STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. _____

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FLORIDA HOUSING
FINANCE CORPORATION

CROSS CREEK GARDENS AT QUINCY, LLC, a Florida limited liability company,

Petitioner,

FHFC CASE NO. 2023-069VW
Application No. 2022-247H
RFA 2021-206

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.0072(21)(b), F.A.C. (05/18/2021) AND EXHIBIT D, § 6, OF THE RFA

Pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code ("F.A.C."), Petitioner Cross Creek Gardens at Quincy, LLC, 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 2022-247H (the "Application") in response to Florida Housing's Request for Applications 2021-206 HOME Financing for the Construction of Small, Rural Developments (the "RFA"). Under the Rule, a firm loan commitment must be issued within 12 months of Petitioner's acceptance to enter credit underwriting. Additionally, under Exhibit D, § 6, of the RFA, Petitioner must complete the credit underwriting process, including Board approval of the credit underwriting report, and execute a HOME written agreement within twelve months of the date of the invitation to enter into credit underwriting. Because Petitioner experienced significant delays beyond its control, Petitioner seeks a Rule and RFA waiver so that it may

obtain another 6-month extension of this credit underwriting and firm loan commitment deadline. 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
Phone: (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
Fax: (305) 789-3395

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: Cross Creek Gardens at Quincy
- Development Address: South Springs Road, approximately 1,500 feet west of the intersection of Pat Thomas Parkway and South Springs Road
- County: Gadsden

- Developer: ACRUVA Community Developers, LLC; Neighborhood Renaissance, Inc.
- Number of Units: 34[1] Enhanced Structural Systems Construction units
- Type: New Construction/Garden Apartments
- Set Asides: 20% at 50% AMI; 80% at 60% AMI
- Demographics: Family
- Funding: $6,000,000 HOME

4. On March 31, 2022, Petitioner accepted an invitation to enter credit underwriting dated March 29, 2022. Thus, Petitioner had a deadline of March 31, 2023 to complete the credit underwriting and firm loan commitment process. Although the Rule provides that the firm loan commitment must be issued within twelve months of acceptance to enter credit underwriting, it also provides that Petitioner may request one extension of up to six months. Petitioner exercised this right and Florida Housing's Board approved the extension request on March 10, 2023 to extend the deadline to October 2, 2023. Petitioner paid the extension fee required by the Rule.

5. Petitioner now seeks an additional 6-month extension to and including April 2, 2024.

C. WAIVER IS PERMANENT

6. The requested waiver is permanent in nature.

D. RULE AND RFA PROVISIONS FROM WHICH WAIVER IS SOUGHT

7. 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. (05/18/2021).

8. Petitioner also seeks a waiver of the RFA requirement that Petitioner:

> execute a HOME written agreement within twelve (12) months of the date of the invitation to enter into credit underwriting. To meet this requirement, all Applicants that are invited to enter credit underwriting will be expected to complete the credit underwriting process and receive Board approval of the credit underwriting report prior to that date

See RFA, p. 79, Exhibit D at ¶ 6; *see also* RFA, p. 2, § 1 ("Applicants that are selected to receive funding will be invited to enter credit underwriting and will be expected to complete the credit underwriting process, including Board approval of the credit underwriting report, and execute a HOME written agreement within twelve months of the date of the invitation to enter into credit underwriting").

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[1] On June 1, 2023, Petitioner submitted a written request to Florida Housing's Managing Director of Homeowner Programs to increase the total number of units to 36 pursuant to Rule 67-48.004(3)(i), F.A.C. This request is currently pending Florida Housing approval.

E. STATUTES IMPLEMENTED BY THE RULE

9. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"),[2] 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).

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 and RFA.

12. Petitioner is requesting an extension of the credit underwriting and firm loan commitment process deadline from October 2, 2023 to April 2, 2024.

13. The need for the requested extension was created by circumstances beyond Petitioner's control. Specifically, the construction costs for the Development's preliminary design, as estimated by the General Contractor, identified a funding gap created by inflation and substantially increased construction costs. Because the Development was not eligible for CHIRP

funding, Petitioner restructured the Development to add 4% low-income housing tax credits with tax-exempt bonds and applied for viability loan funding to close the gap. Identifying and working to secure these additional funding sources lengthened the development timeline. While Petitioner has worked diligently on this structure, it has taken more time than anticipated.

14. These delays and interruption of the development timeline prevent finalization of the Credit Underwriting Report prior to October 2, 2023. Rule 67-48.0072(21)(a), F.A.C., prohibits Florida Housing from issuing a firm loan commitment until after approval of the Credit Underwriter's recommendation for funding by the Board. Thus, Petitioner does not believe it will be able to complete the credit underwriting and firm loan commitment process before the October 2, 2023 deadline.

15. The requested waiver will not prejudice Petitioner, the Development, any other party that applied to receive HOME financing 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 Gadsden County of essential affordable rental units set aside for families, who desperately need that housing, as well as other amenities and services that the Development will offer; and (c) violate principles of fairness[3]. *See* § 120.542(2), F.S.

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

[3]"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.

16. If this Petition is not granted, the preliminary commitment will be withdrawn and the Development will not be constructed. As a result, Gadsden County will have less affordable housing units available for families in need, and the related economic development will not occur. Granting the waiver will ensure the availability of HOME financing that will otherwise be lost as a result of the delays.

17. As discussed herein, Petitioner is requesting a second extension of the deadline for completion of the credit underwriting and firm loan commitment process from October 2, 2023 to April 2, 2024, which request requires a waiver of the Rule and RFA.

18. The requested waiver will ensure the availability of HOME financing which will otherwise be lost as a consequence of the delays described herein.

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

20. 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 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.

21. 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

22. Petitioner requests the following:

a. That Florida Housing grant Petitioner a waiver from the requirements of Rule 67-48.0072(21)(b), Florida Administrative Code, and Exhibit D, § 6, of the RFA, and extend the deadline for completing the credit underwriting and firm loan commitment process from October 2, 2023 to April 2, 2024;

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 8th day of September, 2023.

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