STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: CP RENAISSANCE, LLC FHFC Case No.: 2022-063VW

_____/

ORDER GRANTING WAIVER
OF RULE 67-48.0072(21)(b), FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on December 9, 2022. On November 21, 2022, Florida Housing Finance Corporation ("Florida Housing") received a "Petition for Waiver of Rule 67-48.0072(21)(b), F.A.C. (6/23/20)" (the "Petition") from CP Renaissance, LLC (the "Petitioner"), to allow Petitioner to extend the firm loan commitment issuance deadline. Notice of the Petition was published on November 22, 2022, in Volume 48, Number 227, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised on the premises, the Board hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner successfully applied for SAIL Financing of Affordable Multifamily Housing Developments to be Used in Conjunction with Tax-

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION
/DATE: 12/9/2022

Exempt Bond Financing and Non-Competitive Housing Credits under RFA 2020-205 via Application Number 2021-219SN, to assist in the construction of a 43-unit family housing development named Coleman Park Renaissance to be located in Palm Beach County, Florida (the "Development").

3. Rule 67-48.0072(21)(b), Florida Administrative Code (6/23/20) (the "Rule"), in relevant part, provides:

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

4. Petitioner requests a waiver of the Rule to allow Petitioner to extend the firm loan commitment issuance deadline from December 30, 2022, to June 30, 2023.

5. FHFC staff issued an invitation to enter credit underwriting to Petitioner on June 24, 2021, which stated that the firm loan commitment must be issued within 12 months of the acceptance to enter credit underwriting. The acceptance was acknowledged on June 30, 2021, creating a firm loan commitment issuance deadline of June 30, 2022. Petitioners were allowed to request - and did request - one six-month extension to secure a firm loan commitment. This request was granted by the Board on June 17, 2022, thereby extending the deadline to December 30, 2022.

6. Petitioner indicates that the need for that extension was related to delays in the approval of the site plan submissions with the City of West Palm Beach and unfortunate delays by the development Architect and consulting engineers in developing the construction document set. Accordingly, additional time was needed to secure final site plan approval and to secure the GC Contract.

7. Because Petitioner was previously granted a six-month extension of the firm loan commitment deadline, the requested extension may not be granted without a waiver of the Rule.

8. Petitioner states that it is requesting an additional extension of the firm loan commitment deadline from December 30, 2022, to June 30, 2023, to allow sufficient time to finalize underwriting. The credit underwriting report cannot be presented prior to the December 30, 2022, deadline (i.e., at the Board's December 9, 2022, meeting). Since the one extension permitted by the Rule has already been approved, a rule waiver is required to request an additional extension.

9. Petitioner alleges that the need for the requested extension was created by circumstances beyond Petitioner's control. Specifically, inflation and sky-rocketing construction costs required Petitioner to secure $2.3 in gap funding from Palm Beach County. While this funding was approved by the Palm Beach County Department of Housing & Economic Sustainability, it will not be considered by the Palm Beach County Commission until January 2023 - after the firm loan commitment deadline. Accordingly, Petitioner requests this waiver.

10. Petitioner argues that the requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive

SAIL funding in the RF A, or Florida Housing. A denial of the Petition, however, would: (a) result in substantial economic hardship to Petitioner, as it has incurred significant costs to date in an effort to ensure that the Development proceeds to completion; (b) deprive Palm Beach County of essential affordable rental units set aside for families, who desperately need the housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness.

11. Petitioner further argues that if the Petition is not granted, the preliminary commitment will be withdrawn and the Development will not be constructed. Palm Beach County will have fewer opportunities for affordable housing and economic development as a result. The requested waiver will ensure the availability of SAIL and housing credit financing which will otherwise be lost as a consequence of the delays described herein.

12. Section 120.542(2), Florida Statutes, provides in pertinent part:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

13. The Board finds that granting the requested waiver will not impact other participants in funding programs administered by Florida Housing, nor will it detrimentally impact Florida Housing.

14. The Board also finds that Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control and that it would suffer a substantial hardship if the waiver is not granted.

15. The Board further finds that Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state," would still be achieved if the waiver is granted. §420.5099, Fla. Stat.

IT IS THEREFORE ORDERED that Petitioner's request for a waiver of Rule 67-48.0072(21)(b), Florida Administrative Code (6/23/20), is hereby **GRANTED** to allow Petitioner to extend its firm loan commitment issuance deadline from December 30, 2022, to June 30, 2023.

DONE and ORDERED this 9th day of December 2022.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

Hugh R. Brown, General Counsel
Marisa Button, Managing Director of Multifamily Programs
Florida Housing Finance Corporation
Hugh.Brown@floridahousing.org
Marisa.Button@floridahousing.org

Brian J. McDonough, Esq.
bmcdonough@stearnsweaver.com

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
Joint.admin.procedures@leg.state.fl.us

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.