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FLORIDA HOUSING
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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. _____

NARANJA GRAND II, LLC, a Florida limited liability company,

Petitioner,

FHFC CASE NO. 2023-063VW
Application No. 2022-201BSN / 2021-528C
RFA 2021-205

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.0072(21)(b), F.A.C. (05/18/2021)

Pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code ("F.A.C."), Petitioner Naranja Grand II, 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 2022-201BSN (the "Application") in response to Florida Housing's Request for Applications 2021-205 SAIL Financing of Affordable Multifamily Housing Developments To Be Used In Conjunction With Tax-Exempt Bonds And Non-Competitive Housing Credits (the "RFA"). Under the Rule, a firm loan commitment must be issued within 12 months of Petitioner's acceptance to enter credit underwriting. Because Petitioner experienced significant delays beyond its control, Petitioner anticipates that the credit underwriting report cannot be approved until the Florida Housing Board meeting on September 8, 2023, which is after the firm loan commitment deadline. Petitioner therefore seeks a Rule waiver so that it may obtain another 6-month extension of the 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:

Matthew Rieger
Naranja Grand II, LLC
3225 Aviation Ave, 6th Floor
Coconut Grove, FL 33133
Phone: (305)860-8188
Fax: N/A
Email: mattr@htgf.com

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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Direct: 850-329-4852
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B. THE DEVELOPMENT AND ITS FINANCING

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

- Development Name: Naranja Grand II
- Development Address: Waldin Dr., at the SW corner of the intersection of Waldin Dr. and SW 147th Ave.
- County: Miami-Dade
- Developer: Naranja Grand II Developer, LLC
- Number of Units: 200 new construction

- Type: High Rise
- Set Asides: 5% at or below 30% AMI; 5% at or below 40% AMI; 10% at or below 50% AMI; 45% at or below 60% AMI; and 35% at or below 70% AMI
- Demographics: Family
- Funding: State Apartment Incentive Loan ("SAIL") $5,000,000, Extremely Low Income ("ELI") $600,000, $1,546,000 Housing Credits, and NHTF $1,546,000

4. On March 3, 2022, Petitioner accepted an invitation to enter credit underwriting dated March 1, 2022. Thus, Petitioner had a firm loan commitment deadline of March 3, 2023. 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 September 3, 2023. Petitioner paid the extension fee required by the Rule.

5. Petitioner now seeks an additional 6-month extension to and including March 3, 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).

E. STATUTES IMPLEMENTED BY THE RULE

8. 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).

F. JUSTIFICATION FOR THE REQUESTED WAIVER

9. 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

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

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.

10. 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.

11. Petitioner is requesting an extension of the firm loan commitment deadline from September 3, 2023 to March 3, 2024.

12. The need for the requested extension was created by circumstances beyond Petitioner's control, as set forth below:

a. Unfortunately, there are a multitude of issues beyond the Petitioner's control that have caused a significant delay in the timeline for this development, which include rising construction costs, interest rates, insurance costs, and prevailing wages. The project's financing gap has risen substantially. To address the financing gap, Petitioner has applied for additional funds from Florida Housing and been given a Notice of Preliminary Award from RFA 2023-211, Construction Inflation Response Viability Funding under the Naranja Grand II application 2023-236V.

b. The Development is located on a Miami-Dade County owned site, which required the Petitioner to solve an array of legal and planning issues with the County. These legal issues have affected the Petitioner's ability to attain timely site plan approval from the County.

13. Currently, the Development has fully completed construction documents and has plans to have a draft credit underwriting report ("CUR") ready by July 31st. With this draft CUR, Petitioner anticipates CUR approval at the next Florida Housing Board Meeting, which will be held on September 8, 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 will not be able to satisfy the firm loan commitment requirement before the September 3, 2023 deadline.

14. The requested waiver will not prejudice Petitioner, the Development, any other applicant, 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 Miami-Dade 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[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. As a result, Miami-Dade 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 funds that will otherwise be lost as a result of the delays.

16. As discussed herein, Petitioner is requesting a second extension of the firm loan commitment deadline from September 3, 2023 to March 3, 2024, which request requires a waiver of the Rule.

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[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.

17. The requested waiver will ensure the availability of funds that will otherwise be lost as a consequence of the delays described herein.

18. The foregoing facts demonstrate the hardship and other circumstances that 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 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 the requirements of Rule 67-48.0072(21)(b), Florida Administrative Code, and extend the firm loan commitment deadline from September 3, 2023 to March 3, 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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/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 16th day of August, 2023.

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