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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

NOTRE MAISON I, LLLP,
a Florida limited liability limited partnership,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

CASE NO. 2024-056VW

Application No. 2023-176CSN

RFA 2023-103

PETITION FOR WAIVER OF RULES
67-48.0072(4)(c) and 67-48.0072(21)(b), F.A.C. (07/06/2022)

The petitioner, Notre Maison I, LLLP, a Florida limited liability limited partnership (the "Petitioner"), hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of Rules 67-48.0072(4)(c) and 67-48.0072(21)(b) of the Florida Administrative Code (July 6, 2022) pertaining to the required date by when an Applicant must receive a firm loan commitment (collectively, the "Subordinate Loan Deadline Rules"). Accordingly, pursuant to Section 120.542 of the Florida Statutes (2022) and Rules 28-104.001 through 28-104.006 of the Florida Administrative Code (2022), the Petitioner hereby requests a waiver of the Subordinate Loan Deadline Rules to allow for an extension of the required date by when the Petitioner must receive a firm loan commitment in connection with the Petitioner's Subordinate Loans (as defined hereinafter), from the current date of September 30, 2024 (the "Current Loan Commitment Receipt Deadline") to a new date of March 31, 2025.

In support of this Petition, the Petitioner states the following:

A. <u>THE PETITIONER</u>

1. The name, mailing address, telephone number and email address for the Petitioner and its qualified representative are:

Notre Maison I, LLLP
Attention: Stephanie Berman
1398 SW 1st Street, 12th Floor
Miami, Florida 33135
Telephone: (305) 371-8300
E-mail: sberman@carrfour.org

2. For purposes of this Petition, the name, mailing address, telephone number and email address of the Petitioner's attorney are:

Bilzin Sumberg Baena Price & Axelrod LLP
Attention: Terry M. Lovell, Esquire
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131
Telephone: (305) 350-2428
E-mail: tlovell@bilzin.com

B. THE DEVELOPMENT

3. The Petitioner timely submitted its Application No. 2023-176CSN (the "Application") on January 26, 2023 in response to the Corporation's RFA 2023-103 (Housing Credit and SAIL Financing for Homeless Housing Developments Located in Medium and Large Counties) issued on November 1, 2022 (the "RFA") for the development named "Notre Maison" (the "Development").

4. The Application was submitted by the Petitioner for (i) competitive Housing Credits under the Corporation's Housing Credit Program (the "Housing Credits"), and (ii) loan funding under the State Apartment Incentive Loan Program (SAIL).

5. Equity raised from the Housing Credits will be used for the development, construction and operation of the Development. Additionally, loan proceeds generated from the Petitioner's Subordinate Loans will be used for the development, construction and operation of the Development.

6. The following information pertains to the Development:

- Development Name: Notre Maison
- Development Location: City of Miami, Miami-Dade County, State of Florida
- Type of Construction: New Construction
- Number of Total Units: 75
- Number of Residential Buildings: 1

- Development Type: Mid-Rise (6 Stories)
- Demographics: Homeless
- Set-Asides: 15% (12 units) at or below 28% AMI and 85% (63 units) at or below 60% AMI, with 7 units at or below 22% AMI (NHTF); at least 50% of units will be set-aside for Homeless individuals and families; and at least 20% of units will be set-aside for Persons with Special Needs (which may be the same units set aside for Homeless individuals and families)
- Funding: 9% Housing Credits at an annual amount of $2,850,000; SAIL financing of $3,733,300; ELI financing of $466,700; and NHTF financing of $2,625,000

7. The Application was preliminarily selected for funding by the Corporation, the Petitioner was invited by the Corporation to enter into credit underwriting, and the Petitioner accepted the invitation to credit underwriting on March 31, 2023.

8. Under the Subordinate Loan Deadline Rules, the Applicant (who is the Petitioner) must receive a firm loan commitment for the Petitioner's Subordinate Loans within twelve (12) months of the Applicant's acceptance to enter into credit underwriting. Further, under the Subordinate Loan Deadline Rules, the Applicant may request one (1) extension, not to exceed six (6) months, to the required deadline to receive a firm loan commitment for the Petitioner's Subordinate Loans. In the event that the Applicant has not received a firm loan commitment for the Petitioner's Subordinate Loans in accordance with the aforementioned deadlines, then the preliminary loan commitment for the Petitioner's Subordinate Loans shall be withdrawn.

9. As previously noted, the Petitioner accepted the invitation to credit underwriting on March 31, 2023. As such, the twelve (12) month deadline for the Petitioner to receive a firm loan commitment for the Petitioner's Subordinate Loans expired on March 31, 2024. However, the Petitioner requested, and the Corporation granted, a six (6) month extension on May 10, 2024 such that the deadline for the Petitioner to receive a firm loan commitment for the Petitioner's Subordinate Loans was extended to September 30, 2024 (which is the Current Loan Commitment Receipt Deadline).

10. A further extension of the deadline for the Petitioner to receive a firm loan commitment for the Petitioner's Subordinate Loans cannot be granted by the Corporation without a waiver of the Subordinate Loan Deadline Rules.

11. As explained in greater detail below, the Petitioner will not be able to receive a firm loan commitment for the Petitioner's Subordinate Loans by the Current Loan Commitment Receipt Deadline; and therefore, the Petitioner is requesting an extension of the required date by when the Petitioner must receive a firm loan commitment in connection with the Petitioner's Subordinate Loans from the Current Loan Commitment Receipt Deadline to a new deadline of March 31, 2025.

12. The requested waiver and relief set forth in this Petition will not adversely affect the Development or the Corporation. However, a denial of this Petition: (i) would result in substantial hardship to the Petitioner,[1] including substantial economic hardship because the Petitioner has more than $688,675 invested and at risk in the Development, (ii) would deprive the City of Miami and Miami-Dade County of desperately needed affordable housing units, particularly housing for Homeless individuals and families, (iii) would prevent or hinder the implementation of the Corporation's Housing Credit Program and the State Apartment Incentive Loan Program (SAIL), and (iv) would violate principles of fairness.[2]

C. RULES FROM WHICH WAIVER IS REQUESTED

13. The Petitioner hereby requests a waiver from the Subordinate Loan Deadline Rules.

14. Rule 67-48.0072(4)(c) of the Florida Administrative Code (July 6, 2022) provides for the following:

> For SAIL and HOME, the credit underwriting process must be completed within the time frame outlined in subsection 67-48.0072(21), F.A.C., below and the loan must close within the time frame outlined in subsection 67-48.0072(26), F.A.C., below.

15. Rule 67-48.0072(21)(b) of the Florida Administrative Code (July 6, 2022) provides, in relevant part, for the following:

> Information required by the Credit Underwriter shall be provided as follows: [. . .] For SAIL and HOME, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued within twelve (12) months of the Applicant's acceptance to enter credit underwriting, which may be automatically extended to the next scheduled

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[1] "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. *See* Section 120.542(2) of the Florida Statutes (2022).

[2] "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* Section 120.542(2) of the Florida Statutes (2022).

> meeting of the Board of Directors that is after the twelve (12) month deadline. [. . .] Applicants may request one (1) extension of up to six (6) months, which may be automatically extended to the next scheduled meeting of the Board of Directors that is after the six (6) month extension deadline, to secure a firm loan commitment. [. . .] If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

D. STATUTES IMPLEMENTED BY THE RULES

16. The Subordinate Loan Deadline Rules are implementing the Florida Housing Finance Corporations Act (the "Act"),[3] the statute that designates the Corporation as the administrator of the State Apartment Incentive Loan Program (SAIL) for the purpose of providing loans to sponsors (including the Petitioner) to provide affordable housing to low-income persons. Accordingly, the Corporation is responsible for, and is authorized to establish and implement, the procedures for the State Apartment Incentive Loan Program (SAIL); and therefore, the Subordinate Loan Deadline Rules effectuate, among other sections of the Act, the statutory power and authority for the Corporation's establishment and implementation of the State Apartment Incentive Loan Program (SAIL).

E. JUSTIFICATION FOR GRANTING THE REQUESTED WAIVER

17. Under Section 120.542(1) of the Florida Statutes (2022) and Chapter 28-104 of the Florida Administrative Code (2022), the Corporation has the power and authority to grant waivers to its rule requirements when strict application of such rules or requirements would lead to unreasonable, unfair and unintended consequences in particular instances. Pursuant to Section 120.542(2) of the Florida Statutes (2022), a waiver shall be granted when: (i) the person subjected to the rule demonstrates that application of the rule would either create a substantial hardship or violate principles of fairness; and (ii) the purpose of the underlying statute has been, or otherwise will be, achieved by other means by the person.

18. The Petitioner timely submitted the Application on January 26, 2023 in response to the RFA, the Petitioner was invited by the Corporation to enter into credit underwriting on March 31, 2023, and the Petitioner accepted the invitation. In turn, the Petitioner received a preliminary loan commitment, in accordance with the Act, for a SAIL loan in the principal amount of $3,733,300, an ELI loan in the principal amount of $466,700, and a NHTF loan in the principal amount of $2,625,000 (collectively, the "Petitioner's Subordinate Loans").

[3] The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.55 of the Florida Statutes (2022).

19. Pursuant to the Subordinate Loan Deadline Rules, the Petitioner must receive a firm loan commitment for the Petitioner's Subordinate Loans by no later than the Current Loan Commitment Receipt Deadline.

20. Since the Petitioner entered into credit underwriting for the Development on March 31, 2023, the Development has encountered events that unmistakably demonstrate that the Petitioner will not be able to receive a firm loan commitment for the Petitioner's Subordinate Loans by the Current Loan Commitment Receipt Deadline.

21. The Development has encountered substantial delay due to the review process by the City of Miami of the site plan for the Development. The initial round of Development site plan comments has been completed by the Petitioner with the City of Miami. However, the second round of Development site plan comments is currently in process between the Petitioner and the City of Miami, and the Petitioner is diligently addressing the various site plan comments provided by the City of Miami to the Petitioner.

22. Given the extended time of review by the City of Miami during the site plan approval process, plus the need for review of the site plan for the Development by external governmental agencies (such as the Miami-Dade Water and Sewer Department and the Miami-Dade Department of Environmental Resources Management), additional time is needed to receive permit approvals that will extend beyond the Current Loan Commitment Receipt Deadline. Further, in order to mitigate the impact of these governmental agency reviews, the Petitioner has hired a permit expediter as well as submitted the Petitioner's draft construction documents to these governmental agencies using a private provider. The goal is for these additional steps to reduce the necessary review time.

23. As of the date hereof, the Petitioner continues to progress through the underwriting and development process for the Development, and the Petitioner currently anticipates (i) completion of the credit underwriting process by March 31, 2025, (ii) receipt of a firm loan commitment for the Petitioner's Subordinate Loans by March 31, 2025, (iii) closing on the necessary financing (equity and debt) for the Development by March 31, 2025, and (iv) completion of the development and construction of the Development within fourteen (14) months following such closing (i.e., completion of the development and construction of the Development by May 31, 2026).

24. As outlined above, the delays have been caused by circumstances outside the control of the Petitioner and not by any fault of the Petitioner. As a result, such delays currently make it impossible for the Petitioner to receive a firm loan commitment for the Petitioner's Subordinate Loans by the Current Loan Commitment Receipt Deadline; and as such, the Petitioner currently requests the relief set forth in this Petition.

25. Additionally, the Petitioner respectfully requests the Corporation's acknowledgement of the fact that the Petitioner continues to act in good faith and with due diligence to complete the Development pursuant to the RFA and the Application, as demonstrated by (i) the Petitioner's recent completion of permit plans for the Development with the City of Miami, and (ii) the Petitioner's engagement of a pre-construction general contractor in order to expedite the pricing of plans and underwriting for the Development and to finalize the construction budget for the Development.

26. Because the Petitioner knows that circumstances outside the control of the Petitioner will prevent the Petitioner's receipt of a firm loan commitment for the Petitioner's Subordinate Loans by the Current Loan Commitment Receipt Deadline, the Petitioner hereby respectfully requests (i) a waiver of the requirement that the Petitioner receive a firm loan commitment for the Petitioner's Subordinate Loans by September 30, 2024, and (ii) a grant of an extension for the Petitioner to receive a firm loan commitment for the Petitioner's Subordinate Loans to a new deadline of March 31, 2025.

27. As demonstrated above, the Petitioner meets the standards for a waiver of the Subordinate Loan Deadline Rules because the Petitioner (i) has demonstrated the hardships and other circumstances which justify the Petitioner's requests set forth in this Petition and (ii) has acted in good faith and with proper diligence to complete the underwriting process for the Development pursuant to the RFA and the Application.

28. The granting of this Petition will not adversely impact the Development or the Corporation; and rather, the granting of this Petition will ensure that much needed affordable housing units will be made available for the Homeless population in Miami-Dade County.

29. If this Petition is not granted, then the Petitioner and the Development will suffer substantial and irrevocable hardship because the Development will need to be abandoned (as the Petitioner will not have sufficient time to receive a firm loan commitment for the Petitioner's Subordinate Loans by September 30, 2024, leading to the preliminary loan commitment for the

Petitioner's Subordinate Loans being withdrawn). Consequently, granting this Petition will (i) ensure the availability of the Petitioner's Subordinate Loans for the Development, which may otherwise be lost due to the aforementioned delays, (ii) promote principles of fundamental fairness in the development of affordable housing, (iii) permit the development and construction of new affordable housing units via the Development, (iv) enable the Petitioner to utilize (and not lose) its significant investments made to-date in connection with the Development, (v) allow the Petitioner to obtain the necessary financing in order to proceed with the development and construction of the Development, (vi) encourage private and public investment in facilities benefiting persons of low income (including Homeless individuals and families), (vii) promote the goal of increasing the supply of affordable housing through private investment through the Corporation's Housing Credit Program, and (viii) promote participation by experienced non-profit developers (such as Carrfour Supportive Housing, Inc.) in providing affordable housing units to extremely underserved tenant populations (such as Homeless individuals and families).

30. Further, this Petition should be granted, as opposed to withdrawing the preliminary loan commitment for the Petitioner's Subordinate Loans, because Miami-Dade County is currently experiencing a shortage of affordable housing units, particularly housing for Homeless individuals and families. Granting this Petition will result in the delivery of seventy-five (75) affordable housing units in Miami-Dade County (increasing the availability of decent, safe, affordable and sanitary housing for individuals and families living in Miami-Dade County) much faster than would a reallocation of funds to a new development. As such, the granting of this Petition would serve the purposes of the Act and the RFA.[4]

31. Should the Corporation require any additional information, a representative of the Petitioner is available to answer questions and to provide information necessary for the Corporation's review and consideration of this Petition.

F. PERMANENCY OF WAIVER

32. The waiver being sought is permanent in nature.

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[4] One of the primary goals of the Act is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income individuals and households by ensuring: "the maximum use of available tax credits in order to encourage development of low-income housing in the state, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought." *See* Section 420.5099(2) of the Florida Statutes (2022).

G. ACTIONS REQUESTED

For the reasons set forth in this Petition, the Petitioner respectfully requests that the Corporation:

a. Grant this Petition and all of the relief requested herein;

b. Waive the requirement that the Petitioner receive a firm loan commitment for the Petitioner's Subordinate Loans by September 30, 2024;

c. Grant an extension for the Petitioner to receive a firm loan commitment for the Petitioner's Subordinate Loans by no later than March 31, 2025; and

d. Award or grant such further relief as may be deemed appropriate.

Respectfully submitted,

Bilzin Sumberg Baena Price & Axelrod LLP
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Miami, Florida 33131
Tel: (305) 350-2428
Fax: (305) 351-2126
E-mail: tlovell@bilzin.com

/s/ Terry M. Lovell

CERTIFICATE OF SERVICE

This Petition is being served via electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation (CorporationClerk@FloridaHousing.org), with a copy being served by U.S. Mail on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, as of this 2nd day of October, 2024.

/s/ Terry M. Lovell

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