STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: 2021-090VW
APPLICATION NO.: 2020-390S

COUNTRY CLUB MAGNOLIA FAMILY, LP,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-48.0072(21)(b)

Country Club Magnolia Family, LP, a Florida limited partnership (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(21)(b), Florida Administrative Code (July 11, 2019) (the "Rule"), which provides for one six (6) month extension of the firm loan commitment issuance deadline. Petitioner seeks to extend the time allowed under the Rule for the issuance of a firm loan commitment. 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:

Country Club Magnolia Family, LP
Attn: James S. Grauley
1718 Peachtree Street, Suite 684
Atlanta, Georgia 30309
Telephone: (404) 419-1432
Email: jgrauley@columbiares.com

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

Nicholas W. Heckman, Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4241
Email: nick.heckman@nelsonmullins.com

3. On October 22, 2019, the certificate of Limited Partnership of the Petitioner was filed with the Florida Department of State, in which the general partners of the Petitioner are Columbia Magnolia Family Partners, LLC, a Florida limited liability company and THA Magnolia Family, LLC, a Florida limited liability company ("THA"). THA is wholly owned by the Tallahassee Housing Authority. On December 30, 2019, the Petitioner timely submitted an application in response to RFA 2019-116 for SAIL Financing of Affordable Multifamily Housing Developments to be Used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits (the "RFA") (the "Application") to finance the construction of a multifamily apartment complex to be known as Magnolia Family in Tallahassee, Florida (the "Project"), which will serve low-income families in Leon County. The Petitioner requested a preliminary award for $5,611,577 in State Apartment Incentive Loan ("SAIL") funding and $600,000 in Extremely Low Income ("ELI") funding (collectively, the "Loans") from the Corporation.

4. On July 22, 2020, Petitioner accepted and acknowledged its invitation to credit underwriting, giving Petitioner a firm loan commitment issuance deadline of July 22, 2021 ("Initial Deadline"). On May 3, 2021, the Petitioner submitted a letter to the Corporation requesting an extension to the firm loan commitment deadline from July 22, 2021 to January 22, 2022. The Board of Directors of the Corporation (the "Board") approved the six (6) month extension of the

Initial Deadline to January 22, 2022 (the "January Deadline") at the Board's June 18, 2021 meeting. While attempting to meet the January Deadline, Petitioner encountered several issues outside its control which delayed its progress in meeting the January Deadline (as set forth below). Petitioner therefore is requesting waiver of or variance from Rule 67-48.0072(21)(b) for an extension of the firm loan commitment issuance deadline for an additional six (6) month period.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

5. The Petitioner requests a waiver of, or variance from, Rule 67-48.0072(21)(b), Florida Administrative Code (effective July 11, 2019) , which provides in part:

> **67-48.0072(21)(b) – Credit Underwriting and Loan Procedures.**
>
> (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
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> Emphasis added.

C. STATUTES IMPLEMENTED BY THE RULES

6. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statute that designated the Corporation to the SAIL Program. *See* Fla. Stat. § 420.5087.

D. JUSTIFICATION FOR PETITIONER'S REQUESTED WAIVER

7. The Petitioner is requesting an extension of the deadline to secure a firm loan commitment for an additional six (6) months from the January Deadline. Over the past year, Covid constraints have caused delays that have impacted almost every aspect of the construction industry. Increases to construction costs have drastically effected developer's ability to accurately price raw materials for construction and firmly hire a contractor at a fair and equitable price on a national scale. As such, the increases in the costs of construction materials has affected and delayed Petitioner's ability to finalize its price estimates, and lock in a firm construction bid. Further, Covid constraints have trickled down and has caused delays in almost every aspect of Project, which in turn has caused delays in Petitioner's ability to produce its due diligence necessary to receive its firm loan commitment.

8. Nonetheless, Petitioner has been working diligently to complete the necessary due diligence items needed to receive its firm loan commitment. Petitioner is in the middle of satisfying the requirements of its HUD Environmental Part 58 (the "Part 58 Review") and NHTF environmental review (the "NHTF Review", and together with the Part 58 Review, the "Environmental Reports"). During the process of completing such requirements for the issuance of the Environment Reports, it recently became apparent to the Petitioner that they needed to parcel out the southern portion of the development site from the original application site. Although the issuance of the Environmental Reports has been delayed by the above and other such Covid

constraints, the Petitioner has been working diligently with the City of Tallahassee and expects to be in the position to close within the first quarter of the 2022 calendar year.

9. Before the Corporation issues a firm loan commitment to Petitioner, a credit underwriting report must be completed and approved by the Board. A draft credit underwriting report must be submitted to the Corporation's staff at least four weeks prior to such meeting for review, and the final credit underwriting report must be submitted to the Corporation's staff approximately two weeks before the Board meeting. Accordingly, a credit underwriting report must be submitted to the Corporation's staff by the credit underwriter at least four weeks before a Board meeting. The next possible meeting Petitioner can present the credit underwriting report for the Board's approval is December 10, 2021, which means the credit underwriting report must be submitted to the Corporation's staff by November 12, 2021 and finalized by November 26, 2021. However, because of the delays as set forth above, the report cannot be finalized by the November 26, 2021 deadline.

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.

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[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.

11. The Rule provides that a failure of the Petitioner to receive the Corporation's issuance of a firm loan commitment by January 22, 2022 will result in a withdrawal of the preliminary commitment for the Loans. If this Petition is denied and the Petitioner is not granted an extension, it would result in substantial economic hardship to the Petitioner, as it has inccured considerable costs to date in furtherance of completion of the Project. Furthermore, it would deprive Leon County of much needed affordable housing and violate principles of fairness given the circumstances surrounding the delays are outside of the Petitioner's control.

12. Consequently, the extension is necessary to avoid unfairness and substantial hardship on the Petitioner and the Project. By granting the requested extension, the Project will be able to proceed to reach completion in the near future, which will provide 130 much needed affordable housing units in Leon County, Florida, 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. Further, a waiver of this Rule will serve the underlying purposes of Section 420.5087 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. Denial of the waiver would deprive Leon County of essential and affordable housing units. 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 through Petitioner supplying 130 much needed affordable housing units in Leon County, Florida.

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

E. TYPE OF WAIVER

15. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

16. For the reasons set forth herein, the Petitioner respectfully requests the Corporation (i) grant a waiver of the Rule to extend the deadline to secure a firm loan commitment from January 22, 2022 to July 22, 2022; (ii) grant this Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356
Nelson Mullins Broad and Cassel
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4241
Email: nick.heckman@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 18th day of November, 2021.

NELSON MULLINS BROAD & CASSEL

By: _____
Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356