STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In re: Naranja Lakes Housing Partners, LP

Petitioner.
_____/

FHFC File No.: 2021-051VW
Application No. 2020-117C (RFA2019-112)

PETITION FOR WAIVER OF PROVISION OF RULE 67-48.002(96), FLORIDA ADMINISTRATIVE CODE

Petitioner, Naranja Lakes Housing Partners, LP, ("Petitioner"), hereby submits this Petition to the Florida Housing Finance Corporation ("FHFC") for a waiver of Rule 67-48.002(96), Florida Administrative Code, and the restriction in the 2019 Housing Credit Qualified Allocation Plan, which is incorporated by reference in Rule 67-48.002(96), restricting when a recipient of federal low income housing tax credits ("housing credits") can exchange previously issued housing credits for current year housing credits. Petitioner seeks to exchange 2020 Housing Credits for 2021 or 2022 Housing Credits. Petitioner also seeks to extend its "placed in service" deadline (and other development deadlines). In support of this waiver request, Petitioner states as follows:

Introduction

1. Pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code, Petitioner requests a waiver of a provision of the 2019 Qualified Allocation Plan, incorporated by reference in Rule 67-48.002(96), Florida Administrative Code, in order to allow Petitioner to immediately return its 2020 Housing Credits in exchange for an allocation of 2021 or 2022 housing credits.

FLORIDA HOUSING FINANCE CORPORATION
2021 AUG 11 AM 10:17
RECEIVED

THE PETITIONER

2. The name, address, telephone, and fax numbers for Petitioner and its qualified representative are:

Robert G. Hoskins
800 N. Point Parkway, Suite 125
Alpharetta, GA30005
Telephone: 770-552-8070
Fax: 770-552-8748

3. The name, address, telephone number, fax number and email of Petitioner's counsel is:

J. Stephen Menton
Tana D. Storey, Esq.
Rutledge Ecenia, P.A.
119 S. Monroe Street, Suite 202
Tallahassee. Florida 32301
Telephone: 850-681-6788
Fax: 850-681-6515
Email: smenton@rutledge-ecenia.com
tana@rutledge-ecenia.com

Type of Waiver

4. The waiver being sought is permanent in nature.

THE DEVELOPMENT AND FUNDING

5. On or about October 19, 2019, Petitioner submitted its Application No. 2020-117C (the "Application") in response to RFA 2019-112 entitled Housing Credit Financing for Affordable Housing Developments Located in Miami-Dade County (the "RFA") requesting an allocation of tax credits to assist in the construction of a 140 unit development located in Miami-Dade County, Florida, known as the Residences at Naranja Lakes (the "Development").

6. After review and scoring of the Application by Florida Housing staff, Florida Housing's Board approved an annual allocation of Housing Credits in the amount of $2,582,000.

The total projected development costs in the Application were $40,919,741 of which $25,301,070 was projected to be provided by Housing Credit Equity Proceeds. The other proposed sources of permanent financing were a $13,300,000 million loan from a Regulated Mortgage Lender; and $2,500,000 in deferred developer fee.

7. After the award of tax credit funding, Naranja promptly proceeded with the Development.

8. The Carryover Allocation Agreement entered into by Florida Housing and Petitioner on October 2, 2020 required Petitioner to meet the following project deadlines:

a. Demonstration of site control by March 31, 2021.

b. Incurring at least 10% of the reasonably expected basis of the Development by March 31, 2021. [extended to September 30, 2021]

c. Commencement of construction by June 30, 2021. [extended to September 30, 2021]

d. Finalize credit underwriting by June 30, 2021. [extended to September 30, 2021]

e. Close the tax credit partnership by June 30, 2021. [extended to September 30, 2021]

f. Place all qualified buildings in service by December 31, 2022.

9. The spread of the COVID-19 pandemic in the Spring of 2020 significantly impacted the progress of the Development. On March 1, 2020, the Governor entered Executive Order No. 20-51 directing the declaration of a public health emergency pursuant to Section 381.0011(9), Fla. Stat. The public health emergency significantly disrupted many governmental and business operations. Petitioner has diligently continued with development during these

difficult times, but, as detailed below, has unavoidably encountered delays which have significantly impacted the construction timeline. The resulting uncertainty has prompted the filing of this Petition.

10. While Petitioner had promptly initiated Development efforts, matters beyond its control caused unavoidable delays. Unfortunately, COVID had major impacts on Miami-Dade County's Building Department, which has only recently reopened. Miami-Dade County had high COVID infection rates leading to staffing issues and disruption in government services. In the wake of COVID and its aftermath, construction reviews and approval of submissions in Miami-Dade were greatly delayed. The Miami-Dade County Building Department did not operate on a typical schedule and was not conducting plan reviews on its usual timeframes. For a significant period of time, no in-person meetings with the County were allowed and it was not until June 7, 2021 that the County was open for in-person meetings, but, even then, only one Monday a month. As a result, work on the Development was significantly hindered for months.

11. In addition, the Developer had to address unanticipated comments and concerns from the County's Department of Environmental Management ("DERM") during a time when County operations were not functioning on a normal schedule.

12. Because of the pandemic as well as the unexpected extra work required to meet the DERM concerns, the Development has fallen well behind the initial expected construction and completion dates.

13. The following bullet points summarize several of the construction efforts and events that have led to delays on this project:

- March 2020 – Architect, civil engineer and consultants were contracted to start site plan process.
- March-May 2020 - Pre-development activities were well underway (boundary survey, tree survey, Phase I etc.).

- May 2020 – administrative site plan approval "ASPR" submitted to Miami-Dade County.
- June 2020 – comments returned from the County's Department of Environmental Management ("DERM") – the comments indicated for the first time that the property might have ecological sensitive coverings ("Pine Rocklands"). The site was not listed on the Forestry Registry or by Fish and Wildlife as an area of concern.
- Because of the DERM issues, site planning had to be put on hold until the DERM comments were resolved. At this point in time, the Developer had no idea of the size of the preservation area that would be required to resolve the DERM comments and/or whether this issue would necessitate the site plan being completely revised. Ultimately, as described below, multiple revisions to the site plan were made in order to obtain DERM approval of the northwest corner ("NWC") of the site being preserved as a way to resolve the unanticipated comments from DERM.
- July/Aug 2020 – environmental assessment consultant had to be hired to analyze impact of the Pine Rocklands area and quality.
- July 2020 – Developer reached out to Florida Fish and Wildlife to notify them of the site situation brought up by DERM.
- Aug/Sep 2020 – Ecological Assessment Report was submitted to Miami-Dade DERM and Fish and Wildlife for review. The Developer walked site with its consultants and DERM reps to determine the area for preservation. It was agreed that the NWC of the property would be preserved since it had the highest quality of Pine Rocklands.
- Sept 2020 – Fish and Wildlife was provided a copy of the DERM approved Ecological Report and latest site plan which separated the NWC of the property for preservation purposes.
- Aug/Sept 2020 – owner proceeded with site planning having agreed to a preservation area with DERM while waiting on Fish and Wildlife response. The site plan revisions and efforts to obtain approval from DERM and Fish and Wildlife during a period when COVID was limiting governmental operations resulted in unexpected delays in development.
- Nov 2020 – Fish and Wildlife approved the preservation area.
- Jan 2021 – Platting - Once the site plan was finalized, the Plat application was submitted. The Plat was approved, but the project was still waiting on final DERM preservation comments.
- Dec 2020 – June 2021 Building permit plans were submitted to Miami-Dade County for review. Due to COVID, Miami-Dade County Building Department staff were working remotely. All submissions had to be made through uploads via their electronic system. It was a very unjust and challenging process. In several instances electronically submitted material was not appropriately routed for review. Until June 7, 2021, no in-person meetings with County reviewers were allowed (even now, the Miami-Dade County staff will only conduct in person meetings, once a week, on Mondays). A Zoom meeting with all County reviewers and the Developer's team of professionals was held on June 16, 2021. The development had been getting the same comments back on the plans, even though it had submitted revisions in Mar/Apr/May. Unfortunately, it turns out that the reviewers were not receiving the revised files due to technical issues with the County's website. All comments have since been discussed and amendments are being made.
- March 2021 – applicant submitted a Tree Removal Permit to DERM and Zoning. The permit has not yet been approved and there are outstanding comments from both departments. Final language for the preservation area is being discussed. The Applicant

is willing to and has been working with DERM to accommodate this unexpected preservation situation. The property is not listed on the National Forestry Register, so specific preservation language is being prepared by DERM. The Applicant has yet to receive a draft of such language.

- May 2021 – DERM decided that it wanted changes to the preservation area. The Development accommodated this request, which required architecture, landscape and civil plan changes. The changes have been completed.
- June 2021 – New Miami-Dade County Zoning plan review comment – although the zoning department had the site plan since 2020 as referenced above, a new comment was received the last week of June 2021 advising that the County no longer wanted the landscape requirement that is required by code along the frontage of the property. The code specified requirements had been in the plans since day one. Now the County wants to modify the site plan from the code specified requirement. This change effects Architectural and Civil drawings and other submittals that have already been approved, but now require resubmission.

14. While some stability has recently been restored to the County planning process as vaccines have become available and businesses have begun trying to resume normal operations, the situation is dynamic and unpredictable, so some delays continue.

15. The Developer has worked diligently to make as much progress as possible while dealing with the issues detailed above. Nonetheless delays were unavoidably incurred and extensions are necessary due to the issues described above which have been exacerbated by the impacts of COVID. The Carryover Allocation Agreement entered into by Petitioner and Florida Housing allows for extension of the deadlines.

16. The Developer has requested and paid for extensions of time to complete the Credit Underwriting Report, to close the Tax Credit Partnership and to file the Notice of Commencement, which are now currently due September 30, 2021.

17. A revised construction timeline is attached hereto which demonstrates that 18 to 21 months will be required before the final Certificate of Occupancy for the planned 64 story high-rise can issue. The projected construction loan closing date for the Development is still uncertain but October 2021 now appears to be the earliest it can occur. Due to the aforementioned events,

which were entirely out of Naranja's control, it is clear the Development will not meet the placed in service date of December 31, 2022.

18. Due to market demands from condo and other market rate developers who were approaching the land seller with lucrative offers, the Developer has closed on the land to secure the site for its intended use as an affordable housing development using the awarded tax credits. Because it has become clear that the Development will not be completed by the placed in-service date set forth in the original carry over Allocation Agreement, the credit swap requested through this Petition is necessary to resolve the uncertainty created by the unanticipated delays. The requested credit swap will enable the Development to proceed on a realistic schedule that has necessarily been adjusted due to the issues discussed above.

THE RULES FROM WHICH RELIEF IS REQUESTED

19. Section 420.5099, Florida Statutes, designates Florida Housing as the housing credit agency, pursuant to the Internal Revenue Code, and assigns Florida Housing the responsibility to allocate and distribute low-income housing tax credits. The statute also instructs Florida Housing to adopt procedures to ensure the maximum use of housing credits to encourage the development of low-income housing. In furtherance of this statutory purpose, Florida Housing has established a competitive Request for Application process to allocate various forms of funding to satisfy specific geographic and demographic affordable housing goals.

20. The Housing Credit program is governed in part by a Qualified Allocation Plan (QAP), required by federal law, which sets forth the selection criteria and preferences of Florida Housing for developments which will receive Housing Credits. Florida Housing adopts a QAP annually and incorporates it by reference in Florida Housing Rule 67-48.002(96), Florida Administrative Code.

21. Rule 67-48.002(96), Fla. Admin Code, provides:

> (96) "QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2019 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the state of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits. The QAP is available on the Corporation's Website under the Mutifamily Programs link or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or from http://www.flrules.org/Gateway/reference.asp?No=Ref-10769

22. The QAP in effect for RFA 2019-112 was the 2019 QAP. The QAP contains specific provisions governing the distribution and return of Housing Credits.

23. Paragraph II.K. of the 2019 QAP allows an applicant to return its allocation of Housing Credits if it is apparent that the Development will not be placed in service by the date required and such failure is due to circumstances beyond the Applicant's control.[1] If Florida

---

[1] Section II.K. of the Qualified Allocation Plan ("QAP"), as adopted by reference in Rule 67-48.002(96), Fla. Admin. Code, provides:

> K. Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required pursuant to Section 42 of the IRC, or it is apparent that a Development will not be placed in service by the date required pursuant to Section 42 of the IRC, and such failure is due to circumstances beyond the Applicant's control, and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service pursuant to Section 42 of the IRC, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may issue a Carryover Allocation Agreement allocating such Housing Credits to the Applicant for either the current year or the year after the year in which the Development was otherwise required to be placed in service pursuant to Section 42 of the IRC, provided the following conditions have been met: (i) the sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant's control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, that the Development in all respects,

Housing agrees that the delay was caused by circumstances beyond the Applicant's control and certain criteria are met, an applicant can return the awarded tax credits and Florida Housing can allocate Housing Credits to the Applicant for either the current year or the year after the Development was otherwise required to be placed in service. According to Paragraph 5.F. of Exhibit C "Additional Information" to RFA 2019-112, found on page 104 of 131 of the RFA, the approval of a request for a return of Housing Credit allocation and receipt of a new Housing Credit allocation requires payment of a $15,000 fee. Naranja is prepared to make that payment.

24. Rule 67-48.002(96), Florida Administrative Code, and the 2019 QAP incorporated therein, implement Section 420.5099, Florida Statutes.

JUSTIFICATION FOR REQUESTED WAIVER

25. Pursuant to Section 120.542(1), Florida Statutes, and Rule 28-104.002, Florida Administrative Code, Florida Housing has the authority to grant waivers to its rule requirements when strict application of its rules would lead to unreasonable, unfair and or unintended consequences in particular instances. Waivers 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 or violate the principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other mean. See §120.542(2), Fla. Stat.

26. For the reasons set forth herein, Petitioner meets the standards for a Rule waiver.

Substantial Hardship

27. Petitioner applied for the housing credits prior to the onslaught of the COVID Pandemic and without any knowledge of the additional requirements that would be placed on the

---

except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs. . .

project due to the concerns raised by DERM. The COVID pandemic significantly impacted the plan review process by Miami-Dade County for this high-rise development, such that the placed-in-service deadline of December 31, 2022 is not possible. Unforeseen circumstances beyond Petitioner's control have unavoidably resulted in delays that have rendered the placed in service date unachievable. Waiting until the final quarter of 2022 to request an exchange of credits when it is clear that the Development cannot meet the December 31, 2022 "placed in service" deadline creates unnecessary uncertainty for the investors involved in the Development financing structure. Petitioner's investors are reluctant to close the tax credit partnership with that uncertainty lingering.

28. Petitioner seeks a waiver of the provision of the 2019 QAP regarding the timing for requesting an exchange of housing credits so that it can immediately return its 2020 Housing Credits in exchange for an allocation of 2021or 2022 Housing Credits.

29. Petitioner will suffer substantial economic hardship if the 2019 QAP provision restricting a housing credit exchange to the last quarter of the original "placed in service" year is strictly applied. Petitioner has expended substantial sums of money on the Development in order to obtain site control, develop a site plan, make revisions to the site plan, obtain a building permit, prepare for credit underwriting approval, prepare for construction loan closing, and prepare for commencement of construction. The costs incurred to date include well over $1,000,000 towards the site purchase contract, third party professional fees, local government fees, and Florida Housing fees.

30. Once an exchange of 2020 Housing Credits for 2021 or 2022 Housing Credits occurs, the relevant deadlines and placed in service date will be controlled by the 2021 or 2022 housing credit issuance year. Extension of the placed-in-service deadline and exchange of the

2020 credits for 2021 or 2022 credits will remove the uncertainty for the investors and reduce the undue financial burden on Petitioner, who has already expended in excess of $1 million on the Development.

31. Florida Housing has previously granted similar waiver requests when it is clear the original development schedule is unattainable. An exchange of the previously allocated credits for an award of current or future year credits will allow compliance with the federal placed in service requirements.

Statutory Purpose Served

32. Section 420.5099(2), requires the adoption of allocation procedures that "will ensure the maximum use of available tax credits in order to encourage development of low-income housing in the state." Florida Housing's statutory purpose of financing the development of affordable housing for low income and very low income persons will still be served by allowing Petitioner to exchange the Housing Credits.

33. The purpose for the request is to accommodate a revised construction schedule. The original construction schedule was delayed due to circumstances beyond Petitioner's control, including delays caused by local government responses to the impacts of the COVID 19 Pandemic. The requested waiver is necessary to ensure that the development can proceed and thereby provide essential affordable housing to the citizens of Miami-Dade County.

Precedent for Waiver

34. On at least two prior occasions, Florida Housing has waived the QAP provision limiting exchanges of Housing Credits to occur only in the fourth quarter of the "placed in service" year, and to allow the exchange of credits to occur earlier in the development process when circumstances warrant. See *In Re: Arbours of Tumblin Creek, LLC*, FHFC Case No. 2015-034VW

(Board approval obtained October 30, 2015) and *In Re: Oakland Preserve, LLC*, FHFC Case No. 2015-035VW (Board approval obtained October 30, 2015). In both of those other cases the petitioners asserted delays beyond the Developer's control. Similar to the present circumstances facing the Developer here. In those prior instances, the delays were due to litigation in the RFA process, local development approval delays, and investor partner's concern over uncertainty of waiting until the last quarter of the "placed in service" year to obtain approval for an exchange of prior issued credits for current year credits.

CONCLUSION

35. Controlling statutes and Florida Housing's Rules are designed to allow flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances would lead to unreasonable, unfair or unintended results. Waivers should be granted when the applicant subject to the rule demonstrates that strict application would: (a) create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. See §120.542(2), Fla. Stat.

36. Strict compliance with QAP would require Petitioner to wait until the fourth quarter of 2022 to return its housing credit allocation, and then hope that FHFC would exchange these credits for 2023 housing credits. This would put financing of the project at risk.

37. The requested waiver will further the legislative goal of providing affordable housing despite the delays encountered due to unforeseen circumstances. Granting the waiver will not adversely affect the Development or Florida Housing. The waiver will benefit the citizens of Miami-Dade County and further the statutory intent of providing safe, sanitary, and affordable housing units to those in need. Denial of the requested waiver would result in a substantial hardship for the Petitioner.

38. If Florida Housing has questions or requires additional information, Petitioner is available to provide any information necessary for consideration of this Petition.

WHEREFORE, Petitioner, Naranja Lakes Housing Partners, LP, respectfully requests Florida Housing Finance Corporation to provide the following relief:

A. Grant the Petition for Waiver and all the relief requested herein;

B. Enter an order waiving of the requirements of Rule 67-48.002(96), Florida Administrative Code, and the 2019 Qualified Allocation Plan incorporated by reference therein, to allow Petitioner to return its previously awarded 2020 Housing Credits for an immediate allocation of 2021 or 2022 Housing Credits now instead of waiting until the last quarter of 2022, the current "placed in service" year;

C. Grant such further relief as may be deemed appropriate.

Respectfully submitted this 11th day of August, 2021.

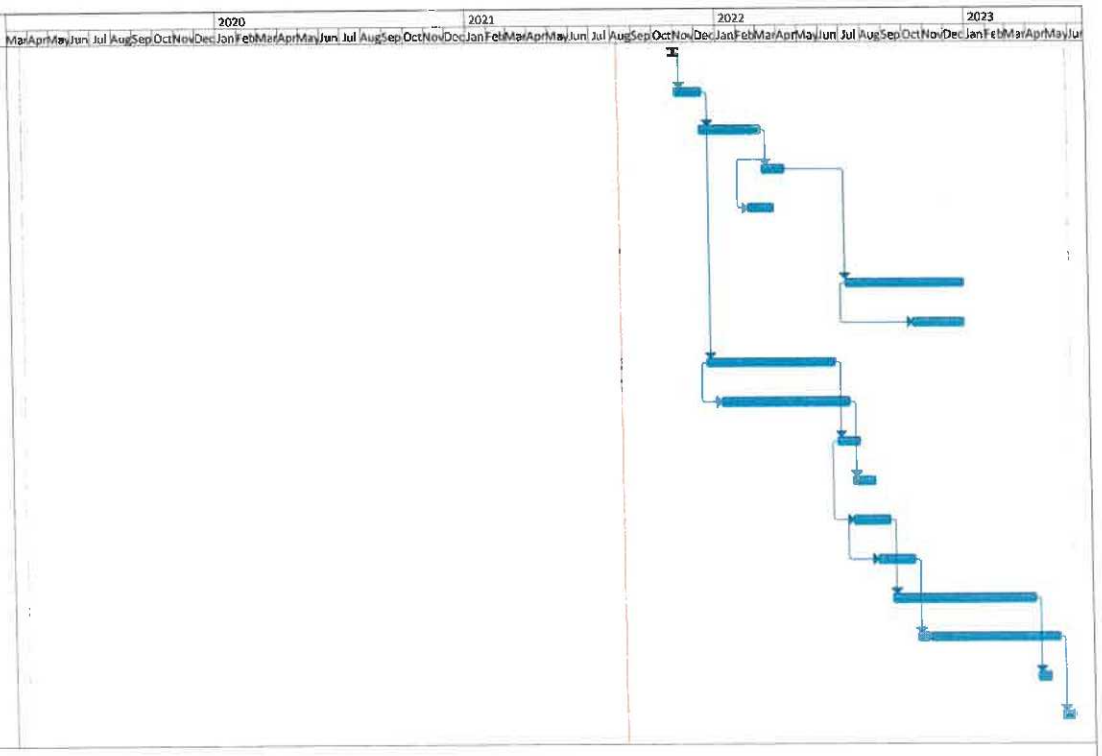
/s/J. Stephen Menton
J. Stephen Menton
Fla. Bar No. 331181
Tana D. Storey
Fla. Bar No. 514772
Rutledge Ecenia, P.A.
119 South Monroe Street, Suite 202
Tallahassee, Florida 32301
(850) 681-6788
smenton@rutledge-ecenia.com
tana@rutledge-ecenia.com
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this original of this Petition has been filed with Kate Flemming, Agency Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000 Tallahassee, Florida 32301 and that a true and correct copy has been provided, via hand delivery, to the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, and an electronic copy provided, via email, to Hugh Brown, General Counsel, Florida Housing Finance Corporation (Hugh.Brown@floridahousing.org) and Betty Zachem, Assistant General Counsel, Florida Housing Finance Corporation (Betty.Zachem@floridahousing.org) this 11th day of August, 2021.

/s/J. Stephen Menton
Attorney

ID	Task Mode	Task Name	Duration	Start	Finish	Predecessors	Resource Names
1		Notice of Commencement	1 day	Sun 10/31/21	Sun 10/31/21		
2		Clearing and Grading	30 days	Mon 11/1/21	Fri 12/10/21	1	
3		Underground Utilities	65 days	Mon 12/6/21	Fri 3/4/22	2FS-5 days	
4		Asphalt Paving Base	25 days	Mon 3/7/22	Fri 4/8/22	3	
5		Plumbing/Electrical Underground	28 days	Mon 2/14/22	Wed 3/23/22	3FS-15 days	
6		Leasing Office	125 days	Mon 7/4/22	Fri 12/23/22	4FS+60 days	
7		Pool	55 days	Mon 10/10/22	Fri 12/23/22	6SS+70 days	
8		Building A Top Out	135 days	Mon 12/13/21	Fri 6/17/22	2	
9		Building B Top Out	135 days	Mon 1/3/22	Fri 7/8/22	8SS+15 days	
10		Building A Roof and Dry In	25 days	Mon 6/20/22	Fri 7/22/22	8	
11		Building B Roof and Dry In	25 days	Mon 7/11/22	Fri 8/12/22	9	
12		Building A Framing/Drywal	40 days	Mon 7/11/22	Fri 9/2/22	10SS+15 days	
13		Building B Framing/Drywal	40 days	Mon 8/15/22	Fri 10/7/22	12SS+25 days	
14		Building A Interior Finishes	150 days	Mon 9/5/22	Fri 3/31/23	12	
15		Building B Interior Finishes	150 days	Mon 10/10/22	Fri 5/5/23	13	
16		Building A - CO	15 days	Mon 4/3/23	Fri 4/21/23	14	
17		Building B - CO	15 days	Mon 5/8/23	Fri 5/26/23	15	



Project: Marathon & Crystal
Date: Tue 8/10/21

Task
Split
Milestone
Summary
Project Summary
External Tasks
External Milestone
Inactive Task
Inactive Milestone
Inactive Summary
Manual Task
Duration-only
Manual Summary Rollup
Manual Summary
Start-only
Finish-only
Deadline
Progress