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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: 2024-035VW
APPLICATION NO.: 2023-168H

HOLY CHILD HOUSING, INC.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.0072(26) AND RFA 2022-206 EXHIBIT C, PART 3.e

Holy Child Housing, Inc., a Florida not-for-profit corporation (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 (July 6, 2022) (the "**Rule**") and RFA 2022-206 HOME Financing to be Used for Rental Developments in Certain Hurricane Ian Impacted Counties (the "**RFA**") Exhibit C, Part 3.e; so that Petitioner may extend its closing deadline of June 28, 2024 and waive any such extension fee that may be imposed by the Corporation for such extension (the "**Extension Fee**"), for reasons set forth in more detail below.

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:

Holy Child Housing, Inc.
Attn: Matt Miller
12629 New Brittany Boulevard, Building 16
Fort Myers, Florida 33907
Telephone: (239) 691-5559
Email: mmiller@national-development.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
Email: nick.heckman@nelsonmullins.com

3. On January 25, 2023, Petitioner timely submitted an application (the "**Application**") in response to the RFA and requested $6,994,000 in HOME Investment Partnership Program ("**HOME**") funding to finance the construction of a twenty-five (25) unit multifamily apartment complex to be known as Holy Child located in Bowling Green, Hardee County, Florida (the "**Development**"). All twenty-five (25) units are to be set-aside as "HOME-Assisted Units," for a period of fifty (50) years, in which (i) five (5) 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 (20) 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 June 12, 2023, the Corporation invited Petitioner to enter into credit underwriting (the "**Preliminary Commitment**"). After Petitioner received its Preliminary Commitment, the Petitioner began diligently working on the Development's credit underwriting report. Although, pursuant to the Rule 67-48, F.A.C., the Petitioner is allowed twelve (12) months to finalize its credit underwriting report and receive its firm loan commitment from the Corporation, Petitioner quickly and efficiently finalized its credit underwriting report approximately four (4) months after receiving its Preliminary Commitment, which such credit underwriting report was approved by the Corporation's Board of Directors (the "**Board**") on October 27, 2023. The Corporation soon thereafter issued a firm loan commitment to Petitioner for a HOME loan from the Corporation to the Petitioner in the amount of $6,994,000 (the "**Loan**") on November 1, 2023, in which the Petitioner timely accepted (the "**Firm Commitment**"). In addition to the Loan, the Development is also being financed, in part, by a construction and permanent loan from Centennial Bank in the amount up to $1,000,000.

5. Pursuant to the Firm Commitment, the Petitioner's deadline to close the Loan, and any other mortgage loans related to the construction and permanent phase financing of the Development, was February 29, 2024 (*i.e.*, 120 calendar days of the Firm Commitment).

6. On April 1, 2024, 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) retroactively began on February 29, 2024, for a new extended loan closing deadline of May 29, 2024 (which such deadline was automatically extended to the June 28, 2024

Board meeting) (the "**Extension Request**"). The Board approved the Petitioner's Extension Request at its May 10, 2024 meeting.

7. On April 24, 2024, the Petitioner submitted a petition requesting waiver of the Corporation's extension fee of 1 percent of each Corporation's loan amount, which is generally applied to loan closing extensions requested by applicants and approved by the Board. The Petitioner's request for waiver was granted on May 10, 2024.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

8. 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.

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"(26) For SAIL 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). These deadlines may be automatically extended to the next scheduled meeting of the Board of Directors that is after the 120 or 180 Calendar Days deadline, as applicable. 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, which may be automatically extended to the next scheduled meeting of the Board of Directors that is after the 90 Calendar Day extension deadline.** 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."

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Emphasis added.

9. Petitioner further requests a waiver of RFA 2022-206 Exhibit C, Part 3.e (the "**RFA Extension Fee Requirement**"), which provides, in relevant part, as follows, and incorporates the Rule.

"3. Fees

The Corporation and, if applicable, the Credit Underwriter shall collect via check or money order from the Applicant the following fees and charges in conjunction with this RFA. Failure to pay any fee shall cause the funding awarded to be withdrawn as outlined in the credit underwriting and program requirements outlined in Rule Chapters 67-21, F.A.C. and 67-48, F.A.C…

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e. Credit Underwriting and Loan Closing Extension Fees

In the event the firm commitment is not issued, or the loan does not close within the prescribed timeframes, extension fees will be assessed. The firm commitment must be issued with the timeframes outlined in subsection 67-48.0072(21). Loans must close within the timeframes outlined in subsection 67-48.0072(26), F.A.C.

The Corporation shall charge an extension fee of 1 percent of each Corporation loan amount if the Board approves the request to extend the loan closing(s)."

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C. STATUTES IMPLEMENTED BY THE RULE

10. 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).

11. 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 hardship[1] *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

12. 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) and the RFA Extension Fee Requirement 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.

13. After the Petitioner entered into the Preliminary Commitment, Petitioner began to work diligently and efficiently to finalize its credit underwriting report and to obtain its building

[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*.

permits so that the Development's financing would close in timely manner. Although Rule 67-48.002(21), F.A.C., allows an applicant twelve (12) months (plus an additional six (6) month extension) to finalize its credit underwriting report and receive its firm loan commitment from the Corporation (the "**12 Month Rule**"), the Petitioner instead did not waste any time and diligently worked with the Corporation and First Housing Development Corporation of Florida (the "**Underwriter**") to promptly finalize its credit under writing report approximately four (4) months after receiving its Preliminary Commitment. In accordance with the Rule 67-48, the Corporation issued the Firm Commitment to the Petitioner on November 1, 2023, therefore setting the target loan deadline for the Petitioner. After receiving the Firm Commitment, the Petitioner again did not waste any time and continued to diligently work on its site plan application, its utility plans, and other items needed from third parties to close the Loan on or before the original loan deadline. For reasons set forth in the Request Letter, the Petitioner original loan deadline was extended to June 28, 2024.

14. At this time, the Petitioner has successfully obtained all of its permits needed to close on the Loan other than its permit from the Southwest Florida Water Management District. The Petitioner has been diligently and efficiently working with the water management district to obtain this permit in order for the Petitioner to timely close on the Loan on or before the June 28, 2024 closing deadline. The Petitioner recently met with water management district so that both parties could sit down and quickly clear any remaining comments or issues that the water management district had in regard to the permit. The Petitioner recently resubmitted its application for permit for the third time and is awaiting finalization and issuance of the permit from the water management district. The water management district is aware of Petitioner's June 28, 2024 closing

deadline and has informed the Petitioner that it will prioritize its review in order to timely finalize and issue the permit.

15. Petitioner continues to work diligently to timely close on the Loan and the Development's other financing. Petitioner still expects to close on the Loan financing on or before the June 28, 2024 closing deadline; however, in the abundance of precaution is requesting this waiver should the any delay occur while obtaining the last permit.

16. The Petitioner requests waiver of the Rule to extend its loan closing deadline and the RFA Extension Fee Requirement to waive the Extension Fee as this request was not necessitated through any fault of the Petitioner. Further, such application of the Extension Fee in this case would violate the principals of fairness as such fee would unintentionally punish the Petitioner for diligently working to complete underwriting and close on the Development's financing in a timely manner so that Petitioner can move the Development toward construction.

17. If Petitioner is not granted a waiver of the Rule and the RFA Extension Fee Requirement, 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 Loan, while the only outstanding item in order for the parties to close on the Loan is Petitioner's receipt of its final permit. Further, the Petitioner will suffer substantial hardship in the form of the Extension Fee. But for the delays in obtaining the last permit that is outside of the control or duty of the Petitioner, Petitioner would have been able to close on the Loan within its extended closing deadline. 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 and from unreasonably and unfairly being required to pay the Extension Fee.

18. Moreover, application of the Extension Fee under these circumstances violates the principals of fairness. As discussed above, the Petitioner diligently worked with the Underwriter and the Corporation and quickly received its Firm Commitment well before the expiration of Corporation's 12 Month Period rule, which generally allows applicants 12 months to receive a firm commitment from the date of its invitation to credit underwriting. The Petitioner, before and after receiving its Firm Loan Commitment, never wasted any time and continued to work diligently toward closing the Development's Loan and other construction and permanent loan financing in a timely manner; however, as discussed above such timeline was delayed for reasons outside of Petitioner's control. Despite facing such challenges and because of the continuing relentless work of the Petitioner, the Petitioner still anticipates closing on the Development's loan financing on or before June 28, 2024, which such date, even after being extended, is set to occur within twelve (12) months of the date Petitioner received its Preliminary Statement. As such, subjecting the Petitioner to the Extension Fee under these facts and circumstances would violate the principals of fairness as such application of the Extension Fee would unintentionally punish those applicants who work diligently and efficiently to complete the requirements needed to be issued a firm commitment, and reward those applicants who are untimely in completing tasks and take the full 12 Month Period to receive firm commitments. Such application of the Extension Fee here when Petitioner still anticipates closing on its financing within 12 months of receiving its Preliminary Statement would serve to punish applicants who work diligently to close on its financing and reward those who do not and ultimately close on such financing close to 16 months after receiving their respective invitation to credit underwriting.

19. 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.

20. 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 25 affordable units will be made available for individuals and families in Hardee County, Florida.

E. TYPE OF WAIVER

21. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

22. 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. (2022) and RFA 2022-206 Exhibit C, Part 3.e; (*ii*) grant this Petition and all the relief requested herein; and (*iii*) grant such further relief as it may deem appropriate.

Respectfully submitted the 12th day of June, 2024,

Nicholas W. Heckman, Esq.
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Nelson Mullins Riley & Scarborough LLP
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Orlando, Florida 32801
Telephone: (407) 839-4241
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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 12th day of June, 2024.

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