STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: 2024-044VW__
APPLICATION NO.: 2023-165BH

RECEIVED
AUG 2 2024 8:00 AM
FLORIDA HOUSING FINANCE CORPORATION

SOVEREIGN AT HARBOR WEST, LLC,

Petitioner,
vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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

Sovereign at Harbor West, 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") (July 6, 2022) (the "Rule"), which requires applicants to pay, not later than the seven (7) calendar days after the original twelve (12) month deadline ("Payment Date"), a non-refundable extension fee of one (1) percent of each loan amount related to Petitioner's utilization of the six (6) month extension request to extend the Petitioner's deadline to secure a firm loan commitment beyond the initial twelve (12) month deadline provided by the Rule (the "Extension Fee"). Petitioner seeks a waiver of, or variance from, the Payment Date imposed by 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:

Sovereign at Harbor West, LLC
575 Pharr Road NE, #550069
Atlanta, GA 30355
Telephone: (404) 963-6657
Attention: James Freeman, III
Email: jwf@thestrategicGroup.com

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 January 24, 2023, Petitioner submitted an application (the "Application") in response to RFA 2022-206 HOME Financing to be used for Rental Developments in Certain Hurricane Ian Impacted Counties (the "RFA") requesting a HOME Investment Partnership Program funds (the "HOME Loan") to finance the development of a 32-unit multifamily residential housing development to be located in the city of Charlotte County, Florida, to be commonly known as Sovereign at Harbor West (the "Development"). The Petitioner received - and subsequently accepted - correspondence from the Corporation providing a preliminary commitment for the HOME Loan up to $6,173,749 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 20, 2023, 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 May 10, 2024, the Corporation approved the Petitioner's request and approved the deadline to be extended through November 26, 2024. Such approval meant that the Petitioner is required to pay the Extension Fee

not later than 7 calendar days after the original 12 month deadline (i.e., August 1, 2024 or otherwise referred to herein as the Payment Date).

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 July 6, 2022), 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 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, which may be automatically extended to the next scheduled meeting of the Board of Directors that is after the twelve (12) month deadline. 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, which may be automatically extended to the next scheduled meeting of the Board of Directors that is after the six (6) month extension deadline, 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.

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(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 HOME Investment Partnership Program. *See* Fla. Stat. § 420.5089.

D. JUSTIFICATION FOR PETITIONER'S REQUESTED WAIVER

6. Petitioner respectfully requests waiver of, or variance from, the Rule requiring payment of the Extension Fee on the Payment Date. Petitioner respectfully requests an extension of the Payment Date in order for Petitioner to finalize its proposed plans to restructure the ownership structure of Petitioner and developer entities. Petitioner recently entered into a verbal agreement with a well experienced partner that will greatly assist Petitioner with the closing of the financing, construction, operation and development of the Development. Such proposed restructure was recently submitted to the Corporation for their review and approval and Petitioner is working diligently with the Corporation to finalize the structure as soon as possible. Petitioner hereby formally requests a waiver of the Rule or variance from the Rule, in order for the Payment Date to be extended and be paid by the Petitioner at a later date in order to allow Petitioner to finalize its new proposed structure with the Corporation.

7. 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.

8. Petitioner is working diligently and quickly to finalize its proposed plans to restructure the ownership structure of the applicant entity and the developers. The petitioner has made substantial progress towards finalizing the proposed changes to the applicant and developer entities. The Petitioner recently submitted its proposed structure to the Corporation and is working diligently with the Corporation to receive their approval. The proposed restructuring of the applicant entity and developer entities only benefits the Development as the Petitioner will be adding a partner that has significant affordable housing development experience. A denial of the request would result in substantial economic hardship to the Petitioner as it would cause the Development to lose its award.

9. The Corporation would benefit by granting the requested waiver of, or variance of the Rule. If granted, it will allow the Petitioner to finalize its structure and bring in an experienced partner to successfully assist the Petitioner with the construction and operation the Development, which will provide 32 much-needed affordable housing units in Charlotte County, Florida.

10. 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 420.5089, 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 sanity housing in the State of Florida to low-income persons and households. Further, the Act was passed

[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.

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 32 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

11. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

12. For the reasons set forth herein, the Petitioner respectfully requests the Corporation (*i*) grant a waiver of the Rule to waive the Payment Date requirement so that such payment date of the Extension Fee be extended and paid by the Petitioner at a later date to be determined by the Corporation; (*ii*) grant this Petition and all the relief requested herein; and (*iii*) grant such further relief as it may deem appropriate.

Respectfully submitted the 1st day of August, 2024.

Respectfully submitted,

Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356
Nelson Mullins Riley & Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, FL 32801
Telephone: (407) 669-4241
Facsimile: (407) 425-8377
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 1st day of August, 2024.

By: _____
Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356