STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2021- 021VW
APPLICATION NO. 2019-406H

MARIANNA CROSSINGS, LLC

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 2019-109 EXHIBIT C, PART 3(d), INCORPORATING THE LOAN CLOSING TIMEFRAME.

Marianna Crossings, LLC, a Florida limited liability company (the "**Petitioner**") by and through its undersigned counsel submits its Petition to Respondent, Florida Housing Finance Corporation (the "**Corporation**"), for waiver of or variance 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 of the Florida Statutes (2020) and Chapter 28-104 of the Florida Administrative Code (2020). In support of this Petition for Waiver of Rule 67-48.0072(26) F.A.C. (2018) and the Closing Requirement incorporated by RFA 2019-109 Exhibit C, Part 3(d) (the "**Petition**"), Petitioner states as follows:

A. PETITIONER AND DEVELOPMENT

1. The address and telephone number of the Petitioner are:

Marianna Crossings, LLC
7575 Dr. Phillips Blvd., Suite 390
Orlando, Florida 32819
Attn: Chris Savino
Telephone: (407) 716-1084

2. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address of Petitioner's counsel is:

Roman Petra, Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4247
Email: Roman.petra@nelsonmullins.com

3. On March 28, 2019, Petitioner 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 to finance the construction of a multifamily apartment complex to be known as Marianna Crossings in Marianna, Florida (the "**Development**"), which will serve low-income families, affected by Hurricane Michael, in Jackson County. The Petitioner received a preliminary award for $5,000,000 in HOME funding (the "**Loan**") from the Corporation.

4. The Corporation issued a firm commitment for the Loan to Petitioner on July 23, 2020. Petitioner's deadline to close the loan was December 8, 2020 (the "**Initial Deadline**"). On November 18, 2020 Petitioner requested a ninety (90) day extension of the Initial Deadline 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 an extension of the Initial Deadline to March 8, 2021 (the "**Revised Deadline**") at the Board meeting on December 4, 2020.

5. In connection with closing the Loan, Petitioner requires a general contractor that can obtain required payment and performance bonds (the "**P&P Bonds**"), which the current contracted general contractor is unable to obtain. As such, Petitioner will not be in a position to close by the Revised Deadline, due solely to the general contractor's inability to produce a fully executed P&P Bond, and requires additional time to secure a new general contractor capable of obtaining the P&P Bonds. Therefore, Petitioner is requesting a waiver of the Closing Requirement of Rule 67-48.0072(26) F.A.C. (2018) as integrated by the RFA and extension of the Loan closing deadline until June 18, 2021.

B. THE RULES FROM WHICH WAIVER IS REQUESTED

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

> **67-48.0072 – 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 RFA 2019-109 Exhibit C, Part 3(d), which provides, in relevant part, as follows, and incorporates the Closing Requirement.

> Part 3(d). Additional Information, 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 Rules for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the "**Act**"), the statute that created the HOME Program. *See* Section 420.5089, Florida Statutes (2020).

9. Pursuant to Chapter 120.542(1), Florida Statutes, "[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation." Therefore, under Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its requirements when strict application of these requirements would

lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, Section 120.542(2) states:

> "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. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "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."

10. In this instance, Petitioner meets the standards for a waiver.

D. <u>JUSTIFICATION FOR GRANTING THE WAIVER OF THE RULES</u>

11. Petitioner was previously granted a 90-day extension of the closing of the Loan, extending the Initial Deadline to the Revised Deadline. A further extension of the Revised Deadline to close the Loan would require a waiver of Rule 67-48.0072(26) F.A.C. (2018) and RFA 2019-109 Exhibit C, Part 3(d) integrating same.

12. Petitioner is requesting an extension of the deadline to close the Loan from the Revised Deadline to June 18, 2021because Petitioner requires additional time to secure a general contractor capable of obtaining the P&P Bonds necessary for closing of the Loan. Petitioner had previously secured the services of AHP Development, LLC, a Florida limited liability company, with an address of 815 South Palafox Street, 3rd Floor, Pensacola, Florida 32502 (the "**Original GC**"), with the expectation that the Original GC would be able to obtain the P&P Bonds. As the Original GC has been unable to obtain the P&P Bonds, Petitioner is currently in the process of seeking the services of an alternative general contractor that can obtain the P&P Bonds and will assume the contract of the Original GC.

13. The Development has obtained all necessary financial, governmental and development approvals, including site plan approval and building permits, with the exception of the P&P Bonds. The Development's financial partners stand ready to close promptly upon identifying an acceptable replacement general contractor with the ability to produce the required fully executed P&P Bond.

14. 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 Revised Deadline 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, it would result in substantial economic hardship to the Petitioner, as it has inccured considerable costs to date in furtherance of completion of the Development, and would deprive Jackson County of much needed affordable housing.

15. Consequently, the extension is necessary to avoid unfairness and substantial hardship on the Petitioner and the Development. By granting the requested extension, the Property will be able to proceed towards completion, providing 30 much needed affordable housing units in Bay 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.

16. The 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.AC., 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, particularly in Jackson County.

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

E. TYPE OF WAIVER

18. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

19. 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 Revised Deadline to June 18, 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,



Andrew Bennett, Esq.

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COUNSEL FOR PETITIONER

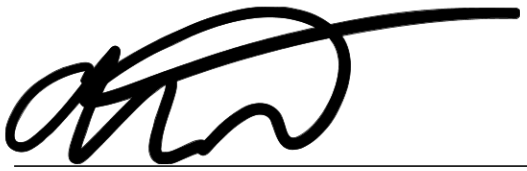
CERTIFICATE OF SERVICE

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

This 22nd day of February, 2021.



Andrew Bennett, Esq.
Fla. Bar No. 0125189