STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

LIBERTY SQUARE PHASE FOUR, LLC

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC Case # 2023-057VW

FHFC APPLICATION: 2020-468BS/2019-573C
REQUEST FOR APPLICATIONS: 2020-208

PETITION FOR WAIVER OF RULE 67-48.0072(26) F.A.C. (7/11/19)

Petitioner, Liberty Square Phase Four, LLC (the "Petitioner"), by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of Rule 67-48.0072(26), Florida Administrative Code ("F.A.C.") (July 11, 2019) so that it may extend the SAIL closing deadline of June 19, 2023. Petitioner experienced a series of delays beyond its control, as outlined in more detail below. Accordingly, Petitioner is requesting a 90-day extension of the loan closing deadline. In support, Petitioner states as follows:

1. THE PETITIONER

The address, telephone, facsimile numbers and e-mail 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

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

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street
Suite 2200
Miami, Florida 33130
Telephone: 305-789-3350
Fax: 305-789-3395
Email: Bmcdonough@stearnsweaver.com

Bridget Smitha
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
106 East College Avenue, Suite 700
Tallahassee, FL 32301
Telephone: 850-329-4852
Fax: 850-329-4844
Email: BSmitha@stearnsweaver.com

2. DEVELOPMENT BACKGROUND

The following information pertains to the development (the "Development") underlying Petitioner's application:

- 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: 193
- Type: Mid-Rise, 5 to 6-stories
- Set Asides: 27.46% of units (53 units) at or below 30% AMI, 13.47% (26 units) at or below 40% AMI, 4.66% (9 units) at or below 60% AMI, 53.89% (104 units) at or below 80% AMI, and one unrestricted employee unit (0.52%)
- Demographics: workforce
- Funding: $3,250,000 Workforce SAIL Request Amount; $43,000,000 Multifamily Mortgage Revenue Bonds through Florida Housing; and $3,135,015 Non-Competitive 4% Housing Credit Request Amount (annual amount).

3. WAIVER IS PERMANENT

The waiver being sought is permanent in nature.

4. THE RULE FROM WHICH WAIVER IS REQUESTED

Petitioner seeks a waiver of Rule 67-48.0072(26),[1] effective July 11, 2019, which provides:

> (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.

Id. (emphasis added).

5. STATUTES IMPLEMENTED BY THE RULE

The Rule implements Section 420.5087 (State Apartment Incentive Loan Program), Section 420.5089 (HOME Investment Partnership Program; HOME Investment Partnership

[1] RFA 2020-208, Ex. C., § 4.g. states: "SAIL loans must close within the timeframes outlined in subsections 67-48.072(21) and 67-48.072(26), F.A.C. For all SAIL loans, a request for an extension of the deadline for closing the loan(s) may be considered by the Board for an extension term of up to 90 Calendar Days." *Id*. at p. 89.

Fund), and Section 420.5099 (creating the Housing Credits Program) of the Florida Housing Finance Corporation Act (the "Act").[2]

6. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE

a. Petitioner timely submitted the Application for the Development on March 25, 2020 in response to RFA 2020-208 (SAIL and Housing Credit Financing for the Construction of Workforce Housing) (the "RFA").

b. The Development received an allocation of the 2020 Housing Credit dollar amount meeting the requirements of Section 42(h)(1)(E) and (F) of the Internal Revenue Code of 1986 as amended ("Tax Credits") and was invited to credit underwriting on October 21, 2020.

c. Petitioner accepted an invitation to enter credit underwriting on October 26, 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 on October 22, 2021 to extend the deadline from October 26, 2021 to April 26, 2022. Petitioner paid the extension fee required by the Rule.

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

e. 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. Because Florida Housing could not issue a firm loan commitment until after the credit underwriting report was approved,

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

Petitioner requested, and was approved by Florida Housing's Board on March 4, 2022, a Rule waiver to extend the firm loan commitment deadline to October 26, 2022.

f. On September 22, 2022, Florida Housing issued a firm commitment for the SAIL. Pursuant to RFA 2020-208, the loan was required to close within 180 calendar days of the date of the firm commitment (*i.e.*, March 21, 2023). However, an extension of that closing deadline of 90 calendar days was approved by Florida Housing's Board on April 28, 2023, extending the loan closing deadline to June 19, 2023.

g. Because Petitioner exercised the single extension allowed under the Rule, Petitioner must request via this Petition a waiver of the Rule to allow an additional extension. The need for this extension was created by forces outside of Petitioner's control.

h. Specifically, Petitioner is involved with the multi-phase redevelopment of the oldest public housing development in Florida, which will involve redeveloping 640 units into a 1,500-unit mixed income development. Because the site provided public housing, approval from the U.S. Department of Housing and Urban Development ("HUD") was necessary to demolish the original units and replace them with modern units. Before such approval could be granted, HUD required a lengthy reconciliation process to confirm the number of affordable housing units that were being replaced.

i. Petitioner cannot close without HUD approval, which approval requires substantially final documents. Petitioner submitted the required documents to HUD in May 2023. While HUD has already provided its first round of comments, final HUD approval likely cannot be obtained until mid-July.

j. Separately, Florida Housing advised that credit underwriting could not be completed until HUD posted the rents that were to be underwritten. Generally, such information

is available by April of each year. However, the information did not become available until May 15, 2023. Thus, credit underwriting could not be finalized until the updated rents were published. The final credit underwriting report update letter was not approved by the Board until June 9, 2023. Additionally, the rent increase was significantly lower than anticipated (*i.e.*, 6% instead of 14%).

k. Lastly, Petitioner has been working diligently to obtain building permits for all three buildings to be constructed. Initially, Petitioner intended to construct two buildings in phase one, and intended to construct a third building in a later phase. However, because all three buildings will be located within – and comprise – an entire city block, the City required Petitioner to submit drawings for all three buildings during the site plan approval process. Because the site plan included all three buildings, Petitioner decided to construct all three buildings simultaneously as opposed to waiting to construct the third building in a later phase. Petitioner also increased the number of units from 110 to 186 and then to 193. The changes to the plans and Development Order slowed Petitioner's progress and substantially increased related costs.

l. Unfortunately, due to delays related to the foregoing, Petitioner does not believe it will be able to satisfy the current loan closing deadline.

m. Thus, Petitioner is in need of a Rule waiver to obtain a second extension of the loan closing deadline.

n. As set forth above, this request was not necessitated through any fault of Petitioner. Rather, Petitioner exercised due diligence in attempting to move the Development towards construction.

o. If the Petition is denied, the preliminary commitment will be withdrawn per Rule

67-48.0072(26), F.A.C. Because the Development cannot move forward without this funding source, the denial would cause Miami-Dade County to lose these 193 affordable housing units.

p. This Petition should be granted, as opposed to de-obligating the award, because Miami-Dade County is currently experiencing a shortage of affordable housing units. Granting the Petition will result in the delivery of 193 affordable housing units much faster than would reallocating the funding to a new development because Petitioner expects to have its building permits and HUD approval by mid-July.

q. 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,[3] 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.

r. In this instance, Petitioner meets the standards for a waiver of the Rule. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 193 affordable housing units will be preserved and made available for the target population in Miami-Dade County, Florida. The strict application of the Rule would cause the preliminary commitment to be withdrawn. Further, the waiver will serve the purposes of the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary

[3] "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.

housing in the State. By granting this waiver, and further ensuring the development of 193 affordable housing units in Miami-Dade County, Florida Housing would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable housing. *See* § 420.5099(2), Fla. Stat.

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

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

7. ACTION REQUESTED

For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested waiver to extend the loan closing deadline an additional 90 days (*i.e.*, through and including September 18, 2023); (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, 22nd Floor
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@stearnsweaver.com

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 28th day of June, 2023.

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