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 # _2023-098VW_____

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

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

Petitioner Miami Beach Housing Initiatives, Inc. ("MBHI") a Florida non-profit corporation and an instrumentality of the Housing Authority of the City of Miami Beach, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of Rule 67-48.0072(26) F.A.C. (July 11, 2019) (the "Rule") so that it may extend the SAIL/ELI closing deadline of December 15, 2023. MBHI experienced a series of delays beyond its control, as outlined in more detail below. Accordingly, MBHI is requesting an extension of the loan closing deadline to the February 2, 2024 Florida Housing Board meeting to be consistent with the requested CHIRP closing deadline extension which is being requested contemporaneous with this request. In support, MBHI states as follows:

A. THE PETITIONER

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

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. DEVELOPMENT BACKGROUND

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

- Development Name: The Heron
- Development Address: 1158 Marseille Drive, Miami Beach, FL 33141
- County: Miami-Dade
- Developer: Housing Authority of the City of Miami Beach
- Number of Units: 20
- Type: Mid-Rise, 4 stories
- Set-Asides: Four units at or below 28% AMI, Eight units at or below 30% AMI, and Eight units at or below 60% AMI
- Demographics: Special Needs Elderly
- Funding from Florida Housing: $3,999,980 SAIL, $389,200 SAIL-ELI, and $2,520,000 HOME-ARP CHIRP

C. WAIVER IS PERMANENT

The waiver being sought is permanent.

D. THE RULE FROM WHICH WAIVER IS REQUESTED

MBHI seeks a waiver of Rule 67-48.0072(26), effective July 11, 2019, which provides:

(26) For SAIL and HOME, unless stated otherwise in a competitive solicitation, these Corporation loans and other mortgage loans related to the Development must close by the date of the Board of Directors meeting immediately following 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 period outlined above. If an approved extension is utilized, Applicants must pay the extension fee not later than seven (7) Calendar Days after the Board approves the request to extend 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

The Rule implements Section 420.5087 (State Apartment Incentive Loan Program), Section 420.5089 (HOME Investment Partnership Program; HOME Investment Partnership Fund) of the Florida Housing Finance Corporation Act ("the Act") set forth in Sections 420.50 through 420.55 of the Florida Statutes.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE

1. MBHI timely submitted its Application for the Development on April 1, 2020 in response to RFA 2020-102 SAIL Financing For Smaller Developments For Persons With Special Needs (the "RFA").

2. On July 8, 2020, Florida Housing 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.

3. On June 18, 2021, the Florida Housing Board approved the request for a firm loan commitment issuance deadline extension from July 9, 2021, to January 9, 2022. On December 10, 2021, the Board approved the Rule waiver request for an additional firm loan commitment issuance deadline extension from January 9, 2022, to July 9, 2022.

4. On May 9, 2022, Florida Housing issued the 2022 Construction Housing Inflation Response Program (CHIRP) Invitation to Participate (ITP). Florida Housing received a CHIRP ITP Application from MBHI on July 1, 2022, requesting HOME-ARP funds.

5. On June 17, 2022, the Florida Housing Board approved an additional Rule waiver request to extend firm loan commitment issuance deadline from July 9, 2022, to January 9, 2023.

6. On January 27, 2023, the Florida Housing Board approved the final credit underwriting report with a positive recommendation for funding. On January 30, 2023, staff issued a firm commitment to the Applicant giving them a loan closing deadline of May 30, 2023.

7. On June 9, 2023, the Florida Housing Board approved a waiver of the CHIRP ITP to waive the loan closing deadline from June 9, 2023 to September 8, 2023 and a request for a SAIL/ELI loan closing deadline from May 30, 2023 to September 8, 2023, subject to payment of the required non-refundable extension fee of one percent of the SAIL/ELI loan amounts, pursuant to the requirements of the RFA.

8. On August 18, 2023, MBHI submitted a check to Florida Housing in the amount of $43,891.80 for payment of the required non-refundable extension fee of one percent of the SAIL/ELI loan amounts.

9. On September 8, 2023, the Florida Housing Board approved a waiver of the CHIRP ITP to waive the loan closing deadline from September 8, 2023 to December 15, 2023 and a Rule waiver request for a SAIL/ELI loan closing deadline from September 8, 2023 to December 15, 2023.

10. Because MBHI exercised the single extension allowed under the Rule, MBHI 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.

11. In order to qualify for CHIRP funding, MBHI was required to convert some of the 60% AMI units to 30% AMI units, resulting in a loss of revenue. This required the addition of eight (8) project-based vouchers (PBV) to have sufficient income to support the increased debt, resulting in the need for a Subsidy Layering Review (SLR) to be completed by HUD. MBHI cannot close without HUD approval which is expected to be issued within sixty days. MBHI anticipates that the approval will be granted after the current loan closing deadline of December 15, 2023.

12. The Development sources include substantial funding from the City of Miami Beach and Miami-Dade County. MBHI has requested draft closing documents from the City and County for legal counsel review in preparation for closing, however they have not yet been provided. The lack of all closing documents has caused a considerable delay in preparing for the loan closing.

13. Lastly, MBHI has been working diligently to obtain building permits for the Development. The delay in obtaining permit approvals has slowed MBHI's progress in complying with the terms of the loan closings. MBHI anticipates that the building permit will be issued within the next ninety days.

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

15. Thus, MBHI is in need of a Rule waiver to obtain a third extension of the loan closing deadline.

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

17. 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 the Florida Housing funding, the denial would cause Miami-Dade County to lose these twenty permanent supportive housing units.

18. 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 twenty affordable housing units much faster than would reallocating the funding to a new development.

19. Under Section 120.542(1), Florida Statutes 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 principals

of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Florida Statutes.

20. In this instance, MBHI 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 twenty permanent supportive housing units for elderly persons with special needs will be made available in Miami-Dade County. The strict application of the Rule would cause the funding 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 housing in the State. By granting this waiver, and further ensuring the development of twenty affordable housing unit in Miami-Dade County, Florida Housing would recognize the goal of increasing the supply of affordable housing though 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.

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

22. 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.

G. ACTION REQUESTED

For the reasons set forth herein, MBHI respectfully requests Florida Housing: (i) grant the requested waiver to extend the loan closing deadline to the February 2, 2024 Florida Housing Board meeting to be consistent with the requested CHIRP closing deadline

extension; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem 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 the Corporation 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 28th day of November, 2023.

/s/ Alexander L. Palenzuela
Alexander L. Palenzuela