STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: 2022-047VW
APPLICATION NO.: **2021-253BSN**

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FLORIDA HOUSING FINANCE CORPORATION

MHP FL X LLLP,

Petitioner,
vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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

MHP FL X LLLP, a Florida limited liability 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 ("F.A.C") (June 23, 2020) (the "Rule"), which requires applicants to pay a non-refundable extension fee of one (1) percent of each loan amount to obtain an extension of the credit underwriting and firm loan commitment process beyond the initial twelve (12) month deadline provided by the Rule (the "Extension Fee"). Petitioner seeks a waiver of the Extension Fee imposed by the Rule. 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:

MHP FL X LLLP
601 Brickell Key Drive, Suite 700
Miami, FL 33131

Telephone: (786) 257-2767
Attention: McDowell Housing Partners, LLC, c/o Christopher L. Shear
Email: cshear@mcdhousing.com

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

Roman J. Petra, Esq.
Nelson Mullins Riley & Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4247
Facsimile: (407) 425-8377
Email: roman.petra@nelsonmullins.com

3. On November 18, 2020, Petitioner submitted an application (the "Application") in response to RFA 2020-205 - SAIL Financing Of Affordable Multifamily Housing Developments To Be Used In Conjunction With Tax-Exempt Bond Financing And Non-Competitive Housing Credits (the "RFA") requesting i) State Apartment Incentive Loan ("SAIL") funding (the "SAIL Loan") under the SAIL Program (the "SAIL Program"), ii) Extremely Low Income Loan funding (the "ELI Loan"), iii) non-competitive housing credits (the "Housing Credits") under the Housing Credits Program (the "Housing Credits Program"),iv) a loan financed by Corporation-issued Multifamily Mortgage Revenue Bonds (the "MMRB Loan"), and a National Housing Trust Fund Loan (the "NHTF Loan") to finance the development of a 136-unit multifamily residential housing development in the city of North Port, Florida, to be commonly known as Arbor Park (the "Development"). On June 22, 2021, Petitioner received correspondence from the Corporation providing a preliminary commitment for the SAIL Loan in an amount up to $5,810,714, the ELI Loan in an amount up to $600,000, a NHTF Loan in an amount up to $653,873, and the MMRB Loan in the amount of $15,000,000 (the SAIL Loan, ELI Loan, NHTF Loan, and MMRB Loan, collectively, the "Loans") and inviting the Petitioner to enter credit underwriting (the "Invitation").

AmeriNat was assigned to the Development as credit underwriter (the "Underwriter"). Petitioner accepted the Invitation on June 29, 2021. Per the Rule, the twelve (12) month deadline to receive a firm loan commitment was June 29, 2022 (i.e., 12 months from Applicant's acceptance of the invitation to enter credit underwriting). Petitioner did not meet this deadline for the reasons set forth below and is requesting a six (6) month extension of the deadline through December 29, 2022 at the August Meeting (as defined below), which request will be presented on the consent agenda of the August Meeting. Petitioner also seeks a waiver of the required Extension Fee for the reasons set forth below.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

4. The Petitioner requests a waiver of or variance from Rule 67-48.0072(21)(b), F.A.C (effective June 23, 2020), which provides in part:

> **67-48.0072 Credit Underwriting and Loan Procedures.**
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> ***
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> (21) Information required by the Credit Underwriter shall be provided as follows:
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> ***
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> (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 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, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original twelve (12) month deadline. 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

5. 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 State Apartment Incentive Loan Program. *See* Fla. Stat. § 420.5087.

D. JUSTIFICATION FOR PETITIONER'S REQUESTED WAIVER

6. Petitioner was initially invited to credit underwriting on June 22, 2021. During the credit underwriting process, Petitioner submitted a petition for waiver of Rule 67-21.003(8)(i), F.A.C (2020) to permit the Petitioner to reduce the Total Set-Aside Percentage of the Development to enable the Petitioner to adopt the Average Income Test (the "Set-Aside Petition"). On April 29, 2022, the Board approved the Set-Aside Petition and on May 11, 2022, Petitioner submitted a revised set-aside mix of the units (the "Unit Mix") to the Corporation. On May 15, 2022, Petitioner received an initial draft of the credit underwriting report for the Development (the "CUR"), with a subsequent draft provided to Petitioner on May 25, 2022. On May 28, 2022, Petitioner submitted an average income test election worksheet identifying the Unit Mix to the Corporation and expressly describing the number of NHTF-affected units to be set-aside for the Development (the "Worksheet"). The Unit Mix identified by the Worksheet was acknowledged as approved by the Corporation on June 8, 2022. Petitioner thus anticipated formal approval of the CUR would take

place at the June 17, 2022 meeting (the "June Meeting") of the Board of Directors of the Corporation (the "Board").

7. On June 10, 2022 the Underwriter contacted Petitioner, identifying perceived issues concerning the express set-aside terms pertaining to the NHTF-affected units of the Development and clarifying the CUR was, in-fact, not approved and would not be put before the Board at the June Meeting due to the 12:00 P.M. June 9th deadline for the finalization of the CUR having already elapsed. Petitioner, in coordination with the Corporation and Underwriter, swiftly sought to resolve the perceived issues in an effort to ensure the CUR would be included on the Board's consent agenda for the June Meeting. Despite these efforts, which resulted in the resolution of issues with modifications to the terms of the NHTF units which allowed for changes to the Unit Mix prior to the occurrence of the June Meeting, Petitioner was still advised the CUR was unable to be submitted as part of the consent agenda for such meeting. Instead, the CUR would need to be submitted to the Board for approval at its the August 5, 2022 meeting (the "August Meeting").

8. The Rule provides that Petitioner must have received a firm loan commitment for the SAIL Loan and ELI Loans (the "Commitment") within twelve (12) months of the Applicant's acceptance to enter credit underwriting, unless extended pursuant to the Rule. The Petitioner's deadline to finalize credit underwriting and receive the Commitment was June 29, 2022 ("Commitment Deadline"). Before the Corporation issues a firm loan commitment to Petitioner, a credit underwriting report must be completed and approved by the Board. As a result of the events described above, for reasons beyond its control, Petitioner was unable to meet the Commitment Deadline. As such, on June 15, 2022, Petitioner submitted a letter to the Corporation requesting a six (6) month extension of the Commitment Deadline so Petitioner could seek approval of the CUR at the August Meeting (the "Letter"). The Letter also requested a waiver of the Extension Fee. On

June 28, 2022, the Petitioner paid the Extension Fee as is required by the Rule to be paid within seven (7) days of the current firm loan commitment issuance deadline. While Petitioner awaits a decision regarding its requested extension of the Commitment Deadline, Petitioner is seeking a waiver of the Extension Fee as the events necessitating the Petitioner's requested extension were outside of its control. Petitioner was timely in its responses pertaining to, and its submission of information required to, ensure the CUR would be included on the Board's consent agenda for the June Meeting. Petitioner hereby formally requests a waiver of the Rule, as it relates to the Extension Fee.

9. 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 purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Fla. Stat.

10. Despite receiving written acknowledgment and approval of the Unit Mix on June 8, 2022 without further comment or amendment to the CUR, Petitioner was subsequently informed the CUR would not be approved due to requested modifications relating to the Unit Mix, Average Income Test, and NHTF units. While certain clarifications and changes to the terms were made regarding the NHTF unit set-aside requirements following discussions amongst the Petitioner, Corporation, and Underwriter, no changes were made to the Unit Mix prior to the date of the June

[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.

Meeting. Even though the parties swiftly clarified the perceived issues, with no change to the Unit Mix or material change to the Development, the delay was substantial enough to result in the CUR being omitted from the Board's consent agenda for the June Meeting due to the passage of the deadline for finalization of the underwriting reports. If not for this delay, caused by forces beyond Petitioner's control, the CUR would have been included on the Board's consent agenda for approval at the June Meeting and Petitioner would have received the Commitment by the Commitment Deadline. Therefore, Petitioner would not have needed an extension or to pay the Extension Fee. As such, a waiver of the Rule is necessary to avoid unfairness and substantial hardship on the Petitioner and the Development.

11. The Corporation would benefit by granting the requested waiver of the Rule. If granted, Petitioner will not need to increase its CHIRP request and Petitioner will be able to proceed with the Development, which will provide 136 much-needed affordable housing units in Sarasota County, Florida. The Florida Housing Finance Corporation Act (Section 420.501, *et seq*.) was passed to encourage private and public investment in facilities for persons of low-income. The purposes of the State Apartment Incentive Loan Program and National Housing Trust Fund are to stimulate and prioritize initiatives to increase the supply of affordable housing. By granting the requested waivers, the Corporation would promote the goal of providing persons of low-income with of affordable housing through private investment. The requested waivers or variances will not adversely impact the Development or the Corporation or provide Petitioner with an unfair advantage, and will ensure that the 136 affordable housing units of the Development will be made available for the target population in Sarasota County to obtain decent, safe, and sanitary housing.

E. TYPE OF WAIVER

14. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

15. For the reasons set forth herein, the Petitioner respectfully requests the Corporation (*i*) grant a waiver of the Rule to waive the Extension Fee imposed upon Petitioner; (*ii*) grant this Petition and all the relief requested herein; and (*iii*) grant such further relief as it may deem appropriate.

Respectfully submitted the 19 day of July, 2022.

Respectfully submitted,

Lloyd D. Burman, Esq.
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Roman J. Petra, Esq.
Fla. Bar No. 450030
Nelson Mullins Riley & Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, FL 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
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 19 day of July, 2022.

By: _____
Lloyd D. Burman, Esq.
Fla. Bar No. 1016149