

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Dunbar Improvement
Association, Inc.

FHFC CASE NO.: 2018-011VW

**ORDER GRANTING WAIVER OF RULES 67-48.0072(4)(c), F.A.C. (2015)
and 67-48.0072(21)(b), F.A.C. (2016)**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on March 16, 2018, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on February 28, 2018, from Dunbar Improvement Association, Inc. ("Petitioner"). Notice of the Petition was published on March 1, 2018, in Volume 44, Number 42, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. Petitioner was selected to receive an Elderly Housing Community Loan (EHCL) of \$750,000 from Florida Housing pursuant to RFA 2015-102 to assist in the rehabilitation of a Development serving low-income elderly tenants in Fort Myers, Florida. Petitioner was also selected to receive an EHCL of \$750,000 from

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

W. J. McLamory / DATE: 3/16/18

Florida Housing pursuant to RFA 2016-108 to further assist in the rehabilitation of this Development.

3. Rule 67-48.0072(4)(c), F.A.C. (2015) provides as follows:

(c) For SAIL, EHCL, and HOME Applicants, the loan must close within 12 months of the date of the invitation to enter credit underwriting. Applicants may request one (1) extension of up to 12 months. . . . In the event the loan does not close by the end of the 12 month extension period, the preliminary commitment or firm commitment, as applicable, will be deemed void and the funds will be de-obligated.

4. Rule 67-48.0072(21)(b), F.A.C. (2016) provides as follows:

(b) For SAIL, EHCL, and HOME that is not in conjunction with Competitive HC, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued within nine (9) months of the Applicant's acceptance to enter credit underwriting. . . .

5. In accordance with the EHCL award under RFA 2015-102, the loan closing deadline was May 23, 2016. Petitioner was granted one 12-month extension of the EHCL closing deadline to May 23, 2017, and a second 12-month extension of the deadline to May 23, 2018. In December of 2016 Petitioner was awarded additional EHCL funding pursuant to RFA 2016-108. The firm loan commitment issuance deadline under this second RFA was September 21, 2017. Petitioner was granted one 6-month extension of the firm loan commitment issuance deadline to March 21, 2018. Petitioner alleges that the impacts of Hurricane Irma on the City of Fort Myers and on the Development led to unavoidable and unforeseen delays. Petitioner also alleges that additional time was required to receive approval from the

U.S. Department of Housing and Urban Development for a rent increase. Both of the EHCLs have been submitted to credit underwriting and a single credit underwriting report will be issued for both loans. It is thus anticipated that both loans will close simultaneously.

6. The Board finds that granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

7. Section 120.542(2), Florida Statutes provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

8. Petitioner has demonstrated that the waiver is needed in order to efficiently serve low-income elderly persons and that, if the waiver were not granted, Petitioner would suffer a substantial hardship. Petitioner has also demonstrated that the purpose of the underlying statute, which is to “encourage development of low-income housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

9. The Board finds that strict application of the above Rules under these circumstances would cause substantial hardship to Petitioner, and that granting this

request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

Petitioner's request for a waiver of Rule 67-48.0072(4)(c), Fla. Admin. Code (2015) is hereby **GRANTED** to allow the RFA 2015-102 EHCL loan closing deadline to be extended until October 31, 2018. Petitioner's request for a waiver of Rule 67-48.0072(21)(b), F.A.C. (2016) is hereby **GRANTED** to allow the RFA 2016-108 EHCL firm loan commitment issuance deadline to be extended until October 31, 2018.

DONE and ORDERED this 16th day of March, 2018.

Florida Housing Finance Corporation

By:


Chair

Copies furnished to:

Hugh R. Brown
General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Brantley Henderson
Director of Multifamily Development
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301

Bernice S. Saxon, Esq.
Saxon Gilmore & Carraway, P.A.
201 E. Kennedy Blvd., Suite 600
Tampa, Florida 33602
bsaxon@saxongilmore.com

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
120 Holland Building
Tallahassee, Florida 32399-1300

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.