

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

MOUNT SINAI MEDICAL CENTER OF
FLORIDA, INC., a Florida non-profit
corporation,

Petitioner,

vs.

FHFC CASE NO. 2009-C35 VW

FLORIDA HOUSING FINANCE
CORPORATION,

APPLICATION NO. 2007-022W

Respondent.

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**PETITION FOR WAIVER OF
RULE 67-58.003(1)(a), FLORIDA ADMINISTRATIVE CODE (2007)**

MOUNT SINAI MEDICAL CENTER OF FLORIDA, INC., a Florida non-profit corporation ("Petitioner"), by and through its undersigned counsel and pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code ("F.A.C."), hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver or variance from Rule 67-58.003(1)(a), Florida Administrative Code.

THE PETITIONER

I. The address, telephone number and facsimile number of the Petitioner is:

Mt. Sinai Medical Center of Florida, Inc.
4300 Alton Road
Miami Beach, FL 33140
305-674-2200
305-674-2155 (Fax)
Amy-perr@msmc.com

2. The address, telephone number and facsimile number of the Petitioner's counsel is:

Gary J. Cohen, Esq.
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THE RULE FROM WHICH WAIVER IS SOUGHT

3. Rule 67-58.003(1)(a), F.A.C. (2007), specifically provides that the CWHIP Application Package is adopted and incorporated by reference into Rule 67-58. Part III.G of the Application Instructions (page 14) provides, in part, that "In order for the CWHIP loan to be forgivable, the Applicant must commit to a minimum Affordability Period of 50 years for rental units...". Applicant committed to an affordability period of 50 years in its application, and is requesting (for the reasons set forth below) that the affordability period be decreased to 30 years, thus giving rise to the necessity for this rule waiver request.

STATUTES IMPLEMENTED BY RULE 67-58.003(1)(a), F.A.C.

4. Rule 67-58.003(1)(a), F.A.C. (2007), implements Section 420.5095, Florida Statutes. Florida Statutes Section 420.5095 ("Community Workforce Housing Innovation Pilot Program") provides for the Corporation to make mortgage loans for the financing of development costs of projects which will provide affordable rental and homeownership community workforce housing for essential services personnel.

5. Petitioner seeks a waiver of that portion of the Application Instructions which require a 50 year affordability period in order for a CWHIP loan to be forgivable. Petitioner respectfully requests that a 30 year affordability period be required in lieu of the aforementioned

50 year affordability period, and that such CWHIP loan be forgivable at the end of the 30 year affordability period.

JUSTIFICATION FOR GRANTING WAIVER OF RULE 67-58.003(1)(a), F.A.C.

6. Petitioner applied for a CWHIP loan in the 2007 CWHIP Application Cycle (Application Number 2007-022W) and was awarded an allocation of CWHIP funds for the rehabilitation of exiting residential rental units located in the Lowenstein Building within the Mount Sinai Medical Campus. On July 24, 2009, the Corporation approved the final credit underwriting report for the Development, and issued a loan commitment letter in the amount of \$3,265,600.00 on July 28, 2009. The credit underwriting report and the loan commitment letter reference a 50 year affordability period, and provide for forgiveness of the loan at the end of such affordability period provided the Development remains in compliance with its set-aside requirements.

7. The Lowenstein Building was originally constructed in 1960, and the rehabilitation contemplated to be undertaken with the proceeds from the CWHIP loan will constitute the first substantial rehabilitation to such building since its inception. The building will be used primarily to house nurses and other essential services personnel, primarily those employed at Mount Sinai Medical Center. Given the current age of the building, it is more realistic to expect that its remaining useful life will extend for an additional 30 year period (through 2039) and not through a 50 year period (2059).

8. The property upon which the Lowenstein Building is located is part of a major medical center campus, and is one of the many structures that comprise the hospital campus. As such, it differs significantly from rental housing or homeownership typically constructed by a single asset applicant/development entity funded by the Corporation. The health care industry in general (and the Mount Sinai campus specifically), is subject to constantly evolving regulatory

conditions and market influences. While Petitioner believes that the Mount Sinai Medical Center campus will continue to provide medical services for the foreseeable future, it is possible that significant changes (market, regulatory, or otherwise) may occur in the future which could substantially change the means by which medical care is provided and delivered, which changes could give rise to substantial changes to the Mount Sinai medical campus. As such, Petitioner believes that it would not be prudent to restrict the utilization of the Lowenstein Building to “workforce housing” for a 50 year period, and believes that a 30 year affordability period would be more realistic. It is a simple matter for a single-asset development entity to commit to a 50 year affordability period for such single asset (as is typically the case with affordable housing developments financed by the Corporation). It is more difficult for a multi-faceted applicant (such as Petitioner) to agree to restrict the use of a significant asset, which is integral to the overall operations of the medical campus, for a period that is longer than necessary, given the current unsettled state of the medical industry.

9. Petitioner was awarded CWHIP funds in the “Innovation” category, receiving the second highest “Innovation” score of any eligible applicant. If this Petition is granted, Petitioner’s overall score of 177 points would be decreased; however, Petitioner’s Innovation score of 89 points would remain the same. As set forth on page 29 of the Application Instructions for the 2007 CWHIP cycle, after funding eligible projects in the “high cost” and “high growth” county categories (three applications in each of those categories), the Corporation directs all remaining CWHIP funds to fund projects in the “Innovative Projects” category. Projects in the “Innovative Projects” category are ranked in the following order:

1. Innovation scores;
2. Overall scores;
3. Tie-breakers.

As discussed above, Petitioner's overall score would be decreased by decreasing the affordability period from 50 years to 30 years; however, no reduction in the innovation score would result. As such, Petitioner would continue to be ranked second in the "Innovative Projects" category even if it initially committed to a 30 year affordability period instead of a 50 year affordability period.

10. The Corporation is authorized by Section 120.542(1), Florida Statutes, and Rule Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or violate principles of fairness¹; and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes. The application of this rule will result in a substantial financial burden to the Petitioner.

11. In this case, strict application of Rule 67-58.003(1)(a), F.A.C. (2007) in this case will create a substantial hardship for Petitioner. Requiring the Lowenstein Building to be restricted for 50 years would unduly restrict and "tie the hands" of Petitioner with respect to the operation of its medical center campus, which has been providing care to the residents of Miami-Dade County for 60 years. The medical center is the largest employer on Miami Beach with more than 3,000 employees and is the largest private, independent not-for-profit teaching hospital in South Florida, with more than 700 physicians and 955 licensed beds. In order to be in a position to continue to provide such care for the foreseeable future, Petitioner must retain some

¹ "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance. "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 Rule 120.542(2), Florida Statutes.

level of flexibility with respect to future utilization of all of the properties on its medical center campus, including the Lowenstein Building. Requiring such building to provide workforce housing for its medical service personnel for 30 years rather than 50 years would impose a more reasonable burden/restriction on utilization of such building, particularly in light of the age of such building.

12. Further, the waiver will serve the underlying purpose of the statute. Specifically, §420.5095 which is implemented by the rule in question seeks to provide safe, sanitary, and affordable workforce housing to essential services personnel who are working and classified as income and occupationally eligible workforce housing beneficiaries. Such statute specifically targeted counties that were facing critical shortages of affordable housing for teachers, firefighters, police, healthcare workers, and other essential personnel necessary for the economic well-being of their communities. Miami-Dade County is sorely in need of affordable housing for key employees (such as healthcare workers) of the sort specifically referenced by the above statute. Acting favorably on this Petition will promote the development of workforce housing in Miami-Dade County and serve the underlying purpose of the statute.

13. The variance or waiver being sought is permanent in nature.

ACTION REQUESTED

14. For the reasons set forth herein, Petitioner respectfully requests the Corporation to grant the requested waiver of that portion of Rule 67-58.003(1)(c), F.A.C. (2007) which requires that a development funded by CWHIP funds maintain its set-asides for workforce housing and essential services personnel for 50 years in order for such CWHIP loan to be forgivable, and to instead permit a 30 year affordability period for such loan and forgivability at the end of such 30 year period.

15. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300, as required by Section 120.542(5), Florida Statutes.

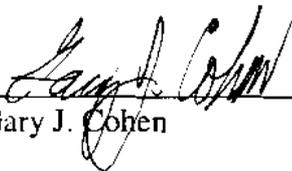
Respectfully submitted this 22nd day of September, 2009.



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CERTIFICATE OF SERVICE

The Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Proccdures Committee, Room 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399-1300, this 22nd day of September, 2009.



Gary J. Cohen