allocation of the low-income housing tax credit).

E. JUSTIFICATION FOR REQUESTED WAIVER

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 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

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes.

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 in paragraphs 7 – 9, above, Petitioner was on course for the Board to direct staff to proceed with issuance of a firm commitment and closing activities at its May meeting. However, the timeline was derailed by an issue that arose just days before the meeting, requiring Petitioner to request that the Board not consider the staff recommendation until the Board’s next meeting on June 21, 2019. However, the firm loan commitment issuance deadline is June 12, 2019 – more than a week before the next meeting. Accordingly, Petitioner is in need of the requested extension so that the Board can approve the final credit underwriting report and direct staff to proceed with issuing a firm commitment at the next meeting.

15. Because Petitioner previously received an extension pursuant to the Rule, a waiver is necessary to obtain the requested extension.

16. The requested waiver will not adversely affect Petitioner, 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 Sarasota County of essential housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness². *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. “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.

17. If this Petition is not granted, the SAIL allocation will automatically be withdrawn from the transaction, the preliminary commitment for the ELI Loan will be withdrawn, and the Development will not be constructed.

18. As discussed herein, Petitioner is requesting a second extension of the deadline for issuance of the firm loan commitment from June 12, 2019 to July 12, 2019, which request requires a waiver of the Rule.

19. The requested waiver will ensure the availability of SAIL and 4% HC financing which will be lost without the extension.

20. The foregoing facts demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the loss of a substantial sum of money should the transaction not go forward, and the loss of critical housing for Sarasota County.

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

22. 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. ACTION REQUESTED

23. 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, extend the deadline for issuance of the firm loan commitment from June 12, 2019 to July 12, 2019, and to refrain from imposing an extension fee in relation to this short-term extension;
- 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,

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ALHADEFF & SITTERSON, P.A.
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By: *s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The Petition is being served by electronic mail for filing with the Corporation Clerk, CorporationClerk@floridahousing.org, with copies served via U.S. Mail to the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 24th day of May, 2019.

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