

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**FHFC CASE NO.: 2026-024VW
APPLICATION NO.: 2025-279BSA**

40th Street Lofts, LLC

Petitioner,
vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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**FLORIDA HOUSING
FINANCE CORPORATION**

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

40th Street Lofts, LLC, a Florida limited liability company (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”) (August 27, 2024) (the “Rule”), in effect at the time Petitioner submitted its Application (as defined below) in response to the Corporation’s RFA (as defined below), to allow Petitioner to extend its deadline to secure a firm loan commitment for an additional six (6) months. Petitioner seeks a waiver of, or variance from, the Rule for reasons set forth below. 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:

40th Street Lofts, LLC
2730 Cumberland Blvd SE, Smyrna, Georgia 30080
Telephone: 321-431-3164

Attention: Renee Sandell
Email: renee@pacesfoundation.org

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

Nicholas W. Heckman, Esq.
Nelson Mullins Riley & Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 669-4241
Facsimile: (407) 425-8377
Email: nick.heckman@nelsonmullins.com

3. On September 12, 2024, Petitioner submitted an application (the "Application") in response to RFA 2024-205 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 a loan financed by Corporation-issued Multifamily Mortgage Revenue Bonds in an amount of \$16,500,000 (the "MMRB Loan"), a State Apartment Incentive Loan in an amount of \$5,000,000 (the "SAIL Loan"), together with an Extremely Low Income loan in the amount of \$581,100 (collectively, the "SAIL/ELI Loan"), and a Home Investment Partnership Program from the American Rescue Plan Act in an amount of \$1,298,500 (the "HOME-ARP Loan") to finance the development of a 65-unit affordable housing development to be located in Hillsborough County, Florida, to be commonly known as 40th Street Lofts (the "Development"). The Petitioner received - and subsequently accepted - correspondence from the Corporation providing a preliminary commitment for the SAIL/ELI Loan, HOME-ARP Loan, and the MMRB Loan (the SAIL/ELI Loan, HOME-ARP Loan, and MMRB Loan, collectively referred to herein as the "Loans") and inviting the Petitioner to enter credit underwriting. Pursuant to the Rule, the Petitioner must receive a firm loan commitment within twelve (12) months of the Petitioner accepting its invitation to enter into credit underwriting. On November 10, 2025, the Petitioner

requested the approval of the Corporation to extend the Petitioner's deadline to secure a firm loan commitment by six (6) months. On December 12th, 2025 the Corporation's Board of Directors approved the Petitioner's request and approved the deadline to be extended through May 18th, 2026. Petitioner paid a one (1) percent extension fee in connection with approval of the foregoing extension.

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 August 27, 2024), which provides in part:

67-48.0072 Credit Underwriting and Loan Procedures.

(21) Information required by the Credit Underwriter shall be provided as follows:

(b) For SAIL and HOME, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued by the date of the Board of Directors meeting immediately following twelve (12) months after the Applicant is invited to enter credit underwriting. Unless an extension is approved by the Board, 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 Board 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 nonrefundable 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 deadline is approved. If an approved extension is utilized, Applicants must pay the extension fee not later

than seven (7) Calendar Days after the Board approves the extension of the original 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 and the HOME Investment Partnership Program. See Fla. Stat. §§ 420.5087, 420.5089.

D. JUSTIFICATION FOR PETITIONER’S REQUESTED WAIVER

6. Petitioner was previously granted an extension to secure a firm loan commitment for the Loans to May 18th, 2026. Petitioner respectfully requests an extension of the deadline to secure a firm loan commitment for the Loans for an additional six months in order for Petitioner to finalize the Development’s credit underwriting report. Shortly after the Board granted Petitioner’s request to extend its firm loan commitment deadline to May 18th, 2026, the Petitioner worked tirelessly to advance all remaining development activities required to proceed toward credit underwriting completion. As the Development progressed, several regulatory and environmental processes outside of the Petitioner’s control created unavoidable delays that now prevent the Petitioner from meeting the current firm loan commitment deadline.

7. Following the Corporation’s Board of Directors’ (the “Board”) approval of the Development’s prior extension, the Petitioner proceeded immediately with the remaining environmental review and permitting obligations necessary for the Development. As part of the

United States Department of Housing and Urban Development's ("HUD") required environmental review, wetlands were identified on the project site, triggering HUD's 8-step decision-making process, which mandates separate 15-calendar day and 7-calendar day public notice comment/input periods, in addition to the Finding of No Significant Impact/Request for Release of Funds (FONSI/RROF) Notice which also requires a 15-calendar day comment/input period. The Petitioner's timeline for completing these HUD requirements was further affected by federal government shutdowns, including the extended shutdown from October 1 to November 12, 2025, which slowed federal processing and added additional delays to the environmental review timeline. The 15-calendar day Early Notice was published on February 18, 2026 with a comment deadline of March 5, 2026; no public comments/input were received. The 7-calendar day Final Notice was published on March 25, 2026; no public comments/input were received. The FONSI/RROF Notice will be published after the additional environmental requirements are completed and before the HUD environmental review can be finalized. The Petitioner has been working with HUD and the local government to quickly get this finalized. The small wetland area identified on the site had not been reflected in the Petitioner's original environmental review or in the records maintained by the local jurisdiction. In addition to the HUD requirements, the Petitioner is diligently working through the wetland impact permitting process with the county's Environmental Protection Commission ("EPC"). Although EPC has completed its required site visit and confirmed the delineation of the wetlands, the Petitioner is still awaiting EPC's wetland impact approval, which is anticipated to be issued within the next two months. The area was discovered only after the Petitioner's wetlands consultant, acting out of an abundance of caution, conducted an on-site inspection. This unexpected finding triggered the need for both HUD's eight-step process and EPC

wetland impact review. Nevertheless, the Petition continues to push the process forward to finalize the credit underwriting report.

8. The Petitioner's progress on the overall development timeline has also been impacted by Florida's Live Local program, which is the statutory land-use approval required for qualifying affordable housing developments under Sections 125.01055 and 166.04151, Fla. Stat. Because this Development is being advanced under the Live Local program, the wetland impact approval is a mandatory component of the Live Local applications, and the Petitioner cannot submit a complete application until EPC approval is issued. The Petitioner and the local government are working together to finalize the Live Local zoning preemption process; however, the process has taken longer than expected. Based on the timing of the remaining HUD environmental requirements, EPC's wetland impact approval, and the Live Local submission process, the Petitioner anticipates securing all necessary permits by August 2026.

9. The Petitioner anticipates finalizing its credit underwriting report by November 18th, 2026. As such, Petitioner hereby formally requests a waiver of the Rule or variance from the Rule, in order to extend the Petitioner's firm loan commitment deadline for an additional six months to allow Petitioner additional time to finalize its credit underwriting report and receive its firm loan commitment from the Corporation.

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 hardship¹ 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

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 Petitioner is actively and promptly undertaking the steps necessary to complete the required environmental, permitting, and design obligations. As it stands, the development team has completed approximately 90% of the civil engineering plans and 60% the building plans. A 90% civil permit-ready plan and building permit plans have been delivered to the Corporation. The Petitioner currently anticipates submitting civil and building permit plans by the end of April 2026. The 50% design development set and current civil plans have already been completed and distributed to the appropriate consultants. The delays are the result of mandatory federal and local regulatory processes, not from inaction by the Petitioner and the Petitioner has been doing everything in its power to move the process forward and close as quickly and efficiently as possible. A denial of the request would result in substantial hardship to the Petitioner, as it has incurred substantial costs to ensure that the Development proceeds to completion. If not granted, the Petitioner would lose its funding, despite having substantially advanced the Development to this point.

12. The Corporation would benefit by granting the requested waiver of, or variance of the Rule. Since the Board approved Petitioner's extension request to secure a firm loan commitment, the Petitioner has devoted a substantial amount of time and energy to quickly and efficiently finalize its credit underwriting report. If granted, it will allow the Petitioner the additional time it needs to finalize its credit underwriting report and receive the Development's firm loan commitment.

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.

13. 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 Section 420.5087 and Section 420.5089, Fla. Stat. and the Act that are implemented by Chapter 67-48, as one of the goals is for 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. Further, the Act was passed in order 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 65 affordable housing units of the Development will be made available for the target population in Hillsborough 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 extend the May 18th, 2026 deadline to November 18, 2026 to secure a firm loan commitment for an additional six months; (ii) grant this Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted the 7th day of April 2026.

Respectfully submitted,



Nicholas W. Heckman, Esq.

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Email: nick.heckman@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 7th day of April, 2026.

By: _____



Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356