STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2022-063VW

CP Renaissance, LLC,
a Florida limited liability company,

Petitioner,

FHFC CASE NO. _____
Application No. 2021-219SN
RFA 2020-205

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.0072(21)(b), F.A.C. (6/23/20)

Pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code ("F.A.C."), Petitioner CP Renaissance, LLC, a Florida limited liability company, submits this Petition to Respondent Florida Housing Finance Corporation ("Florida Housing") for a waiver of Rule 67-48.0072 (21)(b), F.A.C. (the "Rule") in effect at the time the Petitioner submitted its application in response to Florida Housing's Request for Applications 2020-205 SAIL Financing of Affordable Multifamily Housing Developments to be Used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits (the "RFA"). Petitioner seeks a firm loan commitment extension for Application 2021-219SN (the "Application"). Per Rule 67-48.0072 (21)(a), F.A.C., Florida Housing "shall issue a firm loan commitment after approval of the Credit Underwriter's recommendation for funding by the Board." However, Petitioner experienced significant delays beyond its control and anticipates that the credit underwriting report cannot be finalized until after the present December 30, 2022 firm loan issuance commitment deadline. Thus, Petitioner seeks an additional six-month

extension of the firm loan commitment deadline to June 30, 2023. In support of its Petition, the Petitioner states as follows:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for Petitioner and its qualified representative are:

Terri Murray
Neighborhood Renaissance, Inc.
510 24th Street
West Palm Beach, FL 33407
Telephone: (561)832-6776 ext 102
Fax: N/A
Email: tmurray@neighborhoodrenaissance.org

2. The name, address, telephone and facsimile numbers, and email address for Petitioner's attorney are:

Brian J. McDonough
Stearns Weaver Miller Weissler Alhadeff & Sitterson
150 West Flagler Street
Suite 2200
Miami, FL 33130
bmcdonough@stearnsweaver.com
Tel: (305) 789-3350
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Bridget Smitha
Stearns Weaver Miller Weissler Alhadeff & Sitterson
106 East College Avenue, Suite 700
Tallahassee, FL 32301
bsmitha@stearnsweaver.com
Direct: 850-329-4852
Fax: 850-329-4844

B. THE DEVELOPMENT AND ITS FINANCING

3. The following information pertains to the development underlying Petitioner's Application (the "Development"):

- Development Name: Coleman Park Renaissance

- Development Address(s): (Site "A"): 2212 N Tamarind Ave., 918 22ND St.; 933 21ST St.; (Site "D"): 1004 19TH St.; 1977 N Tamarind Ave.; 1945 N Tamarind Ave.; (Site "F"): 1980 N Tamarind Ave.; 1940 N Tamarind Ave.; 910 19TH St.; (Site "G"): 1002 Grant St.; 1001 State St., West Palm Beach, FL 33407

- County: Palm Beach
- Developers: NRI Development Corp., Neighborhood Renaissance, Inc, Stone Soup Development, Inc.
- Number of Units: 43 newly constructed units
- Type: Garden Apartments
- Set Asides: 27.90% @ 30% AMI (SAIL, ELI & 4% HC) 23.26% @ 60% AMI (SAIL & 4% HC) 48.84% @ 70% AMI (SAIL & 4% HC) 11.90% @ 22% AMI (NHTF)
- Demographics: Family
- Funding: $2,940,000 State Apartment Incentive Loan (SAIL) $571,300 Extremely Low Income (ELI) $1,196,493 National Housing Trust Fund (NHTF) $418,853 Housing Credits (4% HC)

4. 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. Per the Rule, Petitioners were allowed to request – and did request – one six-month extension to secure a firm loan commitment. This request was granted by Florida Housing Board on June 17, 2022, thereby extending the deadline to December 30, 2022.

5. 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.

6. Petitioner paid the extension fee required by the Rule.

C. <u>WAIVER IS PERMANENT</u>

7. The requested waiver is permanent in nature.

D. RULE FROM WHICH WAIVER IS SOUGHT

8. Petitioner requests a waiver from the Rule, which 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.

See Rule 67-48.072(21)(b), F.A.C. (6/23/20)

E. STATUTES IMPLEMENTED BY THE RULE

9. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"),[1] Section 420.5087 (State Apartment Incentive Loan Program); Section 420.5089 (HOME Investment Partnership Program and HOME Investment Partnership Fund); and Section 420.5099 (allocation of the low-income housing tax credit).

[1] The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes.

F. JUSTIFICATION FOR THE REQUESTED WAIVER

10. Under Section 120.542(l), Fla. Stat., and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Waivers must be granted when: (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship 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. § 120.542(2), Fla. Stat.

11. 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.

12. Petitioner 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 Florida Housing 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.

13. 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 is in need of a Rule waiver.

14. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive SAIL funding in the RFA, 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[2]. *See* § 120.542(2), F.S.

15. If this 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.

16. As discussed herein, Petitioner is requesting a second extension of the deadline for issuance of the firm loan commitment from December 30, 2022 to June 30, 2023, which request requires a waiver of the Rule.

17. 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.

18. The foregoing facts demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver.

19. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. As demonstrated

[2]"Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. "Principles of Fairness" are violated when 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. Section 120.542(2), Florida Statutes.

above, the requested waiver serves the purposes of Section 420.5087 and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. Further, by granting the requested waiver, Florida Housing would recognize principles of fundamental fairness in the development of affordable rental housing.

20. Should Florida Housing require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

G. ACTION REQUESTED

21. Petitioner requests the following:

a. That Florida Housing grant Petitioner a waiver from Rule 67-48.0072(21)(b), Florida Administrative Code, for an additional extension of the deadline for issuance of the firm loan commitment from December 30, 2022 to June 30, 2023;

b. That Florida Housing grant the Petition and all the relief requested therein; and

c. That Florida Housing grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, P.A.
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Miami, Florida 33131
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/s Brian J. McDonough
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The original Petition is being served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, CorporationClerk@floridahousing.org, with a copy served by U.S. Mail to the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 21st day of November, 2022.

/s *Brian J. McDonough*
Brian J. McDonough, Esq.