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STATE OF FLORIDA
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In re: Quail Roost Transit Village I, Ltd.

FHFC CASE NO. 2022-020VW
Application No. 2020-461S
RFA No. 2020-208

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PETITION FOR WAIVER OF FLORIDA ADMINISTRATIVE CODE RULES 67-48.0072(4)(c) and (21)(b)

Petitioner, Quail Roost Transit Village I, Ltd., (Petitioner), pursuant to section 120.542, Florida Statutes, and chapter 28-104, Florida Administrative Code, petitions Florida Housing Finance Corporation ("Florida Housing") for a waiver of rules 67-48.0072(4)(c) and (21)(b), Florida Administrative Code (2019) (the "Rule") in effect at the time Petitioner submitted its application in response to Florida Housing's Request for Applications No. 2020-208, for SAIL and Housing Credit Financing for the Construction of Workforce Housing (the "RFA"). Petitioner seeks to extend the time allowed under the Rule for the issuance of a firm loan commitment. In support of this Petition, Petitioner states:

A. Petitioner and the Development

1. The name, address, telephone, and email address for Petitioner is:

Quail Roost Transit Village I, Ltd
161 NW 6th Street, Suite 1020
Miami, Florida 33136
Telephone: 305-357-4725
Email: knaylor@apcompanies.com

2. The name, address, telephone and email address of Petitioner's counsel is:

Christopher B. Lunny
Radey Law Firm
301 South Bronough Street, Suite 200
Tallahassee, Florida 32301
Telephone: 850-425-6654
Email: clunny@radeylaw.com

3. The RFA was issued on February 24, 2020.

4. Petitioner timely submitted Application No. 2020-461S in response to the RFA for the development named Quail Roost Transit Village I located in Miami-Dade County, Florida (the "Development"). The Development will consist of a 200 unit, high-rise residential apartment complex that will serve low-income families.[1]

5. The application was assigned number 2020-461S. The Florida Housing Board of Directors (the "Board") approved the final scores and recommendations on June 11, 2020.

6. Petitioner was invited into credit underwriting on October 21, 2020. The invitation letter informed Petitioner that the firm loan commitment letter must be issued within 12 months of the Applicant's acceptance to enter into credit underwriting. Petitioner's firm loan commitment was due on October 23, 2021.

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[1] The following information regarding the Development is provided to facilitate staff's preparation of background material for the Florida Housing Board of Directors:

- Development Name: Quail Roost Transit Village I
- Developer, including at least one natural person: Quail Roost I Development, LLC/Howard D. Cohen
- County of Development: Miami-Dade
- Number of Units: 200
- Type: High-Rise Apartments
- Set Asides: 30 residential units at or below 30% of area median income (AMI); 40 residential units at or below 50% of AMI; 20 residential units at or below 60% of AMI; 90 residential units at or below 70% of AMI; and 20 residential units at or below 80% of AMI
- Demographics: Workforce
- Funding Amounts: $6,500,000 in Workforce SAIL

7. Pursuant to the Rule, applicants such as Petitioner were permitted to request one extension of up to six months to secure a firm loan commitment. Petitioner requested that extension, which was granted by the Florida Housing Board of Directors on October 22, 2021, and which extended the firm loan commitment issuance deadline until April 25, 2022.

8. Petitioner requires additional time to secure its firm loan commitment, which will allow the credit underwriting process to be completed. In general, the need for additional time is the result of three primary issues: 1) unforeseen delays related to obtaining gap financing to fund the development; 2) unforeseen delays related to securing HUD financing; and 3) unforeseen delays to the entitlement and permitting process.

9. More specifically, the delays are a result of the following:

a) Like most urban infill high-rise affordable developments in the Miami-Dade County, the proposed development requires significant gap financing. Petitioner applied for SURTAX funds from Miami-Dade County on July 31, 2020 and was unfortunately not recommended for funding. Miami Dade County Public Housing and Community Development then released a Supplemental SURTAX RFA and Petitioner accordingly submitted an application for the Supplemental SURTAX funds on February 19th, 2021. Petitioner was notified of the scoring results in May 2021, but the recommendation for funding to QRTVI was not approved by the Miami-Dade Board of County Commission until January 19, 2022. Without the SURTAX commitment from Miami-Dade County to fill the gap, Petitioner is unable to complete credit underwriter and work towards closing the financing on the development.

b) In addition, Petitioner is pursuing FHA financing which provides for the most advantageous debt terms in the market, thereby helping reduce the gap financing needs to complete the development. Initially, the Petitioner submitted for a Concept Call under the Section 221(d)4 program with HUD. Unfortunately, HUD staff had concerns with the structure of this project including public transit parking. In light of this concern from HUD, Wells Fargo recommended that the Petitioner pivot to pursuing HUD financing under the Section 220 program. HUD was receptive to this change but requested that Petitioner submit a pre-application in advance of submitting the firm application. This additional step is expected to add at least 60 days to the already lengthy FHA financing timeline. Petitioner submitted the pre-application to HUD in December 2021, and expects to be able to submit its Firm Application in March 2022.

c) Finally, in November 2020, the Petitioner kicked off work on the Administrative Site Plan Review ("ASPR") which is handled by Miami-Dade County. The ASPR pre-application was submitted on March 10, 2021, with the full application then submitted on May 18, 2021. Subsequent responses to comments were then submitted in August, November and December 2021. With that final submission, all approvals were received, except sign off by the Miami-Dade County Department of Transit and Public Works (who provided a new set of comments inclusive of Florida Department of Transportation comments on the proposed transit improvements and parking that the Petitioner is constructing as part of the overall development plan). These comments were significant in that they would require a substantial redesign of the parking garage, which would require further revision to

the ASPR set and already completed permitting drawings. Petitioner is working through the department's comments and expects to have the comments addressed in a way that works for both the Petitioner and Miami-Dade County Department of Transit and Public Works. Unfortunately, however, this development has also created an additional significant delay to the timeline.

10. For all these reasons, Petitioner requests a six-month waiver of the firm loan commitment deadline through and including October 14, 2022, in order to allow more time for the credit underwriting report to be finalized and approved by the Board and the firm loan commitment issued.

B. Type of Waiver

11. The waiver being sought is permanent in nature.

C. Rule For Which a Waiver Is Requested

12. Petitioner requests a waiver from the Rule, which provides:

> (4) If the invitation to enter credit underwriting is accepted:
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> . . . .
>
> (c) For SAIL, EHCL, and HOME, the credit underwriting process must be completed within the time frame outlined in subsection 67-48.0072(21), F.A.C., below and the loan must close within the time frame outlined in subsection 67-48.0072(26), F.A.C., below.
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> . . . .
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> (21) Information required by the Credit Underwriter shall be provided as follows:
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> . . . .
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> (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.

Rule 67-48.0072(4)(c) & (21)(b), Fla. Admin. Code (2019).

D. Statutes Implemented by the Rule

13. The Rule implements, among other sections of the Florida Housing Finance Corporation Act; section 420.5087 (State Apartment Incentive Loan Program); and section 420.5099 (allocation of the low-income housing tax credit).

E. Justification for Granting Waiver of the Rule

14. Under Section 120.542(1), Florida Statutes, Florida Housing has the authority to grant waivers to or variances from its requirements when strict application of the requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, Florida Statute section 120.542(2) states:

> 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. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the 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.

15. Over the last year, the Development has suffered unforeseen hardships that make it clear that the Development will not meet the April 25, 2022, deadline for the firm loan commitment issuance. These challenges are summarized as follows:

(a) unforeseen delays to the entitlement and permitting process

(c) Petitioner has experienced delays related to obtaining subordinate gap financing necessary to complete credit underwriting.

(d) Currently there is an extensive timeline related to HUD 221(d)(4) financing reviews and approvals.

(e) Further, the COVID-19 pandemic had a significant impact. Most of Petitioner's project team members and many government agencies have been working remotely. Document signatures, plan coordination, and the entitlement process have been hindered by challenges to complete previously seamless tasks with the new virtual work environment, which caused delays.

16. Despite these delays, Petitioner has been working diligently to complete the design of the development. To date, the project is in final stages of site plan approval with Miami-Dade County and construction drawings have been submitted to the building department.

17. With these delays, it is evident that Petitioner will not meet the April 25, 2022, deadline for the firm loan commitment issuance. Because Petitioner previously received an extension pursuant to the Rule, a waiver is necessary to obtain the requested additional extension.

18. Under section 120.542(1), Florida Statutes, and chapter 28-104, Florida Administrative Code, Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and 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 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. (2021).

19. In this instance, Petitioner meets the standards for a waiver of the Rule. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 200 much-needed affordable housing units will be made available for a vulnerable segment of the population in Miami-Dade County, Florida.

20. This Development will assist Florida Housing with fulfilling its statutory mandate to provide safe, sanitary, and affordable housing to the citizens of Florida. *See* § 420.502(2), Fla. Stat. Florida Housing is required by section 420.507(48), Florida Statutes, to reserve up to 5% of its annual allocation of low-income housing tax credits to allocate by competitive solicitation for high-priority affordable housing developments, such as housing for low-income families, in communities throughout the state.

21. The requested waiver further serves the purpose of the statute because one of the primary goals of the statute is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida for low-income households. *Id.* By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing in persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable rental housing. *See* § 420.5099(2), Fla. Stat.

22. The strict application of the Rule requirements will create a substantial hardship for Petitioner because if the Petition is not granted, the SAIL allocation will automatically be withdrawn from the transaction and the Development will not be constructed as proposed. The

denial of the Petition would result in an economic hardship to Petitioner because Petitioner has incurred significant costs to date in an effort to ensure that the development is completed.

F. Action Requested

WHEREFORE, Petitioner respectfully requests that Florida Housing:

(i) Grant the requested waiver from rule 67-48.0072(4)(c) & 21(b), Florida Administrative Code and extend the deadline for the issuance of the firm loan commitment from April 25, 2022 until October 14, 2022;

(ii) Grant this Petition and all of the relief requested herein; and

(iii) Grant such further relief as may be deemed appropriate

Respectfully submitted this 16th day of February, 2022.

/s/ Christopher B. Lunny
Christopher B. Lunny, FBN 0008982
Radey Law Firm
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Tallahassee, Florida 32301
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Counsel for Quail Roost Transit Village I, Ltd.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,

Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org,

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street

Tallahassee, Florida 32399
japc@leg.state.fl.us

This 16th day of February, 2022.

/s/ Christopher B. Lunny
CHRISTOPHER B. LUNNY