STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: MHP Collier, Ltd. FHFC Case No.: 2022-002VW

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ORDER GRANTING WAIVER FROM RULE 67-48.0072(26), FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on January 21, 2022. On January 5, 2022, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.0072(26) and RFA 2019-116 Exhibit C, Part 5(g) (the "Petition") from MHP Collier, Ltd. (the "Petitioner") to waive the requirement that the Corporation charge an extension fee of one (1) percent of each Corporation loan if a request to extend the loan closing deadline is approved. Notice of the Petition was published on January 6, 2022, in Volume 48, Number 4, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner successfully applied for competitive State Apartment Incentive Loan ("SAIL") funding, non-competitive housing credits,

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
DATE: 1/21/2022

Extremely Low Income ("ELI") loan funding, and Florida Housing issued Multifamily Mortgage Revenue Bonds ("MMRB") under RFA 2019-116 to finance the construction of a multifamily complex to be known as Allegro at Hacienda Lakes (formerly known as Villa Verde) located in Collier County, Florida (the "Development").

3. Rule 67-48.0072(26), Fla. Admin. Code (2019), in relevant part 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.

Emphasis added.

4. RFA 2019-116 Exhibit C, Part 5(g), in relevant part, states:

> 5. Fees
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> ***
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> g. Firm Loan Commitment and Loan Closing Extension fees
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> In the event the SAIL loan and ELI Loan do not close within the timeframes prescribed, extension fees will be assessed as outlined in subsections 67-48.0072(21) and 67-48.0072(26), F.A.C.

5. Petitioner requests a waiver of the requirement that the Corporation charge an extension fee of one (1) percent of each Corporation loan for an approved request to extend the loan closing deadline. Florida Housing issued a firm loan commitment to Petitioner for its SAIL and ELI loans on June 21, 2021. The Development is also being financed, in part, with $22,500,000 in Florida Housing MMRB.

6. Petitioner's credit underwriting report was approved by the Board at the June 18, 2021 meeting and amended pursuant to an update letter that was approved by the Board on October 22, 2021. Petitioner's deadline to close the SAIL and ELI loans was December 20, 2021. On November 15, 2021, Petitioner requested a ninety (90) day extension of the loan closing

deadline to March 18, 2022. On December 10, 2021, the Board approved the loan closing deadline subject to payment of the extension fee required by the above cited Rule and RFA provision.

7. Prior to closing on the MMRB, a fiscal determination by the State Board of Administration (the "SBA") is required. Such fiscal determination was on the agenda for the October 26, 2021 meeting of the SBA. The SBA canceled the October 26, 2021 meeting and rescheduled for December 14, 2021. The December 14, 2021 was later rescheduled to December 20, 2021, which was the closing deadline.

8. Petitioner asserts that since the MMRB are being offered for public sale and because the MMRB closing must occur simultaneously with the closing of the SAIL and ELI loans, the SBA meeting providing the fiscal determination for the Bonds must occur at least seven (7) days before the closing deadline. According to Petitioner, the repeated cancellation and rescheduling of the SBA meetings made it impossible for Petitioner to timely meet the Closing Deadline and necessitated that Petitioner request the extension. But for the repeated cancellations and rescheduling, Petitioner states that it would have been able to close by the initial closing deadline of December 20, 2021. According to Petitioner, by granting this waiver, Florida

Housing will prevent Petitioner from suffering substantial hardship from unfairly being required to pay the extension fee.

9. Section 120.542(2), Florida Statutes, provides in pertinent part:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

10. The Board finds that granting the requested waiver will not impact other participants in funding programs administered by Florida Housing, nor will it detrimentally impact Florida Housing.

11. The Board also finds that Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver is not granted.

12. The Board further finds that Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" would still be achieved if the waiver is granted. §420.5099, Fla. Stat.

IT IS THEREFORE ORDERED that Petitioner's request for a waiver of Rule 67-48.0072(26), Fla. Admin. Code (2019) and RFA 2019-116 Exhibit C, Part 5(g), is hereby **GRANTED** to waive the requirement that the

Corporation charge an extension fee of one (1) percent of each Corporation loan if the loan closing deadline is extended.

DONE and ORDERED this 21st day of January 2022.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
Joint.admin.procedures@leg.state.fl.us

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.