STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

PHOENIX CROSSINGS, LLC

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC Case # 2024-060VW

APPLICATION NO. 2023-164H

PETITION FOR WAIVER OF RULE 67-48.0072(21)(B)

Petitioner, Phoenix Crossings, LLC, a Florida limited liability company (the "Petitioner") submits its petition to Respondent, Florida Housing Finance Corporation (the "Corporation"), for a waiver of Rule 67-48.0072(21)(b), F.A.C. (July 6, 2022) (the "Rule") in effect at the time Petitioner submitted its application in response to the Corporation's Request for Applications 2022-206 (the "RFA"), to allow Petitioner to extend the Firm Loan Commitment deadline for HOME Funding allocated to Petitioner pursuant to the RFA. In support of this petition (the "Petition"), Petitioner states as follows:

A. Petitioner and the Development.

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

Phoenix Crossings, LLC
c/o Rural Neighborhoods, Inc.
19308 SW 380th Street
Florida City, FL 33034
(305) 242-2142
SteveKirk@ruralneighborhoods.org

The name, address, telephone, and facsimile numbers of Petitioner's attorneys are:

Gary J. Cohen, Esq.
Shutts & Bowen LLP
200 S. Biscayne Blvd., Ste. 4100
Miami, FL 33131
Telephone: (305) 347-7308
Facsimile: (305) 347-7808
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2. Pursuant to the RFA, Petitioner timely submitted its application for HOME funding. See Application No. 2023-164H (the "Application"). Petitioner was preliminarily awarded Six Million Two Hundred Fifty Thousand Dollars ($6,250,000.00) in HOME funding under the RFA (the "HOME Award"). Pursuant to the Rule, Applicant was required to complete credit underwriting and execute a HOME firm commitment within twelve (12) months of the date of the invitation to enter into credit underwriting. The invitation to credit underwriting was accepted on May 24, 2023, and, as such, the original firm commitment deadline was May 25, 2024.

3. On May 25, 2024, Petitioner requested approval of extension of the firm commitment deadline until November 25, 2024, which request was approved at the Corporation's June 28, 2024 Board meeting. Petitioner paid a one (1%) percent extension fee in connection with approval of the foregoing extension. For the reasons explained more fully below, the HOME Award Firm Loan Commitment will not be issued by the November 25, 2024 deadline. Petitioner is requesting an extension of the Firm Loan Commitment issuance deadline until May 26, 2025.

4. The HOME Award is a critical part of the financing for the new construction of affordable family housing to be known as Phoenix Crossings, serving income qualifying persons (the "Development"). The development is located in Flagler County.

B. Rules from Which the Waiver is Sought.

5. The relevant portions of the Rules in effect at the time the HOME funds were awarded for which this waiver is sought, provide as follows:

(b) Rule 67-48.0072 provides that "(21) Information required by the Credit Underwriter shall be provided as follows:

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(b) For SAIL 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, which may be automatically extended to the next scheduled meeting of the Board of Directors that is after the twelve (12) month deadline. 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, which may be automatically extended to the next scheduled meeting of the Board of Directors that is after the twelve (12) month deadline, 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(21)(b), F.A.C. (2022).

C. Statute Implemented.

6. The Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statute that created the HOME program. See § 420.5089, Florida Statutes (2022).

7. Pursuant to Chapter 120.542(1), Florida Statutes, "strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for

agencies to provide relief to persons subject to regulation." Therefore, under Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its requirements when strict application of these requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, 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." Section 120.542(2), Florida Statutes.

8. In this instance, Petitioner meets the standards for a waiver.

D. Justification for Petitioner's Requested Waiver

9. Petitioner was previously granted an extension to secure a firm loan commitment of the HOME Award to November 25, 2024. Petitioner is requesting an extension of the deadline to secure a Firm Loan Commitment for the HOME Award until May 26, 2025. This extension may not be granted without a waiver of the Rule. The reasons for this request are as set forth below.

10. Petitioner has made substantial progress towards closing of financing and commencement of construction of the Development. Previously, Petitioner had encountered difficulty in procuring interest from general contractors in constructing the Development at a feasible price. However, Petitioner engaged the project architect to value engineer the Development, which has produced costs savings but slowed the credit underwriting process.

11. In addition, environmental reviews and soil borings identified unanticipated conditions at the subject property, including wetlands requiring public agency delineation and

unstable soils inadequate to support the Development. Petitioner has undertaken additional environmental and engineering studies, and, as a result, has resolved to expand the retainage pond on the property in order to address these concerns. The concerned parties have preliminarily agreed to this solution, and Petitioner has revised construction drawings and resubmitted same for permitting.

12. In order to increase the financial feasibility of the Development, Petitioner has applied to Federal Home Loan Bank of Atlanta under the Affordable Housing Program and received an award of $750,000.

13. The foregoing events should enable Petitioner to complete credit underwriting in a timely manner.

14. The requested waiver will ensure the availability of HOME funding which will otherwise be lost as a consequence of the failure to obtain the executed HOME firm commitment by the prescribed date.

E. Conclusion

15. The facts set forth in Sections 10 through 14 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver. A denial of the Petition would (a) result in substantial economic hardship to Petitioner, as it has incurred substantial costs to date insuring that the Development proceeds to completion; (b) deprive Flagler County and the City of Bunnell of the provision of much needed affordable housing; and (c) violate principles of fairness. Section 120.52(2), Florida Statutes. As discussed above, the above-described delays have been caused by circumstances outside Petitioner's control, and make it impossible to meet the November 25, 2024 deadline for issuance of a Firm Loan Commitment.

16. As demonstrated above, the requested waiver serves the purposes of Section 420.5089, Florida Statutes, 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, the Corporation would recognize principles of fundamental fairness in the development of affordable rental housing.

17. The waiver being sought is permanent in nature. Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

WHEREFORE, Petitioner respectfully requests that the Corporation:

A. Grant this Petition and all the relief requested therein;

B. Grant a waiver of the Rule to extend the deadline to secure a Firm Loan Commitment from November 25, 2024 to May 26, 2025, and not require that an additional extension fee be imposed;

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

Respectfully submitted,

Gary J. Cohen, Esq.
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CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery

on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 3rd day of October, 2024.

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