

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**FHFC CASE NO.: 2026-050VW
APPLICATION NO.:
2022-242H/2023-238V**

Pollywog Creek Mews, LLC

Petitioner,
vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

**PETITION FOR WAIVER OF RULE 67-48.0072(26) AND RFA 2023-211 EXHIBIT D,
SECTION 5**

Pollywog Creek Mews, 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(26), Florida Administrative Code (May 18, 2021) (the “**Rule**”), and RFA 2023-211 Construction Inflation Response Viability Funding (“**RFA 2023-211**”) Exhibit D, Section 5; so that Petitioner may extend its closing deadline of September 25, 2026.

This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, F.A.C. In support of this Petition, the Petitioner states as follows:

A. THE PETITIONER AND DEVELOPMENT

1. The mailing address, telephone number and email of the Petitioner is as follows:

Pollywog Creek Mews, LLC
c/o Rural Neighborhood, Inc.

19308 SW 380th Street
Florida City, FL 33034
Telephone: (305) 242-2142
Email: stevekirk@ruralneighborhoods.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
Email: nick.heckman@nelsonmullins.com

3. On January 24, 2022, Petitioner timely submitted an application (the “**HOME Application**”) in response to the RFA 2021-206 Home Financing for the Construction of Small, Rural Developments and requested HOME Investment Partnership Program (“**HOME**”) funding to finance the construction of a twenty-eight (28) unit multifamily apartment complex to be known as Pollywog Creek Mews located in LaBelle, Hendry County, Florida (the “**Development**”). All twenty-eight (28) units are to be set-aside as “HOME-Assisted Units,” for a period of fifty (50) years, in which (i) six (6) of the units are to be “Low HOME Units” set aside for occupancy by persons or families having incomes at or below 50% of the area median gross income, adjusted for family size for the county (“**AMI**”) and rent restricted in accordance with the 24 CFR Part 92 (the “**HOME Regulations**”) and as set forth in the RFA; and (ii) the remaining twenty-two (22) units shall be “High HOME Units” set aside for occupancy by persons or families having incomes at or below 60% AMI and rent restricted in accordance with the HOME Regulations and as set forth in the RFA.

4. On March 29, 2022, Petitioner was preliminarily awarded \$5,690,000 in HOME funding under RFA 2021-206 (the “**HOME Loan**”) and the Corporation invited Petitioner to enter

into credit underwriting (the “**Preliminary Commitment**”), which gave the Petitioner a firm loan commitment issuance deadline of April 4, 2023. On March 10, 2023, the Corporation’s Board of Directors (the “**Board**”) approved extending the firm loan commitment issuance deadline for the HOME Loan from April 4, 2023, to October 4, 2023.

5. On May 1, 2023, the Corporation issued RFA 2023-211 for Construction Inflation Response Viability Funding to assist competitive projects in the development pipeline experiencing cost increases related to Market Inflation. In response to multiple issues and unexpected costs raises, on May 15, 2023, Petitioner timely submitted an application (the “**Viability Application**,” and together with the HOME Application referred to herein as the “**Application**”) in response to the RFA 2023-211 and received Board approval of a viability award of \$2,475,000 (the “**Viability Loan**,” together with the HOME Loan are referred to herein as the “**Loans**”). In addition, Petitioner applied to Federal Home Loan Bank of Atlanta under the Affordable Housing Program and received an award of \$750,000 on August 15, 2023.

6. Between 2023 and 2025, the Development experienced multiple issues due to cost increases and requested extensions to its deadline to receive the Development’s firm loan commitment, which the Board gratuitously approved. Ultimately, on December 17, 2025, the Corporation issued a firm loan commitment to Petitioner for Loans, in which the Petitioner timely accepted (the “**Firm Commitment**”) on December 31, 2025. In addition to the Loans, the Development is also being financed, in part, by a construction and permanent loan from Federal Home Loan Bank of Atlanta under the Affordable Housing Program and received an award of \$750,000.

7. Pursuant to the Firm Commitment, the Petitioner’s deadline to close the Loans, and any other mortgage loans related to the construction and permanent phase financing of the Development, was June 26, 2026 (*i.e.*, 180 calendar days of the Firm Commitment).

8. On June 1, 2026, Petitioner submitted a letter to the Corporation requesting a ninety (90) calendar day extension of the Loan Deadline (the “**Request Letter**”), which such 90 calendar day extension period (which may be automatically extended to the next scheduled meeting of the Board), for a new extended loan closing deadline of September 25, 2026 (the “**Extension Request**”). The Board approved the Petitioner’s Extension Request at its June 26th meeting extending the loan closing deadline from June 26, 2026 to September 25, 2026. Florida Housing received the extension fee on July 2, 2026.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

9. Petitioner requests a waiver of, or a variance from, the Rule to allow Petitioner an additional extension of its loan closing deadline and waiver of the Extension Fee, which provides, in relevant part, as follows:

67-48.0072(26) – Credit Underwriting and Loan Procedures.

“(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 or 180 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."

Emphasis added.

10. Petitioner further requests a waiver of RFA 2023-211 Exhibit D, Section 5 (the "RFA Viability Loan Conditions"), which provides, in relevant part, as follows:

"5. If the Active Award consists of SAIL, HOME, or Corporation-issued MMRB financing that has not closed prior to the issuance of the preliminary award for this RFA, closing of the Viability Loan Funding will be simultaneous with the closing of such other Corporation funding. If the Active Award consists of 9% Housing Credits only, the Loan Funding must close by the date of the Board of Directors meeting immediately following 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 period outlined above. If an approved extension is utilized, Applicants must pay the extension fee not later than seven (7) Calendar Days after the Board approves the request to extend 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..."

C. STATUTES IMPLEMENTED BY THE RULE

11. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statute that designated the Corporation to administer the HOME program. See Section 420.5089, Fla. Stat. (HOME Investment Partnership Program; HOME Investment Partnership Fund).

12. The Corporation has the authority pursuant to Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended results in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship¹ or violate principals 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.

D. JUSTIFICATION FOR PETITIONER’S REQUESTED WAIVER

13. Petitioner is requesting the Board’s approval for waiver of, or variance from, the Rule to allow Petitioner an additional extension of its closing deadline for an additional 90 calendar day period (which may be automatically extended to the next scheduled Board meeting that is after the 90 calendar day extension) as Petitioner has experienced timing delays outside of the its control in receiving its last permit needed for Petitioner to successfully close on the Loan.

14. After receiving the Firm Commitment, the Petitioner again did not waste any time and began working diligently to quickly close on its construction and permanent financing.

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 Section 120.542, *Fla. Stat.*

Petitioner worked diligently on its site plan application, its utility plans, and other items needed from third parties to close the Loans on or before the original loan deadline. For reasons set forth in the Request Letter, the Petitioner's original loan closing deadline was extended from the original June 26, 2026 deadline to September 25, 2026.

15. At this time, the Petitioner has successfully obtained all of its permits needed to close on the Loans, but has not been able to complete certain third party due diligence such as its final appraisals and its ALTA Survey. The Petitioner has been diligently and efficiently working with respective third parties in order to finalize the last remaining items needed for the Petitioner to timely close on the Loans on or before the September 25, 2026 closing deadline; however, in the abundance of precaution, Petitioner is requesting this waiver should any unexpected delay occur while finalizing the respective third party reports or should any delay occur while finalizing the construction/permanent financing loan documents.

16. The Petitioner requests waiver of the Rule and the RFA waiver of the Viability Loan Conditions to extend its loan closing deadline as this request was not necessitated through any fault of the Petitioner.

17. If Petitioner is not granted a waiver of the Rule and the RFA Viability Loan Conditions, Petitioner will suffer substantial hardship as such denial to extend the loan closing date would otherwise cause the deal to fail by voiding the Corporation's commitment to fund the Loans, while the only outstanding item in order for the parties to close on the Loans is finalizing a few last minute third party due diligence items required by lenders. Therefore, by granting the requested waiver, the Corporation will prevent Petitioner from suffering substantial hardship that may occur should the additional extension not be granted.

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


Respectfully submitted,

appropriate.

21. For the reasons set forth herein, the Petitioner respectfully requests the Corporation (i) grant a waiver of Rule 67-48.0072(26) F.A.C. (2021) and, RFA 2023-211 Exhibit D, Section 5, to extend the closing deadline from September 25, 2026 to January 29, 2027 (ii) grant this Petition and all the relief requested herein; and (iii) grant such further relief as it may deem

F. ACTION REQUESTED

20. The waiver being sought is permanent in nature.

F. TYPE OF WAIVER

18. Petitioner believes that a waiver of this Rule will serve the purposes of Section 420.5089, *Fla. Stat.* and the Act that are implemented by Chapter 67-48 F.A.C., 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 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. In this instance, Petitioner meets the standards for a waiver of the Rule. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive funding in the RFA or the Corporation and will ensure that 28 affordable units will be made available for individuals and families in Hendry County, Florida.

19. In this instance, Petitioner meets the standards for a waiver of the Rule. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive funding in the RFA or the Corporation and will ensure that 28 affordable units will be made available for individuals and families in Hendry County, Florida.

Nelson Mullins Riley & Scarborough LLP
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Orlando, Florida 32801
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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 31th day of August, 2026.

By: 

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