STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING FINANCE CORPORATION

MIAMI BEACH HOUSING INITIATIVES, INC.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____ /

FHFC Case # 2022-038VW

FHFC APPLICATION: 2020-483S
REQUEST FOR APPLICATIONS: 2020-102

PETITION FOR WAIVER OF RULE 67-48.0072(4)(c) and (21)(b), F.A.C. (7/11/19)

Pursuant to § 120.542, Fla. Stat. and Rule 28-104.002, F.A.C., Petitioner Miami Beach Housing Initiatives, Inc., ("MBHI") a Florida non-profit corporation, submits this Petition to Respondent, Florida Housing Finance Corporation, ("Florida Housing") for a waiver of Rule 67-48.0072(4)(c) and (21)(b), F.A.C. (July 11, 2019) (the "Rule") in effect at the time MBHI submitted its application in response to Florida Housing's Request for Applications 2020-102 SAIL Financing For Smaller Developments For Persons With Special Needs (the "RFA"). MBHI seeks an additional extension for the issuance of a firm loan commitment. In support of its Petition, MBHI states as follows:

A. THE PETITIONER

1. The name, address, telephone, and email address for MBHI and its qualified representative are:

Miguell Del Campillo, Executive Director
Miami Beach Housing Initiatives, Inc.
200 Alton Road, Miami Beach, FL 33139
Telephone: (305) 532-6401, extension 3020
Email: miguell@hacmb.org

2. The name, address, telephone, and email address for MBHI's attorney are:

Alexander L. Palenzuela
Law Office of Alexander L. Palenzuela, P.A.
1200 Brickell Avenue, Suite 1950
Miami, FL 33131-3298
Telephone: (305) 333-0467
Email: alp@alp-law.com

B. THE DEVELOPMENT AND ITS FINANCING

3. Florida Housing issued the RFA on March 4, 2020.

4. MBHI timely submitted its application in response to the RFA for the development named "The Heron", located in Miami-Dade County (the "Development"). The Development will comprise 20 new construction units for elderly persons with special needs. MBHI requested a SAIL loan in the amount of $3,999,980, and an ELI loan in the amount of $389,200. The set asides for the Development consist of 20% at 28% of area median income ("AMI"); and 80% at 60% of AMI.

5. MBHI is an instrumentality of the Housing Authority of the City of Miami Beach, a Florida public housing authority established pursuant to Chapter 421, Fla. Stat.

6. The Florida Housing Board of Directors ("Board") approved the final scores and recommendations for the RFA, on June 11, 2020, and directed staff to proceed with all necessary credit underwriting activities.

7. On July 8, 2020, Florida Housing staff issued an invitation to enter credit underwriting to MBHI, which states that the firm loan commitment must be issued within 12 months of the acceptance to enter credit underwriting. The acceptance was acknowledged on July 9, 2020, giving MBHI a firm loan commitment issuance deadline of July 9, 2021.

8. On May 10, 2021, MBHI requested a firm loan commitment deadline extension from July 9, 2021 to January 9, 2022. The limitations related to the pandemic made it difficult to proceed with procurement requirements as well as with other development activities for this project. Florida Housing staff reviewed the request and found that it met all requirements of the RFA.
9. On June 18, 2021, the Board approved the request for a firm loan commitment deadline extension from July 9, 2021 to January 9, 2022, subject to payment of the required non-refundable extension fee of one percent of the loan amount, pursuant to the terms of the RFA.
10. On July 13, 2021, the non-refundable extension fee of $43,892.00 was received by Florida Housing staff.
11. On December 10, 2021, the Board granted MBHI's first request for a waiver of 67-48.0072(4)(c) and (21)(b), Fla. Admin. Code, to allow MBHI to further extend its firm loan commitment issuance deadline from January 9, 2022 to July 9, 2022.
12. However, MBHI requires additional time to secure its firm loan commitment, which will allow the credit underwriting process to be completed. The need for additional time is the result of having secured additional funding sources.
13. The additional time will allow Miami-Dade County to finalize the approval process for an award of an additional $1,000,000 in Surtax gap financing to the Development over and above the $500,000 in Surtax gap financing that Miami-Dade County initially awarded to the Development.

14. The additional time will also allow the City of Miami Beach to finalize the approval process for an award of $1,400,000 in HOME-ARP financing for the Development, which is in addition to all the above refinancing.

15. The additional time will also allow the HACMB and MBHI to approve the construction contract with Atlantic Pacific Community Builders, LLC and complete the building permit process to bring this much needed project to fruition.

16. MBHI requests a six-month extension of the firm loan commitment deadline from July 9, 2022 to January 9, 2023, in order to allow additional time for the firm loan commitment to be issued and the credit underwriting report to be approved.

17. The requested waiver is permanent in nature.

C. RULE FROM WHICH WAIVER IS SOUGHT

18. MBHI requests a waiver from the Rule, which provides:

> (4) If the invitation to enter credit underwriting is accepted: ...
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> (c) For SAIL, EHCL, , 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.
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> ***
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> (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 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.
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> See Rule 67-48.0072(4)(c) and (21)(b), F.A.C. (emphasis added).

D. STATUTES IMPLEMENTED BY THE RULE

19. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"), § 420.5087, Fla. Stat. (State Apartment Incentive Loan Program).

E. JUSTIFICATION FOR REQUESTED WAIVER

20. Under §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 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.
21. As discussed in Paragraphs 11 through 16 above, MBHI was on course for a firm loan commitment issuance to be completed prior to the July 2022 Board Meeting. However, because of unforeseen delays MBHI requests this additional extension to address and resolve the issues that arose. Accordingly, MBHI is in need of the requested extension.

22. Because MBHI previously received an extension pursuant to the Rule, a waiver is necessary to obtain the requested additional extension.

23. The requested waiver will not adversely affect MBHI, the Development, any other party that applied to receive funding in the RFA, or Florida Housing. A denial of the request, however, would: (a) result in substantial economic hardship to MBHI, 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 housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness.

24. If this Petition is not granted, the SAIL allocation will automatically be withdrawn from the transaction, the preliminary commitment for the ELI Loan will be withdrawn, and the Development will not be constructed as proposed.

25. As discussed herein, MBHI is requesting a third extension of the deadline for issuance of the firm loan commitment from July 9, 2022 to January 9, 2023, which request requires a waiver of the Rule.

26. The requested waiver will ensure the availability of SAIL financing which will be lost without the extension.

27. The foregoing facts demonstrate the hardship and other circumstances which justify MBHI'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 Miami-Dade County.

28. 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 § 420.5087, Fla. Stat. 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.

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

F. ACTION REQUESTED

30. MBHI requests the following:

    a. That Florida Housing grant MBHI a waiver from Rule 67- 480072(4)(c) and (21)(b), Florida Administrative Code, extend the deadline for issuance of the firm loan commitment from July 9, 2022 to January 9, 2023; and,

    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,

/s/ Alexander L. Palenzuela
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Attorney for Miami Beach Housing Initiatives, Inc.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Waiver has been furnished to Hugh Brown, General Counsel for the Corporation, and the Corporation Clerk, both of whose address is Clerk, Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, email: CorporationClerk@floridahousing.org; and to the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, FL 32399; email address: japc@leg.state.fl.us; via electronic email on this 31st day of May, 2022.

/s/ Alexander L. Palenzuela
Alexander L. Palenzuela