STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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ARBOURS AT QUINCY, LLC,

Petitioner,

FHFC CASE NO. 2022-046VW
Application No. 2020-419BS/2019-569C
RFA No. 2019-116

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OF FLORIDA ADMINISTRATIVE CODE RULE 67-48.0072(26)

Petitioner, Arbours at Quincy, LLC, ("Petitioner"), pursuant to section 120.542, Florida Statutes, and chapter 28-104, Florida Administrative Code, petitions Florida Housing Finance Corporation ("Florida Housing") for a waiver of rule 67-48.0072(26), Florida Administrative Code (July 11, 2019) (the "Rule") in effect at the time Petitioner submitted its application in response to Florida Housing's Request for Applications No. 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"). Petitioner seeks to extend the time allowed under the Rule for its loan closing. In support of this Petition, Petitioner states:

A. Petitioner and the Development

1. The name, address, telephone, and email address for Petitioner is:

Arbours at Quincy, LLC
242 Inverness Center Drive
Birmingham, AL 35242
Email: Sam@ArbourValley.com

2. The name, address, telephone and email address of Petitioner's counsel is:

Christopher B. Lunny
Radey Law Firm
301 South Bronough Street, Suite 200
Tallahassee, Florida 32301
Telephone: 850-425-6654
Email: clunny@radeylaw.com

3. The RFA was issued on November 6, 2019.

4. Petitioner timely submitted Application No. 2020-419BS in response to the RFA for the development named Arbours at Quincy located in Gadsden County, Florida (the "Development"). The Development will consist of 80 units that will serve low-income families.[1]

5. The application was assigned number 2020-419BS. The Florida Housing Board of Directors (the "Board") approved the final scores and recommendations on March 6, 2020.

6. Petitioner was invited into credit underwriting on July 20, 2020 and completed credit underwriting on or about November 24, 2021.

7. On December 13, 2021 FHFC staff issued a firm commitment to Petitioner and provided a loan closing deadline of June 13, 2022.

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[1] The following information regarding the Development is provided to facilitate staff's preparation of background material for the Florida Housing Board of Directors:

- Development Name: Arbours at Quincy
- Developer, including at least one natural person: Arbour Valley Development, LLC and Mr. Sam Johnston
- County of Development: Gadsden
- Number of Units: 80
- Type: Garden
- Set Asides: 10% of residential units at 33% of AMI and 90% of residential units at 60% of AMI
- Demographics: Family
- Funding Amounts: SAIL Loan of $7,105,807 (SAIL and SAIL CHIRP; ELI Loan of $600,000; CDFI Loan of $250,000; TE Bond of $13,400,000; FHA Construction Loan of $6,211,000; Bridge Loan of $6,500,000 and FHA Permanent Loan of $6,211,000.

8. Pursuant to the Rule, applicants such as Petitioner were permitted to request one extension of up to ninety (90) days to close the loan. Petitioner accordingly requested a ninety (90) day extension on March 22, 2022, which was granted by the Florida Housing Board of Directors on April 29, 2022, and which extended the firm loan closing deadline until September 12, 2022.

9. Petitioner requires additional time to close its loan. In general, the need for additional time is the result of delays related to securing HUD financing. Petitioner submitted for a first mortgage under the Pilot Program of the Section 221(d)4 program with HUD on May 3, 2022. Although HUD allows affordable deals to move to the front of the underwriting queue through the Pilot Program, and hopes to have these loans closed in sixty (60) business days, HUD has not yet completed final underwriting and issued the FIRM commitment. HUD now gives early estimates of issuing the HUD FIRM commitment in early to mid-August and to have the loan closing 30 business days after, in approximately late September.

10. As a result, Petitioner requests a waiver of the loan closing deadline through and including December 12, 2022, in order to allow more time for the loans to close.

B. Type of Waiver

11. The waiver being sought is permanent in nature.

C. Rule For Which a Waiver Is Requested

12. Petitioner requests a waiver from the Rule, which provides:

> (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 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.

Rule 67-48.0072(26), Fla. Admin. Code (2019).

D. <u>Statutes Implemented by the Rule</u>

13. The Rule implements, among other sections of the Florida Housing Finance Corporation Act; section 420.5087 (State Apartment Incentive Loan Program); and section 420.5099 (allocation of the low-income housing tax credit).

E. <u>Justification for Granting Waiver of the Rule</u>

14. Under Section 120.542(1), Florida Statutes, Florida Housing has the authority to grant waivers to or variances from its requirements when strict application of the requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, Florida Statute 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.

15. Over the last year, the Development has suffered unforeseen hardships that make it clear that the Development will not meet the September 12, 2022, loan closing deadline. These challenges are summarized as follows:

(a) Petitioner has experienced delays related to finalizing costs due to extreme construction material price fluctuations which was necessary to complete credit underwriting; these increased costs required Petitioner to seek FHFC-CHIRP funding in 2022. Petitioner entered into FHFC-CHIRP underwriting on May 10, 2022 and the draft of the CUR recommended an increase in the project's SAIL loan funding.

(b) Currently there is an extensive timeline related to HUD 221(d)(4) financing reviews and approvals; and

(c) Further, the COVID-19 pandemic had a significant impact. Most of Petitioner's many government agencies have been working remotely. Document signatures and plan coordination have been hindered by challenges to complete previously seamless tasks with the new virtual work environment, which has caused delays.

16. Despite these delays, Petitioner has been working diligently to close the requested loans.

17. Unfortunately, with these delays, it is evident that Petitioner will not meet the September 12, 2022 loan closing deadline. Because Petitioner previously received an extension pursuant to the Rule, a waiver is necessary to obtain the requested additional extension.

18. Under section 120.542(1), Florida Statutes, and chapter 28-104, Florida Administrative Code, Florida Housing has the 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. Waivers 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 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. § 120.542(2), Fla. Stat. (2021).

19. In this instance, Petitioner meets the standards for a waiver of the Rule. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 80 much-needed affordable housing units will be made available for a vulnerable segment of the population in Gadsden County, Florida.

20. This Development will assist Florida Housing with fulfilling its statutory mandate to provide safe, sanitary, and affordable housing to the citizens of Florida. *See* § 420.502(2), Fla. Stat. Florida Housing is required by section 420.507(48), Florida Statutes, to reserve up to 5% of its annual allocation of low-income housing tax credits to allocate by competitive solicitation for high-priority affordable housing developments, such as housing for low-income families, in communities throughout the state.

21. The requested waiver further serves the purpose of the statute because one of the primary goals of the statute is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida for low-income households. *Id.* By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing in persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable rental housing. *See* § 420.5099(2), Fla. Stat.

22. The strict application of the Rule requirements will create a substantial hardship for Petitioner because if the Petition is not granted, the SAIL allocation will automatically be withdrawn from the transaction and the Development will not be constructed as proposed. The

denial of the Petition would result in an economic hardship to Petitioner because Petitioner has incurred significant costs to date in an effort to ensure that the development is completed.

F. Action Requested

WHEREFORE, Petitioner respectfully requests that Florida Housing:

(i) Grant the requested waiver from rule 67-48.0072(26), Florida Administrative Code and for an additional extension of the deadline for the loan closing on the Development from September 12, 2022 until December 12, 2022;

(ii) Grant this Petition and all of the relief requested herein; and

(iii) Grant such further relief as may be deemed appropriate

Respectfully submitted this 19th day of July, 2022.

/s/ Christopher B. Lunny

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COUNSEL FOR ARBOURS AT QUINCY, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery, this 19th day of July, 2022, 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
japc@leg.state.fl.us

/s/ Christopher B. Lunny
CHRISTOPHER B. LUNNY