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FLORIDA HOUSING FINANCE CORPORATION

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

CASA DOLORES HUERTA, LLC

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC Case # 2022-052VW

APPLICATION NO. 2021-2895

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

Petitioner, Casa Dolores Huerta, 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. (2020) in effect at the time Petitioner submitted its application in response to the Corporation's Request for Applications 2021-104 (the "RFA"), to allow Petitioner to extend the Firm Loan Commitment deadline for the State Apartment Incentive Loan ("SAIL") 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:

Casa Dolores Huerta, 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
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Telephone: (305) 347-7308
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Email: gcohen@shutts.com

2. Pursuant to the RFA, Petitioner timely submitted its application for SAIL funding. See Application Number 2021-289S. Petitioner was preliminarily awarded $4,300,000.00 in SAIL funding under the RFA (the "SAIL Award"). The SAIL Award Firm Loan Commitment issuance deadline was March 29, 2022, which was twelve (12) months from the invitation to enter credit underwriting.

3. At the meeting of the Board of Directors of the Corporation (the "Board") on March 4, 2022, the Board granted Petitioner's request to extend the loan commitment issuance deadline to September 29, 2022.

4. The SAIL Award is a critical part of the financing for the new construction of 20 units of affordable housing for unaccompanied farmworkers to be known as Casa Dolores Huerta, serving such farmworkers (the "Development"). The development is located in Southwestern Miami-Dade County.

5. For the reasons explained more fully below, the SAIL Award Firm Loan Commitment will not be issued by the September 29, 2022 deadline. Due to delays encountered in entering into a final construction contract for the Development and in securing additional sources of funding needed as a result of increasing construction costs, Petitioner is requesting an additional extension of the firm loan commitment issuance deadline until March 29, 2023.

B. Rules from Which the Waiver is Sought.

6. The relevant portion of the Rules in effect at the time the SAIL funds were awarded for which this waiver is sought, provides as follows:

> "(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 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 twelve (12) 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." Rule 67-48.0072(21)(b), F.A.C. (2020).

C. Statute Implemented.

7. The Rules for which a waiver is requested are implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statute that created the SAIL program and provides for the allocation of Housing Credits. See §§ 420.5087 and §§ 420.5099(2), Florida Statutes (2020).

8. Pursuant to Chapter 120.542(1), Florida Statutes, "[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." 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.

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

D. Justification for Petitioner's Requested Waiver

10. Petitioner was previously granted an extension to secure a firm loan commitment of the SAIL Award, extending such deadline to September 29, 2022. A further extension of the deadline to secure a firm loan commitment may not be granted without a waiver of the Rule.

11. Petitioner is requesting an additional extension of the deadline to secure a loan commitment from September 29, 2022 to March 29, 2023, to have additional time to complete permitting and credit underwriting for the Development. The reasons for this request are as set forth below.

12. Since the initial award of the SAIL financing, construction costs have increased dramatically in Miami-Dade County. As a result thereof, Petitioner applied for and has been initially awarded $500,000 of Federal Home Loan Bank Affordable Housing Program funds.

Application for these funds delayed the initial commencement of preparation of plans and drawings for the Development. Since that time, initial plans have been completed; however, Petitioner has not yet been unable to secure a construction contract for the Development, again as a result of increasing construction costs which cause total development costs to exceed available capital sources. Petitioner has undertaken certain steps to value engineer the Development in order to bring down total development cost to a feasible level, and continues to seek additional capital funding to fill the aforementioned financing gap. Unfortunately, the RFA under which Petitioner participated was not eligible for FHFC CHIRP funding for assistance.

13. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive SAIL funding in the RFA or the Corporation. A denial of the Petition, however, would (a) result in substantial economic hardship to Petitioner, as it has incurred substantial costs to date toward ensuring that the Development proceeds to completion; (b) deprive Miami-Dade County of the provision of much needed affordable farmworkers housing; and (c) violate principles of fairness. §120.542(2), F.S.

14. As discussed above, the delays have been caused by circumstances outside Petitioner's control. As a result, the delay makes it impossible to meet the September 29, 2022, deadline for issuance of a firm loan commitment.

15. The requested waiver will ensure the availability of SAIL equity funding which will otherwise be lost as a consequence of the development delays described herein.

E. Conclusion

16. The facts set forth in Section 12 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the delays occasioned by the need to secure additional funding, attributable to increased construction costs.

17. Petitioner's development will serve unaccompanied farmworkers in Miami-Dade County, which has the third largest number of unaccompanied farmworkers of any county in the state.

18. As demonstrated above, the requested waiver serves the purposes of Section 420.5087, 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.

19. 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 September 29, 2022 to March 29, 2023; and

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 30th day of August, 2022.

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