STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2022-030VW
FHFC APPLICATION NO. 2021-253BSN

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FLORIDA HOUSING FINANCE CORPORATION

MHP FL X LLLP

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-21.003(8)(i) TO DECREASE THE TOTAL SET-ASIDE PERCENTAGE

MHP FL X LLLP, a Florida limited liability limited partnership, (the "Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver or variance from Rule 67-21.003(8)(i), Florida Administrative Code ("F.A.C") (2020) (the "Rule") to revise the Total Set-Aside Percentage reflected in the Application (as defined below) for the Multifamily Mortgage Revenue Bond ("MMRB") Program (the "MMRB Program") from 100% of the units in the Development to individuals whose income is at or below 60% of the area median income of Sarasota County (the "AMI") to 40% of the units in the Development for individuals whose income is at or below 60% of the AMI so Petitioner may adopt the Average Income Test for the Development (as defined below). This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code. In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone number and facsimile number of the Petitioner is:

MHP FL X LLLP
601 Brickell Key Drive, Suite 700
Miami, FL 33131
Telephone: (786) 257-2767
Attention: McDowell Housing Partners, LLC, c/o Christopher L. Shear
Email: cshear@mcdhousing.com

2. For purposes of this petition, the address, telephone number, facsimile number, and email address of Petitioner's counsel is:

Roman J. Petra, Esq.
Nelson Mullins Riley & Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4247
Facsimile: (407) 425-8377
Email: roman.petra@nelsonmullins.com

3. On November 18, 2020, Petitioner timely submitted an application in response to RFA 2020-205 - SAIL Financing Of Affordable Multifamily Housing Developments To Be Used In Conjunction With Tax-Exempt Bond Financing And Non-Competitive Housing Credits (the "RFA") requesting i) State Apartment Incentive Loan ("SAIL") funding (the "SAIL Loan") under the SAIL Program (the "SAIL Program"), ii) Extremely Low Income Loan funding (the "ELI Loan"), iii) non-competitive housing credits (the "Housing Credits") under the Housing Credits Program (the "Housing Credits Program"), and iv) a loan financed by Corporation-issued Multifamily Mortgage Revenue Bonds (the "MMRB Loan") to finance the development of a 136-unit multifamily residential housing project in the city of North Port, Florida, to be commonly known as Arbor Park (the "Development"). On June 22, 2021, Petitioner received correspondence from the Corporation providing a preliminary commitment for the SAIL Loan in an amount up to $5,810,741, the ELI Loan in an amount up to $600,000, a National Housing Trust Fund Loan in

an amount up to $653,873 (the "NHTF Loan"), and the MMRB Loan in the amount of $15,000,000 (the SAIL Loan, ELI Loan, NHTF Loan, and MMRB Loan, collectively, the "Loans") and inviting the Petitioner to enter credit underwriting (the "Invitation").

B. THE RULE FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rule 67-21.003(8)(i), F.A.C. (2020), which provides:

> **67-21.003 – Application and Selection Process for Developments.**
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> * * *
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> (8) Notwithstanding any other provision of these rules, **there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application is deemed complete. Those items are as follows:**
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> * * *
>
> (i) **The Total Set-Aside Percentage as stated in the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application;** notwithstanding the foregoing, the Total Set-Aside Percentage 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;
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> (Emphasis added.)

C. STATUTES IMPLEMENTED BY THE RULE

6. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. See §§ 420.509, 420.5099, Fla. Stat.

D. WAIVERS WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

7. Petitioner requests waivers or variances of the Rule to permit a decrease the total set-aside percentage committed to in the Application under the MMRB Program so Petitioner may elect the Average Income Test under the SAIL Program and Housing Credit Program and substitute a revised Total Set-Aside Breakdown Chart reflecting the Average Income Test for the chart contained in Section 6(d)(2)(a) of the Application. The RFA requires applicants committing to the Average Income Test for the MMRB Program to complete the Average Income Test chart so that the applicant commits to set-aside 40% of the units in the applicable development for rent to individuals whose income is at or below 60% AMI for the applicable county. If the requested waiver is granted, 55 units in the Development will be set-aside for rental to individuals whose income is at or below 60% AMI for Sarasota County for the MMRB Program. Under the SAIL and Housing Credits Programs, 48 units in the Development will be offered for rental to individuals whose income is at or below 60% AMI for Sarasota County and 24 units in the Development will be offered for rental to individuals whose income is at or below 30% AMI for Sarasota County. The remaining 64 units will be offered to rental to individuals whose income is at or below 70% of the AMI for Sarasota County. As a result of these changes, the average AMI of the Development will be below 60%.

8. Since Petitioner filed the Application, material interest rates for financing and the material costs of construction associated with the Development have both increased. Petitioner anticipates these amounts will continue to increase, which will put economic pressure on Petitioner and the Development such that there will be a substantial adverse impact on the economic feasibility of the Development. If the requested waivers or variances are granted, Petitioner will be able to seek additional financing to offset the economic impact of these inflations.

9. Further, Petitioner and the City of Northport (the "City") have encouraged Petitioner making the affordable rental units of the Development available to individuals in a wider range of income bands in response to the recent development of neighboring residential developments which are committed to standard set-asides of 100% of their units at or below 60% AMI. The Average Income Test election would enable the Petitioner to offer decent, safe, sanitary, and affordable housing to low-income residents in the area that would be priced out of the 60% AMI limitation and also unable to afford to rent housing at the market rental rate of Sarasota County. Additional research identified a substantial market demand for higher set-aside units in Sarasota County and indicated the projected rents offered in connection with the Average Income Test election will maintain more than a 30% market rent advantage, despite the 70% AMI set-asides.

10. Pursuant to Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the power and authority to grant waivers or variances to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences in particular instances. A waiver or variance 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. The Florida Housing Finance Corporation Act (Section 420.501, *et seq*.) was passed to encourage private and public investment in facilities for persons of low-income. The

[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.

purposes of the State Apartment Incentive Loan Program, National Housing Trust Fund, Multifamily Mortgage Revenue Bonds Program, and Housing Tax Credit Program are to stimulate and prioritize initiatives to increase the supply of affordable housing. By granting the requested waivers, the Corporation would recognize the goal of providing persons of low-income with of affordable housing through private investment. The requested waivers or variances will not adversely impact the Development or the Corporation or provide Petitioner with an unfair advantage, as the selection of the Average Income Test was available to Petitioner at the time of the Application, and will ensure that the 136 affordable housing units of the Development will be preserved and made available for the target population in Sarasota County to obtain decent, safe, and sanitary housing. Alternatively, strict application of the Rule will result in substantial economic hardship for Petitioner as it attempts to confront the pressures of rising interest rates, inflating construction costs, and direct competition with a neighboring development for identical income-level tenants, all of which will place the Development's 136 affordable units in jeopardy.

E. TYPE OF WAIVER

12. The waivers or variances being sought is permanent in nature.

F. ACTION REQUESTED

13. For the reasons set forth herein, Petitioner respectfully requests the Corporation (*i*) grant the requested waivers or variances of the Rule to allow the set-aside commitment under the MMRB Program to be reduced from 100% of the units of the Development at 60% AMI to 40% of the units of the Development at 60% AMI, so Petitioner may elect the Average Income Test under the SAIL and Housing Credits Program, (*ii*) grant the Petition and all the relief requested herein, and (*iii*) grant such further relief as it may deem appropriate.

Respectfully submitted the 12th day of April, 2022.

Respectfully submitted,

Roman J. Petra, Esq.
Fla. Bar No. 450030
Nelson Mullins Riley & Scarborough LLP
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Orlando, FL 32801
Telephone: (407) 839-4247
Facsimile: (407) 425-8377
Email: roman.petra@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
CorporationClerk@floridahousing.org,

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

The 12th day of April, 2022.

By: _____
Roman J. Petra, Esq.
Fla. Bar No. 450030