STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: 2021-038VW
APPLICATION NO.: 2019-401HB

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FLORIDA HOUSING FINANCE CORPORATION

TUPELO PARK, LP,

Petitioner,
vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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

TUPELO PARK, 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 8, 2018), which provides for a 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:

Tupelo Park, LP
Attn: Renée Sandell
2730 Cumberland Boulevard
Smyrna, Georgia 30080
Telephone: (321) 431-3164 / (770) 431-9696
Email: renee@pacesfoundation.org

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

David F. Leon, Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4276
Email: david.leon@nelsonmullins.com

3. On March 26, 2019, the Petitioner timely 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 ("RFA") (the "Application") to finance the construction of a multifamily apartment complex to be known as Tupelo Park Apartments in Panama City Beach, Florida (the "Property"), which will serve low-income families, affected by Hurricane Michael, in Bay County. The Petitioner received a preliminary award for $4,300,000.00 in HOME funding and $8,200,000.00 in Multifamily Mortgage Revenue Bonds (collectively, the "Loans") from the Corporation.

4. Petitioner's deadline to finalize credit underwriting and receive a final loan commitment for the Loans was June 28, 2020 ("Initial Deadline"). On March 17, 2020, the Petitioner submitted a letter to the Corporation requesting a sixty (60) day extension of the Initial Deadline to receive a final credit underwriting report, but the Board of Directors of the Corporation (the "Board") approved a six (6) month extension of the Initial Deadline to December 28, 2020 ("December Deadline") at the Board meeting on April 17, 2020. While attempting to meet the December Deadline, Petitioner's likelihood of completing the credit underwriting process by that date became doubtful when Petitioner's third-party contractor failed to finalize its design plans and a final price estimate. As such, on November 13, 2020, Petitioner filed a Petition for Waiver

of Rule 67-48.0072(21)(b) requesting a six (6) month extension of the December Deadline in order to receive a final credit underwriting report. At its December 4, 2020 meeting, the Board approved the request and extended the deadline to June 28, 2021 ("June Deadline").

5. The draft credit underwriting report will not be issued by May 17, 2021, the date necessary for the report to be reviewed at the June 18, 2021 Board meeting, as a result of further contractor delays (as set forth below). Therefore, Petitioner is requesting waiver of or variance from Rule 67-48.0072(21)(b) for an extension of the firm loan commitment issuance deadline until December 28, 2021.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

6. The Petitioner requests a waiver of or variance from Rule 67-48.0072(21)(b), Florida Administrative Code (effective July 8, 2018) (the "Rule"), 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 credit underwriting report approval and 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, for profit Applicants must pay the extension fee not later than seven (7) Calendar Days after the original twelve (12) month 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. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

Emphasis added.

C. STATUTES IMPLEMENTED BY THE RULES

7. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statute that designated the Corporation to administer the HOME program in accordance to the HOME Investment Partnership Program. *See* Fla. Stat. § 420.5089.

D. JUSTIFICATION FOR PETITIONER'S REQUESTED WAIVER

8. The Petitioner is requesting an extension of the deadline to secure a firm loan commitment from June 28, 2021 to December 28, 2021, for the following reasons:

a. As of June 2020, the original contractor had estimated the cost of construction to be approximately $6.2 million. However, the contractor materially increased this estimate to approximately $9 million on February 2021. This substantial increase over the course of eight (8) months has Petitioner extremely concerned that the estimate will materially increase again.

b. As a result of such material increase, the Petitioner entered into negotiations with another contractor who will be submitting a price estimate to Petitioner by early June 2021. The alternative contractor has bonding capacity and has previously performed and adequately completed Corporation-related work. Nonetheless, if Petitioner decides to hire this alternative contractor, the credit underwriter will need additional time to review the executed construction contract, which is required by the credit underwriter to

complete the credit underwriting report, which in turn is required for the issuance of a firm loan commitment. Therefore, Petitioner needs additional time to ensure that the construction contract can be executed and reviewed by the credit underwriter.

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 could have presented the credit underwriting report for the Board's approval is June 18, 2021, which means the credit underwriting report must have been submitted to the Corporation's staff by May 21, 2021 and finalized by June 4, 2021. However, as a result of further contractor delays as set forth above, the report cannot be finalized by the June 4, 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

[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.

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 Rule provides that a failure of the Petitioner to receive the Corporation's issuance of a firm loan commitment by June 28, 2021 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 Property. Furthermore, it would deprive Bay 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 Property. By granting the requested extension, the Property will be able to proceed to reach completion in the future, which will provide 47 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.

13. Further, a waiver of this Rule will serve the purposes of Section 420.5089 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 Bay 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 in Bay County.

14. The requested waiver will not adversely affect Petitioner, the Property, 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 June 28, 2021 to December 28, 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,

David F. Leon, Esq.
Fla. Bar No. 0053929
Nelson Mullins Broad and Cassel
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4276
Email: david.leon@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 2nd day of June, 2021.

By: _____
David Leon, Esq.
Fla. Bar No. 0053929