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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

PMG AFFORDABLE, LLC,
a Delaware limited liability company,

Petitioner,

CASE NO. 2021-074VW

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULES 67-48.009(5)(d), 67-48.018(1)(c), AND 67-48.023(1)(c)

PMG Affordable, LLC, a Delaware limited liability company (the "Petitioner"), hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver or variance of the Corporation's prohibition against an applicant applying for SAIL program funding, HOME program funding, and/or competitive Housing Credits (collectively, "FHFC Funding") if any part of the proposed development is subject to an Extended Use Agreement ("EUA") unless a specified exception applies. *See* Rules 67-48.009(5)(d), 67-48.018(1)(c), and 67-48.023(1)(c), F.A.C. (2021) (collectively, the "Rules"). Here, neither of the exceptions specified in the Rules apply. Petitioner seeks to acquire the Highland Park Apartments f/k/a Central City Apartments (the "Existing Project") and develop additional affordable housing for the benefit of the residents of Miami-Dade County. Because the Existing Project is subject to an Existing EUA (which term is hereinafter defined and which Existing EUA will continue to restrict the Existing Project), Petitioner cannot apply to the Corporation for funding in response to competitive solicitations that would provide substantially more affordable housing units on the property than currently exist under the Existing EUA. The Existing Project consists of two 25 year-old buildings that contain

35 affordable housing units. The Petitioner desires to replace the current buildings with new residential buildings that will contain approximately 357 total affordable housing units while maintaining the restrictions set forth in the Existing EUA. Currently, the Petitioner's proposed redevelopment of the Existing Project cannot be accomplished without additional FHFC Funding, and, because the Existing Project is subject to the Existing EUA, strict application of the Rules prevents Petitioner from applying for the necessary FHFC Funding. By not allowing Petitioner to apply for additional FHFC Funding, the Existing Project will remain at only 35 affordable housing units. Petitioner is not asking to be released from the Existing EUA, but rather to be allowed to compete for additional FHFC Funding (understanding that with such additional funding would come a new EUA that would restrict additional new affordable units), and, in turn, provide a substantial number of new affordable units that are desperately needed in Miami-Dade County. In support of this petition, Petitioner states as follows:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for Petitioner and its qualified representative for Petitioner's application:

PMG Affordable, LLC
Attention: Dan Coakley / Lowell Plotkin
1441 Brickell Avenue, Suite 1510
Miami, Florida 33131
Tel: (917) 968-6164
E-mail: dcoakley@pmgaffordable.com
lplotkin@propertymg.com

2. For purposes of this Petition, the address, telephone numbers, facsimile numbers, and email addresses of Petitioner's attorneys are:

Terry M. Lovell, Esquire
Bilzin Sumberg Baena Price &

Johnathan T. Ayers, Esquire
Bilzin Sumberg Baena Price &

Axelrod, L.P.
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131
Tel: (305) 350-2428
Fax: (305) 351-2126
E-mail: tlovell@bilzin.com

Axelrod, L.P.
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131
Tel: (305) 350-7374
Fax: (305) 351-2133
E-mail: jayers@bilzin.com

B. BACKGROUND

3. General Development information:

- Development Name: currently Highland Park Apartments f/k/a Central City Apartments (which is anticipated to be called "Spring Gardens Apartments Phase One" and "Spring Gardens Apartments Phase Two" in future applications)
- Developer: will be PMG Affordable, LLC or its affiliates in future applications.
- County of Development: Miami-Dade
- Number of Units: 35 total current units (two, three story buildings—one building containing 12 units and the other building containing 23 units). Under Petitioner's proposed redevelopment, the two new residential buildings would contain approximately 357 units (the "Proposed Project").[1]
- Type: Garden. Under Petitioner's proposed redevelopment, the type of the new buildings would be Mid to High Rise.

[1] The proposed development will involve Petitioner demolishing the current buildings and creating new units. However, Petitioner does not currently know exactly how many units will be created because it has not yet completed the architectural design process. The entire layout of the site will need to be redesigned to accommodate two new phases of affordable housing. Petitioner is reluctant to incur the significant expense associated with this process without first knowing whether it is eligible to apply for future RFAs (e.g., whether the petition will be granted). Accordingly, Petitioner cannot be more specific at this time.

- Set-Asides: the Existing EUA currently requires seven of the units be set aside at or below 40% of AMI and the remaining 28 units be set aside at or below 50% of AMI (collectively, the "Existing Set Aside"). Under Petitioner's Proposed Project, the Existing Set Aside will be included in part of the restrictions set forth in any competitive solicitation to which Petitioner applies.
- Demographics: currently family. Under Petitioner's Proposed Project, the demographics of the new buildings are anticipated to be elderly (Phase One) and family (Phase Two).
- Previous FHFC Funding: Tax Credits (94L-041).

4. The Existing Project is a Low-Income Housing Tax Credit project that for over twenty-five (25) years has provided low-income housing in the Spring Gardens neighborhood of Miami, Florida. Completed in 1996, the Existing Project consists of two, three-story buildings: one building containing 12 units, and the other containing 23 units. To qualify for its Housing Credit allocation, the original developer, Central City Apartments, Ltd., a Florida limited partnership (the "Original Developer"), entered into the Extended Low-Income Housing Agreement dated November 6, 1996 ("Existing EUA") with the Corporation, requiring, among other things, (1) that 20% of the units be set aside at or below 40% of less of AMI, (2) that 80% of the units be set aside at or below 50% of AMI, and (3) an extended use period lasting for at least 30 years (Doc # 96R534631 OR BK 17435, pgs. 3595-3615 of the Public Records of Miami-Dade County, Florida). All amendments (including the First, Second and Third Amendments), supplements, assignments and modifications are referred to collectively as the "Existing EUA" for purposes of this Petition.

5. On May 26, 2015, the Corporation approved the transfer of ownership of the Existing Project as well as the assignment and assumption of Existing EUA from the Original Developer to Highland Park 1020, LLC, a Florida limited liability company (the "Intermediate Developer") (Doc # 20150378119 OR BK 29654, pgs. 3576-3586 of the Public Records of Miami-Dade County, Florida), which further referenced that certain Purchase and Sale Agreement between the Original Developer and the Intermediate Developer dated March 19, 2015.

6. Petitioner has entered into that certain Agreement of Purchase and Sale dated September 21, 2021 between Petitioner and the Intermediate Developer for the acquisition of the Existing Project and redevelop the Existing Project into the Proposed Project. Critical to the acquisition of the Existing Project and the redevelopment plan for the Proposed Project are Petitioner's ability to apply for and obtain FHFC Funding. Without the ability to obtain FHFC Funding, Petitioner will not have the financial wherewithal to implement its redevelopment plan for the Existing Project and provide Miami-Dade County with the Proposed Project's significant additional affordable housing.

7. Rules 67-48.009(5)(d), 67-48.018(1)(c), and 67-48.023(1)(c), F.A.C., preclude Petitioner from submitting an application for FHFC Funding because the Existing Project is subject to an EUA. Accordingly, Petitioner is requesting a waiver from the Rules to allow it to compete for the FHFC Funding necessary to redevelop the Existing Project.

C. RULES FROM WHICH WAIVER IS SOUGHT

8. Petitioner requests a waiver from Rule 67-48.009(5)(d) (pertaining to SAIL applicants), 67-48.018(1)(c) (pertaining to HOME applicants), and 67-48.023(1)(c) (pertaining to applicants for Housing Credits), F.A.C., which provide:

Unless otherwise permitted in a competitive solicitation process, an Applicant is not eligible to apply for [SAIL Program funding, HOME Program funding, or Competitive Housing Credits] if any of the following pertain [to the proposed Development]: . . . .

The proposed Development site or any part thereof is subject to any Land Use Restriction Agreement or Extended Use Agreement, or both, in conjunction with any Corporation affordable housing financing intended to foster the development or maintenance of affordable housing, unless at least one (1) of the following exceptions applies:

1. A LURA recorded in conjunction with the Predevelopment Loan Program or the Elderly Housing Community Loan Program, or
2. A LURA or EUA, or both, for an existing building or buildings, originally constructed at least 25 years prior to the deadline to apply for the applicable [SAIL funding, HOME funding, or Competitive Housing Credits] where, in the current Application, the Applicant has selected and qualified for the Homeless demographic commitment with a Development category of Rehabilitation/Moderate Rehabilitation/Substantial Rehabilitation, Acquisition and Rehabilitation/Moderate Rehabilitation/Substantial Rehabilitation, Preservation, or Acquisition and Preservation.

D. STATUTES IMPLEMENTED BY THE RULES

9. The Rules implement, among other sections of the Florida Housing Finance Corporation Act, Section 420.5099 (Allocation of the low-income housing tax credit), Section

420.5089 (HOME Investment Partnership Program) and Section 420.5087 (State Apartment Incentive Loan Program).

E. JUSTIFICATION FOR REQUESTED WAIVERS

10. Under Section 120.542(1), Florida Statutes, and Chapter 28-104, Florida Administrative Code, the Corporation 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 shall 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 fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Fla. Stat. *Cf., e.g.*, *In re: VC Cathedral, LLC*, Case No. 2020-032VW (FHFC June 11, 2020) (quoting section 120.542(2) and granting waiver from the Rules, finding that 1) the waiver "will not have any impact on other participants in funding programs administered by Florida Housing, nor would have a detrimental impact on Florida Housing or the [subject] Development…[2) the waiver] is needed because of circumstances beyond [the petitioner's] control, and that it would suffer a substantial hardship if the waiver is not granted…[3)] the purpose of the underlying statute, which is to encourage development of low-income housing in the state" (§420.5009, Fla. Stat.), would still be achieved if the waiver is granted.").

11. Petitioner would like to apply for FHFC Funding. If granted, the funds would be used to not only provide an entirely new development, but also to substantially increase the number of affordable housing units from 35 units to approximately 357 units. The absence of the redevelopment plan for the Proposed Project, to which FHFC Funding is necessary, will deprive Miami-Dade County of approximately 322 additional affordable housing units.

12. The Rules prohibit Petitioner from applying for Corporation funding because the Existing Project is subject to the Existing EUA.

13. The requested waiver is essential in order to provide new affordable housing, which residents in Miami-Dade County desperately need. Petitioner would use the FHFC Funding to make the substantial improvements necessary to provide approximately 357 quality units for families and/or elderly persons, while maintaining the set asides under the Existing EUA (seven of the units be set aside at or below 40% of AMI and 28 units be set aside at or below 50% of AMI), which shall be included in the additional set-asides provided as part of a subsequent competitive solicitation.[2] Without such funding, Petitioner cannot substantially revitalize the Existing Project and the new affordable units of the Proposed Project will not be constructed. *Cf.* Fla. Stat. § 420.5009 (recognizing the purpose of the underlying statute, to wit, "to encourage development of low-income housing in the state"); Fla. Stat. § 420.5087 (stating that "[p]rogram funds shall be made available through a competitive solicitation process in a manner that meets the need and demand for very-low-income housing through the state.") In addition, Petitioner anticipates dedicating one of the two new residential buildings as affordable senior housing, and is committed to complying with the additional requirements applicable to such housing. Finally, Petitioner will continue to provide quality housing for current tenants during redevelopment of the Existing Project. At no cost to the current

[2] This Petition is being filed with regard to the property that is subject to the Existing EUA. Until Petitioner knows which RFA the development will be traveling under, Petitioner does not know which set asides would apply. Put another way, for the reasons stated in Footnote 1, *supra*, Petitioner cannot yet predict which specific demographics it will serve, the number of units it will build, the number of set asides, etc. However, Petitioner can commit that it will comply with all set-aside requirements imposed under the Existing EUA and any future RFA. Each RFA has specific requirements for the number and allocation of set aside units (including ELI units). The entire Proposed Project, including the property subject to this Petition, would be subject to those set-aside requirements.

tenants, the current tenants will be temporarily relocated to comparable housing until the units at the Proposed Project are move-in ready; at which time, such eligible tenants will be invited to be a resident at the Proposed Project.

14. The requested waivers will not adversely affect the Existing Project or the Corporation, but would allow Petitioner to seek additional funding and ensure that the affordable units in the Proposed Project are available at a rate accessible by families and/or elderly persons of lesser means in Miami-Dade County. By granting the waivers, the Corporation would recognize the economic realities and principles of fundamental fairness in the development of affordable housing. This recognition would promote participation by experienced developer entities in meeting the purpose of the Florida Housing Finance Corporation Act in an economical and efficient manner.

15. Moreover, included within the Corporation's Portfolio Preservation Action Plan is the development of parameters for prioritizing developments for recapitalization within each program strategy. The Proposed Project should be prioritized in light of the following property risk factors and general criteria identified in the Board-approved Plan:

- **Market Condition**: Given the anticipated substantial increase in the number of affordable housing units contemplated in the Proposed Project, Petitioner is purchasing the Existing Project at below market value. By granting the waivers sought herein which will allow Petitioner to apply for FHFC Funding, Petitioner will be able to execute its plan to demolish the Existing Project and develop the Proposed Project which will more efficiently utilize the property and result in significantly more affordable housing for families in Miami-Dade County. Indeed, Petitioner hopes to

provide an additional 322 affordable housing units by developing the Proposed Project (i.e., approximately 357 total affordable housing units) with funding provided as part of a FHFC competitive solicitation (which would be subject to additional set-aside requirements creating even more affordable housing units in Miami-Dade County).

- **Location**: The Proposed Project should be deemed a "higher priority" project because it is located near the central business district of Miami and close to amenities, such as theaters, parks, schools, libraries, transit, health care facilities, jobs, grocery stores, restaurants, and other services. Specifically, the Proposed Project is less than a five-minute walk from the Culmer Metrorail station, which would connect the future residents to quality, affordable transportation throughout the Miami-Dade metro area. The Proposed Project is also within walking distance of the historic Lyric Theater, the History Miami Museum, and the LoanDepot Park (home to the Miami Marlins) along with several parks and historical sites. The Proposed Project is also located within one mile of several hospitals and medical centers, such as Jackson Memorial Hospital and the University of Miami Health System, as well as more than a dozen education institutions, including early education, primary, secondary, and post-secondary facilities. Thus, the Proposed Project should be prioritized because a high demand exists for affordable housing units in downtown Miami and because granting the waiver would further Miami-Dade County's and FHFC's desire to provide

more affordable housing units in transit-oriented developments in a resource-rich area near robust public transportation.

- **Owner Performance**: Petitioner's strong experience and performance in developing multi-family rental properties further qualifies the Proposed Project as "high priority" under the Plan. For over thirty years, Petitioner has developed a real estate portfolio exceeding nine billion dollars, which consists of over 16 million square feet of development across 160 projects throughout the United States. These projects include pre-development, construction, lease-up, and sell out, including more than 8,500 residential units. Hence, allowing the requested waiver will leverage Petitioner's experience and proven-track record to strengthen the construction and development of quality affordable units that are desperately needed in Miami-Dade County.

Further, the Proposed Project should also be prioritized because, unlike other rehabilitation projects seeking simply to preserve existing units, the Proposed Project would be adding new affordable units to the market that might not otherwise be constructed.

16. A denial of this Petition would: (a) prevent Petitioner from submitting applications for FHFC Funding; (b) deprive families and/or elderly persons in Miami-Dade County of critically needed safe, clean, and affordable dwelling units and thereby place a substantial hardship upon them; and (c) violate principles of fairness. It would also result in an unintended consequence that is diametrically opposed to the intent of the FHFC Funding programs, especially in light of the express intent to meet the housing needs of families and/or elderly persons. *See* Fla. Stat. § 420.5087(3)(b).

17. A waiver of the Rules would serve the purposes of Sections 420.5099, 420.5089 and 420.5087 Fla. Stat., and the Act as a whole, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to households of limited means.

18. 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.

F. PERMANENCY

19. The waiver being sought is permanent in nature.

G. ACTION REQUESTED

Petitioner requests the following:

a. That the Corporation grant Petitioner—and any entity related to Petitioner through common principals that seeks funding in relation to the Proposed Project that is subject to the Existing EUA—a waiver from Rules 67-48.009(5)(d), 67-48.018(1)(c), and 67-48.023(1)(c), F.A.C (2021), allowing Petitioner to apply for FHFC Funding even though the Existing Project is subject to the Existing EUA;

b. Grant the Petition and all the relief requested therein; and

c. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

BILZIN SUMBERG BAENA PRICE & AXELROD LLP
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131
Tel: (305) 374-7580
Fax: (305) 351-2126
E-mail: tlovell@bilzin.com

/s/ Terry M. Lovell

CERTIFICATE OF SERVICE

The Petition is being served via e-mail for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served electronically and by U.S. Mail on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400; (Joint.Admin.Procedures@leg.state.fl.us), this 5th day of October, 2021.

/s/Terry M. Lovell

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