STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: 2022-002VW
APPLICATION NO.: 2020-385BS

MHP COLLIER LTD,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-48.0072(26) AND RFA 2019-116 EXHIBIT C, PART 5(g)

MHP COLLIER LTD, a Florida limited partnership f/k/a CORE MHP COLLIER, LTD. (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. (2019) (the "Rule") and RFA 2019-116 (the "**RFA**") Exhibit C, Part 5(g) which incorporates by reference the Rule. Particularly, Petitioner requests a waiver of the requirement that the Corporation shall charge an extension fee of one (1) percent of each Corporation loan amount if the Board of Directors of the Corporation (the "**Board**") approves a request to extend the loan closing deadline beyond the applicable period (the "**Extension Fee**").

This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code. In support of this Petition, the Petitioner states as follows:

A. THE PETITIONER AND DEVELOPMENT

1. The mailing address, telephone number and email of the Petitioner is as follows:

MHP COLLIER LTD
c/o McDowell Housing Partners, LLC
601 Brickell Key Drive, Suite 700
Miami, Florida 33131
Attn: Christopher Shear

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

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

3. On December 23, 2019, Petitioner submitted an application (the "**Application")** in response to RFA 2019-116 SAIL Financing Of Affordable Multifamily Housing Developments To Be Used in Conjunction With Tax-Exempt Bond And Non-Competitive Housing Credits to finance the construction of a multifamily complex to be known as Allegro at Hacienda Lakes f/k/a Villa Verde, in Collier County, Florida (the "**Development").**

4. The Corporation issued a firm loan commitment to the Petitioner for financing in the form of i) a $6,000,000 State Apartment Incentive Loan and ii) a $600,000 in Extremely Low Income loan (collectively, the "**Loan**") on June 21, 2021 (the "**Firm Commitment**"). The Development is also being financed, in part, with $22,500,000 in Florida Housing Finance Corporation Tax-Exempt Multifamily Mortgage Review Bonds (the "**Bonds**"), for which Petitioner was underwritten pursuant to that certain Florida Housing Finance Corporation Credit Underwriting Report dated June 9, 2021 and approved by the Board at its meeting on June 18, 2021, as amended pursuant to that Credit Underwriting Update Letter from the Corporation dated September 29, 2021 and approved by the Board at its meeting on October 22, 2021 (the "**CUR**"),

and 4% Housing Credits ("**HC**" and together with the Bonds and the Loans, the "**FHFC Financing**").

5. Petitioner's deadline to close the Loan was December 20, 2021 (the "**Closing Deadline**"). On November 15, 2021, Petitioner submitted a letter to the Corporation requesting a ninety (90) day extension of the Closing Deadline to close the Loan (the "**Request Letter**"), which the Board approved such extension of the Closing Deadline to March 18, 2022 (the "**Extended Closing Deadline**") at the Board meeting on December 10, 2021, subject to payment of the Extension Fee, pursuant to the requirements of the RFA and the Rule.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

6. Petitioner requests a waiver of the Rule, 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, 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.

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Emphasis added.

7. Petitioner further requests a waiver of RFA 2019-116 Exhibit C, Part 5(g) (the "**RFA Extension Fee Requirement**"), which provides, in relevant part, as follows, and incorporates the Rule.

5. Fees

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g. Firm Loan Commitment and Loan Closing Extension Fees

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.

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Emphasis added.

C. STATUTES IMPLEMENTED BY THE RULE

8. The Rule for which a waiver is are implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statute that created the SAIL Program. See § 420.5087, *Fla. Stat.*

9. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended results in particular instances.

Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals of 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.*

D. JUSTIFICATION FOR PETITIONER'S REQUESTED WAIVER

10. Petitioner requests a waiver of the Rule and the RFA Extension Fee Requirement, particularly the requirement that Petitioner pay the Extension Fee in connection with the Board's extension of the Closing Deadline to the Extended Closing Deadline.

11. Procedurally, prior to closing on the Bonds, a fiscal determination of the State Board of Administration (the "**SBA**") was required. The fiscal determination for the Bonds was scheduled to be on the agenda for the October 26, 2021 meeting of the SBA, which was well in advance of the Closing Deadline. Due to circumstances outside of the Petitioner's control, the SBA cancelled the October 26th meeting. The proceeding SBA meeting was scheduled on December 14, 2021. The December 14th meeting was then rescheduled to December 20, 2021, which was the Closing Deadline.

12. Since the Bonds are being offered for public sale and the Bond closing must occur simultaneously with the closing of the Loan, the SBA meeting providing the fiscal determination for the Bonds was required to occur at least seven (7) days before the Closing Deadline. The repeated cancellation and rescheduling of the necessary SBA meetings made it impossible for Petitioner to timely meet the Closing Deadline.

13. If Petitioner is not granted a waiver of the Rule and the RFA Extension Fee Requirement, Petitioner will suffer substantial hardship in the form of the Extension Fee. But for the repeated cancellations and rescheduling, Petitioner would have been able to close on the FHFC

Financing by the Closing Deadline and would not have needed the extension. Therefore, by granting the requested waiver, the Corporation will prevent Petitioner from suffering substantial hardship and from unreasonably and unfairly being required to pay the Extension Fee.

14. Petitioner believes that a waiver of this Rule will serve the purposes of Section 420.5087 and the Act that are implemented by Chapter 67-48 F.A.C., as 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.

15. The requested waiver will not adversely affect Petitioner, the Development, 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 Rule 67-48.0072(26) F.A.C. (2019) and RFA 2019-116 Exhibit C, Part 5(g) incorporating the same to not require that the 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,

Roman J. Petra, Esq.
Fla. Bar No. 450030
Nelson Mullins Riley & Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4247
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
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 5th day of January, 2022.

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