STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

CASE NO. 2022-016VW

LIBERTY SQUARE PHASE FOUR, LLC

Petitioner,

vs.

FHFC APPLICATION: 2020-468BS
REQUEST FOR APPLICATIONS: 2020-208

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

**PETITION FOR WAIVER OF RULE 67-48.0072(21)(b), F.A.C. (7/11/19)**

Pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code ("F.A.C."), Petitioner Liberty Square Phase Four, LLC, a Florida limited liability company, submits this Petition to Respondent Florida Housing Finance Corporation ("Florida Housing") for a waiver of Rule 67-48.0072 (21)(b), F.A.C. (the "Rule") in effect at the time the Petitioner submitted its application in response to Florida Housing's Request for Applications 2020-208 SAIL and Housing Credit Financing For The Construction Of Workforce Housing (the "RFA"). Petitioner seeks to extend the time allowed under the Rule for the issuance of a firm loan commitment. Per Rule 67-48.0072 (21)(a), F.A.C., Florida Housing "shall issue a firm loan commitment after approval of the Credit Underwriter's recommendation for funding by the Board." However, Petitioner experienced significant delays beyond its control finalizing the credit underwriting report. Though Petitioner believes the credit underwriting report will be approved at the Board's meeting on June 17, 2022, the deadline for securing a firm loan commitment is April 26, 2022. Thus, Petitioner seeks a short (*e.g.*, six-

month) extension of the firm loan commitment deadline. In support of its Petition, the Petitioner states as follows:

## A. THE PETITIONER

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

Alberto Milo, Jr.
Organization: Liberty Square Phase Four, LLC
315 S. Biscayne Blvd.
Miami, FL 33131
Telephone: 305-460-9900
Fax: N/A
E-mail: amilo@relatedgroup.com

2. The name, address, telephone and facsimile numbers, and email address for Petitioner's attorney are:

Brian J. McDonough
Stearns Weaver Miller Weissler Alhadeff & Sitterson
150 West Flagler Street
Suite 2200
Miami, FL 33130
bmcdonough@stearnsweaver.com
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Bridget Smitha
Stearns Weaver Miller Weissler Alhadeff & Sitterson
106 East College Avenue, Suite 700
Tallahassee, FL 32301
bsmitha@stearnsweaver.com
Direct: 850-329-4852
Fax: 850-329-4844

## B. THE DEVELOPMENT AND ITS FINANCING

3. On March 25, 2020, Petitioner timely submitted its Application No. 2020-468BS in response to the RFA for the following development:

- Development Name: Liberty Square Phase Four
- Development Address: 1415 NW 63rd Street, Miami, Florida
- County: Miami-Dade
- Developer: Liberty Square Phase Four Developer, LLC

- Number of Units: 110
- Type: Mid-Rise, 5 to 6-stories
- Set Asides: 15.45% of units (17 units) at or below 30% AMI, 30.91% (34 units) at or below 50% AMI, 30.91% (34 units) at or below 70% AMI, and 22.73% (25 units) at or below 80% AMI.
- Demographics: workforce
- Funding: $3,250,000 Workforce SAIL Request Amount; $28,000,000 Multifamily Mortgage Revenue Bonds through Florida Housing; and $1,257,004 Non-Competitive 4% Housing Credit Request Amount (annual amount).

4. Petitioner accepted an invitation to enter credit underwriting on October 21, 2020. Although the Rule provides that the firm loan commitment must be issued within twelve months of acceptance to enter credit underwriting, it also provides that Petitioner may request one extension of up to six months. On June 23, 2021, Petitioner exercised this right and Florida Housing's Board approved the extension request to extend the deadline from October 26, 2021 to April 26, 2022. Petitioner paid the extension fee required by the Rule.

5. The extension was requested due to delays in securing a GC contract caused by the volatility of the construction market.

6. During the extension period, Petitioner worked closely with the Housing Finance Authority of Miami-Dade County to finalize the credit underwriting report. However, the Housing Finance Authority necessitated numerous revisions to address the relocation of public housing residents to the Development and related design changes. Petitioner believes that the credit underwriting report will be approved at the Florida Housing Board's June 17, 2022 meeting. However, the firm loan commitment deadline will expire on April 26, 2022. Per Rule 67-48.0072(1)(a), F.A.C., Florida Housing will not issue a firm loan commitment until after the

credit underwriting report is approved. Accordingly, Petitioner is in need of a Rule waiver in order to obtain a very short extension of the firm loan commitment deadline.

**C. WAIVER IS PERMANENT**

7. The requested waiver is permanent in nature.

**D. RULE FROM WHICH WAIVER IS SOUGHT**

8. Petitioner requests a waiver from the Rule, which provides:

> 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.

*See* Rule 67-48.072(21)(b), F.A.C. (7/11/19)

**E. STATUTES IMPLEMENTED BY THE RULE**

9. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"),[1] 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).

**F. JUSTIFICATION FOR THE REQUESTED WAIVER**

10. Under Section 120.542(l), 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 these rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Waivers must 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. § 120.542(2), Fla. Stat.

11. Because Petitioner was previously granted a six-month extension of the firm loan commitment deadline, the requested extension may not be granted without a waiver of the Rule.

12. Petitioner is requesting a short extension of the firm loan commitment deadline from April 26, 2022 to October 26, 2022 to allow Florida Housing's Board sufficient time to approve the credit underwriting report. While Petitioner is confident that it will be approved at the June 17, 2022 Board meeting, it almost certainly will be approved by the August 5, 2022 Board meeting. Thus, a six-month extension is requested in an abundance of caution and to prevent the need to make a subsequent petition for rule waiver.

[1] The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes.

13. There are no obstacles known to Petitioner that would prevent Florida Housing's issuance of the firm loan commitment following delivery and approval of the Credit Underwriting Report.

14. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive SAIL funding in the RFA, or Florida Housing. A denial of the Petition, however, would: (a) result in substantial economic hardship to Petitioner, as it has incurred significant costs to date in an effort to ensure that the Development proceeds to completion; (b) deprive Miami-Dade County of essential affordable rental units set aside for persons of limited means who desperately need the housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness[2]. *See* § 120.542(2), F.S.

15. If this Petition is not granted, the preliminary commitment will be withdrawn from and the Development will not be constructed.

16. As discussed herein, Petitioner is requesting a second extension of the deadline for issuance of the firm loan commitment from April 26, 2022 to October 26, 2022, which request requires a waiver of the Rule.

17. The requested waiver will ensure the availability of SAIL, MMRB, and housing credit financing which will otherwise be lost as a consequence of the credit underwriting delays described herein.

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[2]"Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. "Principles of Fairness" are violated when 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.

18. The foregoing facts demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the loss of a substantial sum of money should the transaction not go forward, and the loss of critical housing for households of limited means.

19. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. As demonstrated above, the requested waiver serves the purposes of Section 420.5087 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, Florida Housing would recognize principles of fundamental fairness in the development of affordable rental housing.

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

## G. ACTION REQUESTED

21. Petitioner requests the following:

a. That Florida Housing grant Petitioner a waiver from Rule 67-48.0072(21)(b), Florida Administrative Code, extend the deadline for issuance of the firm loan commitment from April 26, 2022 to October 26, 2022;

b. That Florida Housing grant the Petition and all the relief requested therein; and

c. That Florida Housing grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, P.A.
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Miami, Florida 33131
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*/s Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

**CERTIFICATE OF SERVICE**

The original Petition is being served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, CorporationClerk@floridahousing.org, with a copy served by U.S. Mail to the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 14th day of February, 2022.

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