STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2021- 036VW
APPLICATION NO. 2020-385BSN

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FLORIDA HOUSING
FINANCE CORPORATION

CORE MHP COLLIER, LTD.

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.004(3)(g) and 67-21.003(8)(g).

CORE MHP Collier, Ltd., a Florida limited partnership (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 67-48.004(3)(g) and 67-21.003(8)(g) F.A.C. (2019), which requires, in relevant part, that applications must maintain the Development Type indicated on initial application and that such Development Type cannot be changed after submission of the applicable application.

This Petition is filed pursuant to Section 120.542 of the Florida Statutes (2021) and Chapter 28-104 of the Florida Administrative Code (2021). In support of this Petition for Waiver of Rule 67-48.004(3)(g) and 67-21.003(8)(g) F.A.C. (2019) (the "**Petition**"), Petitioner states as follows:

A. PETITIONER AND DEVELOPMENT

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

CORE MHP Collier, Ltd.
c/o McDowell Housing Partners, LLC
601 Brickell Key Drive, Suite 700
Miami, Florida 33131
Attn: Christopher Shear

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

Andrew Bennett, Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4205
Email: drew.bennett@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, formerly known as Villa Verde, in Collier County, Florida (the "**Development**"). The Petitioner received a preliminary award for $6,600,000 in SAIL funding (the "**Loan**") from the Corporation.

4. In the Application, Petitioner indicated that the 'Development Type' of the Development was to be a 'Mid-Rise, 4-stories.' Due to unforeseen circumstances, however, it has become necessary and desirable to construct the Development as 5-story structure and modify the 'Development Type' under the Application to a 'Mid-Rise, 5-6 stories.' Therefore, as such a modification of the Application is not permitted under Rule 67-48.004(3)(g) or 67-21.003(8)(g) F.A.C. (2019), Petitioner is requesting a waiver of the application amendment

restriction of Rule 67-48.004(3)(g) and 67-21.003(8)(g) F.A.C. (2019) and amendment of the 'Development Type' in the Application to a 'Mid-Rise, 5-6 stories.'

B. THE RULES FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver of Rule 67-48.004(3)(g) F.A.C. (2019), which provides, in relevant part, as follows:

> **67-48.004 – Selection Procedures for Developments.**
>
> (3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:
>
> ***
>
> (g) Development Type;

6. Petitioner requests a waiver of Rule 67-21.003(8)(g) F.A.C. (2019), which provides, in relevant part, as follows:

> **67-21.003 – Application and Selection Process for Developments.**
>
> (3) 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:
>
> ***
>
> (g) Development Type;

C. STATUTES IMPLEMENTED BY THE RULES

7. 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 SAIL Program. *See* Section 420.5087, Florida Statutes (2021).

8. 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."

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

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

9. Petitioner properly submitted the Application on December 23, 2019.

10. Petitioner, per the Application, originally intended to construct a single four (4) story residential building for the Development, as part of the first phase of a multiphase development (the "**Project**"). After the Petitioner's submission of the Application, a second phase of restricted elderly housing was subsequently planned on contiguous land within the same legally defined parcel as the Development (Collier County Parcel ID: 48586003020). It became apparent, only after performing detailed engineering of the Development, however, that, under

Collier County's land development code, the required setbacks between the phases of the Project were larger than they were required to be as a standalone development.. Furthermore, though zoning only requires that there be one (1) parking space per unit, during the aforementioned detailed engineering and design phase the Petitioner's property management team concluded that a ration of one and three-tenths (1.3) parking spaces per unit is necessary and desirable for safe and efficient operation of the Development. The enlarged set-backs and additional parking requirements (the "**Site Constraints**"), unknown at the time the Application was submitted, serve as the initial drivers for the need to increase the height of the building to five (5) stories. In addition to ensuring the Development adheres to the Site Constraints, this modification to the Development has produced construction efficiencies for the Development that have resulted in a lower hard cost per square foot basis for the Petitioner which assist in alleviating the hardships of rising construction costs. This change in the Development is already permissible under the applicable zoning permits, which allow for residential development of up to seven (7) stories, but to amend the 'Development Type' of the Application from a 'Mid-Rise, 4-stories' to a 'Mid-Rise, 5-6 stories,' Petitioner requires a waiver of Rule 67-48.004(3)(g) and 67-21.003(8)(g) F.A.C. (2019).

11. If this Petition is granted, and the Development Type modified as requested, Petitioner will continue to meet the requirements otherwise set forth by the Application. This waiver and modification would not impact the total development cost limitations of the Application as the same limitation apply to both Mid-Rise Development Types (4 stories and 5-6 stories). Further, this waiver and modification, if it had been contemplated at the time of the

Application's original submission, would not have had a negative impact on Petitioner's leveraging classification, scoring, ranking or funding.

12. Consequently, waiver of the amendment restriction to the Application is necessary to avoid unfairness and substantial hardship on the Petitioner and the Development. Without this waiver, Petitioner will be unable to construct a four (4) story building that both adheres to the Site Constraints and provides for one hundred sixty (160) units at the Development. By granting the requested waiver, Petitioner will be able to continue towards completion of the Development, while adhering to the Site Constraints, and provide one hundred sixty (160) much needed elderly affordable housing units in Collier County, and, as a result thereof, assist 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 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.

14. 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

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 67-48.004(3)(g) and 67-21.003(8)(g) F.A.C. (2019) and amendment of the 'Development Type' in the Application to a 'Mid-Rise, 5-6 stories;' (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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Orlando, Florida 32801
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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 2nd day of June, 2021.



Andrew Bennett, Esq.
Fla. Bar No. 0125189