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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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CASE NO. 2019-046VW

FLORIDA HOUSING
FINANCE CORPORATION

NORTHSIDE PROPERTY II, LTD.,

Petitioner,

vs.

FHFC Application No. 2018-047BS
REQUEST FOR APPLICATIONS: 2017-108

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.0072(21)(b),
FLORIDA ADMINISTRATIVE CODE**

Pursuant to section 120.542, Florida Statutes, and rule 28-104.002, Florida Administrative Code, Petitioner Northside Property II, Ltd. ("Northside II") submits this Petition to Respondent Florida Housing Finance Corporation ("Florida Housing") for a waiver of rule 67-48.0072(21)(b) (2017), which was in effect at the time the Petitioner submitted its application in response to Florida Housing's Request for Applications 2017-108, SAIL Financing of Affordable Multifamily Housing Developments to be used in conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits (the "RFA"). Northside II seeks to extend the time allowed under the rule for the issuance of a firm loan commitment. In support of this Petition, Northside II states:

A. PETITIONER AND ATTORNEY

1. The name, address, telephone number, and email address for Petitioner is: Northside Property II, Ltd., 3 Miami Central, 161 NW 6th Street, Suite 1020, Miami, FL 33136; 305-357-4725; lwong@apeccommunities.com. For purposes of this proceeding, the contact

information for Petitioner shall be that of the undersigned counsel.

2. The name, address, telephone number, and email address for Petitioner's attorney is: Donna E. Blanton, Radey Law Firm, 301 South Bronough Street, Suite 200, Tallahassee, Florida 32301; 850-425-6654; dblanton@radeylaw.com.

B. BACKGROUND¹

3. Florida Housing issued the RFA on August 31, 2017. On December 8, 2017, the Florida Housing Board of Directors ("Board") approved recommendations to fund certain Applicants. Following litigation, the Board on May 4, 2018, approved a Final Order that resolved all pending litigation, which allowed staff to proceed with all necessary credit underwriting activities. Staff issued a preliminary commitment letter and invitation to enter credit underwriting to Northside II.

4. In accordance with rule 67-48.0072(21)(b), Florida Administrative Code, the preliminary commitment letter to Northside II stated that the firm loan commitment must be issued within nine months of the acceptance to enter credit underwriting. The acceptance was acknowledged on May 4, 2018, which gave Northside II a firm loan commitment issuance deadline

¹ The following background information regarding Northside II is provided to facilitate staff's preparation of a memorandum to the Florida Housing Board of Directors ("Board"):

- Development Name: Northside Transit Village II
- Developer, including at least one natural person Principal: APC Northside Property II Development, LLC; Howard D. Cohen
- County of Development: Miami-Dade
- Number of Units: 180
- Type: High Rise
- Set Asides: 10% at 28% AMI; 90% at 60% AMI
- Demographics: Elderly
- Funding Amounts: SAIL, \$7,000,000, ELI \$600,000; NHTF \$1,047,895.89; Annual 4% Housing Credits, \$1,435,399; MMRB, \$20,000,000

of February 4, 2019. *See* Consent Agenda, p. 54, Board Agenda, December 14, 2018.

5. Rule 67-48.0072(21)(b) allows Applicants to ask for one extension of up to six months to secure a firm loan commitment. On October 16, 2018, Florida Housing received an extension request from Northside II to extend the firm loan commitment issuance deadline to August 4, 2019. The letter cited delays in the entitlement and permitting processes. Based on the staff recommendation that the extension request was in compliance with the RFA, the Board approved the request at its Board meeting on December 14, 2018. *See* Consent Agenda, p. 54, Board Agenda, December 14, 2018. Northside II paid a non-refundable extension fee of one percent of the loan amount after approval of the extension, as required by rule 67-48.0072(21)(b).

6. Northside II is in need of a 180-day extension of the time to obtain a firm loan commitment, up to and including January 31, 2020, for the reasons discussed below. Because rule 67-48.0072(21)(b) allows only one six-month extension of up to six months to secure a firm loan commitment, which has already been approved, a rule waiver is now required and is requested through this Petition.

7. The requested waiver is permanent in nature.

C. RULE FROM WHICH WAIVER IS SOUGHT

8. Rule 67-48.0072(21)(b) (2017) provides:

(b) For SAIL, EHCL, and HOME that is not in conjunction with Competitive HC, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued within nine (9) months of the Applicant's acceptance to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to achieve credit underwriting report approval and 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 nine (9) month deadline is approved. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

(Emphasis supplied).

D. STATUTES IMPLEMENTED BY THE RULE

9. Rule 67-48.0072(21)(b) implements 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 program). All of these programs are part of the Florida Housing Finance Corporation Act, found at sections 420.501-420.517, Florida Statutes. One of the purposes of the Act is “to create new programs to stimulate the construction and substantial rehabilitation of rental housing for eligible persons and families.” § 420.502(8), Fla. Stat.

E. JUSTIFICATION FOR REQUESTED WAIVER

10. Section 120.542(1), Florida Statutes, provides that “[s]trict 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.” That procedure requires those seeking a variance of, or waiver from, a particular rule to demonstrate that application of the rule would create a substantial hardship or would violate principles of fairness. *Id.*, § 120.542(2), Fla. Stat. Petitions for variances and waivers also are required to demonstrate the purposes of the underlying statute will be achieved. *Id.*

11. Several obstacles have prevented Northside II from obtaining a firm loan commitment. Among these are President Trump's announcement of tariffs, both threatened and enacted, which has resulted in subcontractors refusing to commit to hard cost pricing. Current market conditions have required Northside II to significantly revise hard cost estimates, resulting in an increase of over \$3,000,000, approximately 15% over similar costs just one year ago.²

12. In an effort to address the significant cost increases facing the project, Northside II is pursuing financing from the federal Department of Housing and Urban Development ("HUD") through the Federal Housing Administration ("FHA") 221(d)(4) program, which requires a high level of detail in construction drawings and includes a long underwriting period, which will push the closing date until August or September of 2019. Northside II is working with Wells Fargo Bank to obtain this financing.

13. Perhaps the most significant obstacle Northside II has faced are delays caused by Florida Power & Light Co. ("FPL"). Northside II's residential tower is located on top of an FPL duct bank that supplies power to the Northside Metro Station. The tower's foundation design, therefore, has to bridge over the duct bank and provide for future maintenance of the duct bank through access panels. FPL originally approved this design on Northside Transit Village I in 2012. However, FPL staff has changed since these original approvals, and Northside II is still awaiting confirmation from FPL that this solution will work. As a result, Northside II is unable to progress through final design and permitting, which has delayed the project.

14. The issues described above have created a "substantial hardship" for Northside II

² Despite these cost increases, Northside II is still within the Total Development Cost Per Unit Limitation described on pages 67-68 of the RFA.

that justifies a waiver of rule 67-48.0072(21)(b). Northside II believes an extension of 180 days would allow Northside II sufficient time to secure the firm loan commitment.

15. The requested waiver will not adversely affect any party, including any other party that applied to receive SAIL funding in the RFA or Florida Housing. A denial of the requested waiver, however, would result in substantial economic hardship to Northside II, as it has incurred significant costs to date in an effort to ensure that the proposed development proceeds to completion. Additionally, denial of the waiver would deprive Miami-Dade County of much-needed new affordable rental units. If this Petition is not granted, Northside II will be unable to obtain SAIL and National Housing Trust Fund (“NHTF”) funding, which would cause the proposed development to be infeasible.

16. The statutes underlying rule 67-48.0072(21)(b) will be served by the approval of Northside II’s waiver request. One of the statutory goals of the Florida Housing Finance Corporation Act is for proceeds of a SAIL loan to be used to facilitate the availability of decent, safe, and sanitary housing in Florida to low-income persons and households. § 420.502(4), Fla. Stat. This Act was passed to create inducements and opportunities for private and public investment in rental housing to increase the supply of affordable housing for low-income persons and households. By granting this waiver request, Florida Housing would further the goal of increasing the supply of affordable housing units through the construction of new developments.

F. ACTION REQUESTED

17. For the reasons expressed, Northside II respectfully requests that the Florida Housing Board grant the requested waiver of rule 67-48.0072(21)(b), as Northside II has demonstrated a “substantial hardship.” Northside II is specifically requesting an additional 180

days – up to and including January 31, 2020 – to secure the firm loan commitment.

Respectfully submitted,



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Counsel for Petitioner

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was filed by email to Ana McGlamory, the Florida Housing Finance Corporation Clerk, at corporationclerk@floridahousing.org and Ana.McGlamory@floridahousing.org and with a copy served by hand delivery to the Joint Administrative Procedures Committee, 680 Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 20th day of May, 2019.



Donna E. Blanton