STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Miami Beach Housing Initiatives, Inc.

FHFC Case No.: 2021-092VW

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ORDER GRANTING WAIVER FROM RULE 67-48.0072(4)(c) and (21)(b), FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on December 10, 2021. On November 18, 2021, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.0072(4)(c) and (21)(b), F.A.C. of Miami Beach Housing Initiatives, Inc (the "Petition") from Miami Beach Housing Initiatives, Inc. (the "Petitioner") to allow Petitioner to extend the firm loan commitment issuance deadline. Notice of the Petition was published on November 22, 2021, in Volume 47, Number 226, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
DATE: 12/13/2021

2. Petitioner successfully applied for State Apartment Incentive Loan ("SAIL") funding and Extremely Low Income ("ELI") funding in RFA 2020-102 to assist in the construction of a 20-unit affordable housing development named The Heron to be located in Miami-Dade County, Florida (the "Development").

3. Rule 67-48.0072(4)(c), Fla. Admin. Code, in relevant part provides:

> (4) If the invitation to enter credit underwriting is accepted:
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> ...
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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

4. Rule 67-48.0072(21)(b), Fla. Admin. Code, in relevant part provides:

> (21) Information required by the Credit Underwriter shall be provided as follows:
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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.

Emphasis added.

5. Petitioner requests a waiver of the above cited Rules to allow Petitioner to extend the firm loan commitment issuance deadline. Petitioner accepted an invitation to credit underwriting on July 9, 2020. Petitioner initially had a firm loan commitment issuance deadline of July 9, 2021, which was later extended at Petitioner's request to January 9, 2022. Petitioner states that it has encountered several unforeseen issues that have caused delay. An approved credit underwriting report is required before issuance of a firm loan commitment.

6. Specifically, Petitioner has encountered delays in the development approval process by the City of Miami Beach Historic

Preservation Board, which ultimately granted approval on September 13, 2021. Additional time is necessary for Miami-Dade County to finalize the approval process for an award of $500,000 in Surtax gap financing, which was scheduled to be approved on November 8, 2021 and is now expected to be approved in December 2021. Additionally, Petitioner states that the development team is currently finalizing the architectural and engineering plans for submittal to permitting and is working on an expediated review process.

7. Section 120.542(2), Florida Statutes, provides in pertinent part:

> 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.

8. The Board finds that granting the requested waiver will not impact other participants in funding programs administered by Florida Housing, nor will it detrimentally impact Florida Housing.

9. The Board also finds that Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver is not granted.

10. The Board further finds that Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of

low-income housing in the state" would still be achieved if the waiver is granted. §420.5099, Fla. Stat.

IT IS THEREFORE ORDERED that Petitioner's request for a waiver of Rule 67-48.0072(4)(c) and (21)(b), Fla. Admin. Code is hereby **GRANTED** to allow Petitioner to extend its firm loan commitment issuance deadline from January 9, 2022 to July 9, 2022.

DONE and ORDERED this 10th day of December 2021.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.