STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

MBCDC: The Allen, LLC

Petitioner,

FHFC CASE NO. 2021-012VW

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR PERMANENT WAIVER OR VARIANCE OF RULE 67- 32.006(8), F.A.C., ELDERLY HOUSING COMMUNITY LOAN PROGRAM

MBCDC: The Allen, LLC (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a permanent waiver of Rule 67-32.006(8), Florida Administrative Code (2008) ("F.A.C.") (the "Rule"), which requires the Petitioner to comply with all Elderly Housing Community Loan ("EHCL") documents. Specifically. the ECHL Loan Agreement Paragraph 15(g)(i) requires the Petitioner to submit a financial certification within 120 days following the end of the Petitioner's fiscal year. Petitioner requests a permanent waiver of the 120-day financial certification deadline and, in lieu thereof, requests that it be allowed to submit its financial certification to Florida Housing within 9 months of the end of the Petitioner's fiscal year, including waiver of the $250 late fee and default provision related to the 120 day fiscal certification deadline. The 9-month period is necessary because Petitioner's reporting is dependent upon financials provided by affiliated companies which are on a federal reporting cycle under a 9-month deadline. Since the Petitioner faces this same issue each year, the waiver request is permanent and not limited to any fiscal year-end financial reporting.

In support, the Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone, facsimile numbers and e-mail address for Petitioner and its qualified representative are:

MBCDC: The Allen, LLC
c/o Miami Beach Community Development Corporation,
Inc. Attention: Ahmed A. Marin
Executive Director
1688 Meridian Avenue, Suite 600 & 700
Miami Beach, FL 33139
Telephone:(754)216-5853
Email: amartin@miamibeachcdc.org

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

Legal Services of Greater Miami,
Inc. Shahrzad Emami, Esq.
4343 West Flagler Street, Suite 100
Miami, Florida 33134
Telephone: 305-438-2461
Email: ShahrzadE@legalservicesmiami.org

B. THE RULE FROM WHICH WAIVER IS REQUESTED

3. Petitioner requests a waiver of compliance with the EHCL loan documents as required by Rule 67-32.006(8), F.A.C. (2008), which provides in pertinent part:

> Any violation of the terms and conditions required by Rule Chapter 67-32, F.A.C., or *the loan documents* constitutes a default under the loan documents allowing the Corporation to accelerate its loan and to seek foreclosure as well as any other remedies legally available to it. *(emphasis added)*

4. The Petitioner specifically requests a permanent waiver from Paragraph 15(g)(i) of its EHCL Loan Agreement, dated November 10, 2009, ("Loan Agreement") which provides in pertinent part:

> (g) Financial Statements to be Furnished. Borrower shall furnish to Florida Housing and the Servicer:
>
> (i) a certification as described below. Such certification shall be provided within 120 days following the end of the Borrower's fiscal year during the term of the Note…. A late fee of $250.00 will be assessed for failure to submit the required financial certification within 120 days following the end of the Borrower's fiscal year of each year of the term of the Loan. Failure to submit the required financial certification within 120 days following the end of the Borrower's fiscal year of each year during the term of the Loan shall constitute an event of default under the Loan Documents.

C. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE

5. As required by Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), Petitioner, as a subsidiary of Miami Beach Community Development Corporation, Inc. (a non-profit entity) (the "MBCDC") has nine-months to submit its annual audit for the Allen Apartments (the "Development") to comply with all federal financial reporting requirements (the "Federal Requirements").

6. The Petitioner is one of the eleven entities owned by the MBCDC (a 501(c)(3) already limited in time and resources). In order for the Petitioner to comply with the 120-day financial certification deadline of its Loan Agreement, its financing reporting depends on the financing reporting supplied by audit(s) from the other Entities. As a result of not meeting the 120-day financial certification deadline, each year the Petitioner receives audit findings for non-compliance.

7. 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. Florida Housing shall grant a waiver when the entity or person subject to the rule demonstrates that the application of the rule would(1) creates a *substantial hardship*[1] or, violates 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. (2008).

8. If the Rule is imposed, the Petitioner will suffer unnecessary economic and operational hardships because federal or municipal grantor agencies may abstain from additional funding requests based on non-compliance. The waiver would allow the Petitioner to move ahead by meeting its Federal Requirements and increase ability to obtain funds because this Audit finding would not appear. Absent the waiver, Petitioner will need to seek additional sources to cover all costs associated with operations of the Development and jeopardize Petitioner's ability to provide decent, safe and sanitary housing, as required.

9. The Petitioner meets the standards for granting the requested waiver. The requested waiver will not adversely impact the Development or Florida Housing. The strict application of the Rule will create a substantial hardship for Petitioner because reporting as non-compliant will deprive Petitioner of receiving additional funding from federal, state, and/or local grantor agencies. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State. Denying the waiver would compromise the MBCDC's ability to provide and maintain affordable housing on behalf of Miami-Dade County and the City of Miami Beach.

[1] 1 "Substantial hardship" is shown by demonstrating 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. § 120.542(2), Fla. Stat. (2017).

D. ACTION REQUESTED

10. For the reasons set forth herein, Petitioner respectfully requests Florida Housing grant the requested permanent waiver of Rule 67-32.006(8), F.A.C. (2008) that requires compliance with all ECHL loan documents, which will allow Petitioner's requested permanent waiver of the 120-day financial certification deadline contained Paragraph 15.(g)(i) of the Petitioner's Loan Agreement. In lieu of the 120-day financial certification deadline, Petitioner requests that it be allowed to submit hereafter its financial certification to Florida Housing within 9 months of the end of the Petitioner's fiscal year and Florida Housing shall waive the $250 late fee and default provision related to the 120-day fiscal certification deadline.

Respectfully submitted,

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Counsel for Petitioner

By: */s/ Shahrzad Emami*
SHAHRZAD EMAMI, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by hand delivery, with a copy served by the electronic transmission for filing with the Florida Housing 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 8th day of February, 2021.

By: */s/ Shahrzad Emami*
Shahrzad Emami, Esq.