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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

BLUE CASL DADE, LLC,
a Florida limited liability company,

Petitioner,

FHFC CASE NO. 2023-065VW
Application No. 2021-294CSN
RFA 2021-103

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

SECOND PETITION FOR WAIVER OF RULE 67-48.0072(26), F.A.C. (6/23/20)

Pursuant to Section 120.542, Florida Statues, and Rule 28-104.002, Florida Administrative Code ("F.A.C."), Blue CASL Dade, LLC (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for another waiver of Rule 67-48.0072(26), Florida Administrative Code ("F.A.C.") (June 23, 2020), in effect at the time Petitioner submitted its application in response to Florida Housing's Request for Applications 2021-103 Housing Credit and SAIL Financing for Homeless Housing Developments Located in Medium and Large Counties. The Board approved Petitioner's request for a 90-day extension on March 10, 2023 to close the SAIL, ELI and NHTF loans. The $62,964.00 extension fee was paid. Additionally, the Board approved a petition for Rule waiver on June 9, 2023 to extend the closing deadline to August 28, 2023. Petitioner expects to close on all loans prior to the August 28, 2023 deadline. However, in an abundance of caution, Petitioner is submitting this petition to extend the loan closing deadline another 90 days (*i.e.*, to and including November 27, 2023) if the building permit ready letter is not obtained by the City of Miami by the current closing deadline of August 28, 2023.

Petitioner submitted its building plans in July 2022 and has diligently worked since that

time to obtain approval. Petitioner additionally hired a private provider to assist with the navigation of the City of Miami's building approval process in an effort to progress the development.

A. PETITIONER

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

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2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel is:

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B. DEVELOPMENT BACKGROUND

3. The following information pertains to the development underlying Petitioner's application:

- Development Name: Alto Tower
- Development Address: 2291, 2277, 2267 NW 36 ST. & 3618 NW 22 CT., Miami
- County: Miami-Dade
- Developers: Blue AT Developer, LLC and CASL Developer, LLC

- Number of Units: 84 new construction
- Type: Mid-Rise 5-6 Stories
- Set Asides: 15% (13 units) at or below 25% AMI, 85% (71 units) at or below 60%, 11.9% (10 NHTF units) at or below 22% AMI
- Demographics: Homeless Individuals and Families
- Funding: HC recommendation of $2,375,000 annually; $4,600,000 SAIL, plus an additional $1,119,104 in SAIL from CHIRP; and $459,600 ELI, and $1,236,800 NHTF, plus an additional $1,522,000 in NHTF CHIRP.

C. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

D. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver of Rule 67-48.0072(26), effective June 23, 2020, which provides in pertinent part:

> (26) For SAIL, EHCL, and HOME, unless stated otherwise in a competitive solicitation, these Corporation loans and other mortgage loans related to the Development must close within 120 Calendar Days of the date of the firm loan commitment(s), unless the Development is a Tax-Exempt Bond-Financed Development which then the closing must occur within 180 Calendar Days of the firm loan commitment(s). Unless an extension is approved by the Board, failure to close the loan(s) by the specified deadline outlined above shall result in the firm loan commitment(s) being deemed void and the funds shall be de-obligated. Applicants may request one (1) extension of the loan closing deadline outlined above for a term of up to 90 Calendar Days. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The Board shall consider the facts and circumstances of each Applicant's request, inclusive of the Applicant's ability to close within the extension term and any credit underwriting report, prior to determining whether to grant the requested extension. The Corporation shall charge an extension fee of one (1) percent of each Corporation loan amount if the Board approves the request to extend the loan closing deadline beyond the applicable 120 Calendar Day or 180 Calendar Day period outlined above. If an approved extension is utilized, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original loan closing deadline. In the event the Corporation loan(s) does not close by the end of the extension period, the firm loan commitment(s) shall be deemed void and the funds shall be de-obligated.

E. STATUTES IMPLEMENTED BY THE RULE

6. The Rule implements Section 420.5087 (State Apartment Incentive Loan Program), Section 420.5089 (HOME Investment Partnership Program; HOME Investment Partnership Fund), and Section 420.5099 (creating the Housing Credits Program) of the Florida Housing Finance Corporation Act (the "Act").[1] The Act designates FHFC as the State of Florida's housing credit agency within the meaning of Section 42(h)(8)(A) of the Internal Revenue Code of 1986. As the designated agency, FHFC is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). *See* § 420.5099(1) and (2), Fla. Stat. Accordingly, the, Rule implements, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the HC Program.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

7. Under Section 120.542(1), *Fla. Stat.,* and Chapter 28-104, F.A.C., 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,[2] and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Fla. Stat.

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[1] The Act is set forth in Sections 420.50 through 420.55 of the Florida Statutes.

[2] "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. *See* § 120.542(2), Fla. Stat.

8. Because Petitioner was previously granted the 90-day closing extension permitted under the Rule, Petitioner was required to file a petition for rule waiver on May 18, 2023 to request another 90-day extension. That Petition was granted by Florida Housing's Board at its meeting on June 9, 2023, extending the closing deadline to August 28, 2023.

9. Petitioner is requesting an additional 90-day extension of the closing deadline from August 28, 2023 to November 27, 2023 to allow sufficient time for the issuance of the building permit ready letter if needed.

10. The need for the requested extension was created by circumstances beyond Petitioner's control. Petitioner exercised due diligence in attempting to resolve the circumstances causing delay; Petitioner has also taken the following actions to obtain the building permit:

- Expedited Permit Reviews
- Engaged an experienced Private Provider to assist with obtaining permits.
- Petitioner's President of the company and partner went to Miami to move the process along to little avail. Most recently, Blue Sky staff camped out in the permitting office, again to no avail.

11. Petitioner expects to close by the August 28, 2023 deadline and this request is made solely in the abundance of caution.

12. This Petition should be granted, as opposed to de-obligating the award, because the City and Miami-Dade County are currently experiencing a severe shortage of affordable housing units for homeless persons. Granting the Petition will result in the delivery of 84 new affordable housing units much faster than would reallocating the funding to a new development.

13. The foregoing demonstrates the hardship and other circumstances justifying this Petition.

14. Should Florida Housing require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

G. ACTION REQUESTED

15. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant a waiver from Rule 67-48.0072(26), Florida Administrative Code (6/23/20), for an additional extension of the closing deadline from August 28, 2023 to November 27, 2023; (ii) that Florida Housing grant the Petition and all the relief requested therein; and (iii) that Florida Housing grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
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Counsel for Petitioner

By: */s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with a copy served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 16th day of August, 2023.

By: */s/ Brian J. McDonough*
Brian J. McDonough, Esq.