STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: 2021-037VW
APPLICATION NO.: 2019-400H

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FLORIDA HOUSING FINANCE CORPORATION

PACES GATEWAY MANOR, LLC,

Petitioner,
vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.0072(26) AND RFA 2019-109 EXHIBIT C, PART 3(d), INCORPORATING THE LOAN CLOSING TIMEFRAME

Paces Gateway Manor, LLC, a Florida limited liability company (the "Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-48.0072(26), F.A.C. (2018), and RFA 2019-109 Exhibit C, Part 3(d) which incorporates by reference the loan closing timeframe requirements ("Closing Requirement"), which requires that the Corporation's loans must close within one hundred twenty (120) of the date of the firm commitment's issuance (subject to an extension of such closing by up to ninety (90) days).

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:

Paces Gateway Manor, LLC
Attn: Renée Sandell

2730 Cumberland Boulevard
Smyrna, Georgia 30080
Telephone: (321) 431-3164 / (770) 431-9696
Email: renee@pacesfoundation.org

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

David F. Leon, Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4276
Email: david.leon@nelsonmullins.com

3. On March 26, 2019, the Petitioner timely submitted an application in response to RFA 2019-109 HOME Financing to be used for Rental Developments for Hurricane Michael Recovery and in Rural Areas ("RFA") (the "Application") to finance the construction of a multifamily apartment complex to be known as Gateway Manor located in Port St. Joe, Florida (the "Property"), which will serve low-income families, affected by Hurricane Michael, in Gulf County. The Petitioner received a preliminary award for $4,700,000.00 in HOME funds (the "Loan") from the Corporation.

4. The Corporation issued a firm loan commitment for the Loan to Petitioner on December 10, 2020. Petitioner's deadline to close the Loan was April 9, 2021 ("Closing Date"). On April 9, 2021, Petitioner submitted a letter to the Corporation requesting a ninety (90) day extension of the Closing Date to close the Loan, pursuant to Rule 67-48.0072(26) F.A.C. (2018), for which the Board of Directors of the Corporation (the "Board") approved such extension of the Closing Date to July 8, 2021 (the "July Closing Date") at the Board meeting on April 30, 2021.

5. Due to an unexpected increase in contractor's costs, the Petitioner will not be in a position to close by the July Closing Date, which in turn has required Petitioner to alter other

financial metrics (as set forth further below). Therefore, Petitioner is requesting a waiver of, or variance from, the Closing Requirement of Rule 67-48.0072(26) F.A.C. (2018) as integrated by the RFA to extend the Loan closing date to October 6, 2021.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

6. Petitioner requests a waiver of, or variance from, Rule 67-48.0072(26) F.A.C. (2018), which provides, in relevant part, as follows:

> **67-48.0072(26) – Credit Underwriting and Loan Procedures.**
>
> (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, for profit Applicants must pay the extension fee not later than seven (7) Calendar Days after the original loan closing deadline. Non-Profit Applicants may request to pay the extension fee at the time of closing. 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.
>
> Emphasis added.

7. Petitioner requests a waiver of or variance from RFA 2019-109 Exhibit C, Part 3(d), which provides, in relevant part, as follows, and incorporates the Closing Requirement.

> 3. Fees
> d. Credit Underwriting and Loan Closing Extension Fees In the event the firm commitment is not issued, or the loan does not close within the prescribed timeframes, extension fees will be assessed. The firm commitment must be issued with the timeframes outlined in subsection 67-48.0072(21). **Loans must close within the timeframes outlined in subsection 67-48.0072(26), F.A.C.** The Corporation shall charge an extension fee of 1 percent of each Corporation loan amount if the Board approves the request to extend the loan closing(s).
>
> Emphasis added.

C. STATUTES IMPLEMENTED BY THE RULES

8. 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

9. Petitioner is requesting an extension of the closing deadline to close the Loan from the July Closing Date to October 6, 2021 for the following reasons:

a. Petitioner was ready to close on the Loan prior to the July Closing Date. However, shortly before such date the contractor for the Property, Fyffe Construction Company, Inc., an Alabama corporation (the "Contractor") increased its cost estimate from $4,256,537 to $4,793,623, an increase of $537,086. The increase was due to unforeseen cost increases to construction materials and labor shortages, which prevented closing from occurring on the July Closing Date.

b. In response to the rise in costs, Petitioner is working to increase the construction loan amount and its corresponding mortgage in favor of Ameris Bank to help balance its sources and uses. This measure will help fill the financing gap that was created due to the unexpected rise in Contractor's costs. Nonetheless, Petitioner needs additional time to coordinate the final construction loan amount with Ameris Bank. Similarly, the credit underwriter will require additional time to review and approve such changes.

10. 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[1] *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. *See* § 120.542(2), Fla. Stat.

11. Rule 67-48.0072(26) F.A.C. (2018) and RFA 2019-109 Exhibit C, Part 3(d) integrating same, provide that failure to close the Loan by the July Closing Date will result in the firm loan commitment for the Loan being deemed null and void and the funds allocated for the Development will be de-obligated. If this Petition is denied and the Petitioner is not granted a further extension of the closing deadline, it would result in substantial economic hardship to the Petitioner, as it has incurred considerable costs to date in furtherance of completion of the Property, and would deprive Gulf County of essential and affordable housing units.

[1] "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 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.

12. Consequently, the extension is necessary to avoid unfairness and substantial hardship on the Petitioner and the Property. By granting the requested extension, the Property will be able to proceed to reach completion in the future, which will provide 30 much needed affordable housing units in Gulf County, Florida, including housing for low-income families impacted by Hurricane Michael, and such a result assists the Corporation with fulfilling its statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

13. The Petitioner believes that a waiver of the Closing Requirement will serve the purposes of Section 420.5089 and the Act that are implemented by Chapter 67-48 of the Florida Administrative Code, 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, particularly in Gulf County.

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

E. TYPE OF WAIVER

17. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

18. For the reasons set forth herein, the Petitioner respectfully requests the Corporation (i) grant a waiver of Rule 67-48.0072(26) F.A.C. (2018) and RFA 2019-109 Exhibit C, Part 3(d)

integrating same, to extend the deadline to close the loan from the July Closing Date to October 6, 2021, and not require that an additional extension fee be imposed; (ii) grant this Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

David F. Leon, Esq.
Fla. Bar No. 0053929
Nelson Mullins Broad and Cassel
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4276
Email: david.leon@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 2nd day of June, 2021.

By: _____
David F. Leon, Esq.
Fla. Bar No. 0053929