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FLORIDA HOUSING FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

MIAMI BEACH HOUSING INITIATIVES, INC.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____ /

FHFC Case # 2024-080VW

FHFC APPLICATION: 2023-186SAN
REQUEST FOR APPLICATIONS: 2023-102

PETITION FOR WAIVER OF RULE 67-48.0072(21)(b) F.A.C. (7/6/22)

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(21)(b) F.A.C. (July 6, 2022) (the "Rule") so that it may extend the SAIL/NHTF/HOME-ARP firm loan commitment issuance deadline of November 11, 2024. MBHI experienced a series of delays beyond its control, as outlined in more detail below. Accordingly, MBHI is requesting a firm loan commitment issuance deadline to the June 13, 2025 Florida Housing Board meeting. In support, MBHI states as follows:

A. THE PETITIONER

The name, address, and telephone for MBHI and its qualified representative are:

David Greeff, President
Miami Beach Housing Initiatives, Inc.
200 Alton Road, Miami Beach, FL 33139
Telephone: (305) 532-6401, extension 3020

The name, address, telephone, and email address for MBHI's attorney are:

Miriam Soler Ramos
Holland & Knight LLP
701 Brickell Avenue, Suite 3300
Miami, FL 33131
Telephone: (305) 789-7530
Email: Miriam.SolerRamos@hklaw.com

B. DEVELOPMENT BACKGROUND

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

- Development Name: Eleven44
- Development Address: 1144 Marseille Drive, Miami Beach, FL 33141
- County: Miami-Dade
- Developer: Housing Authority of the City of Miami Beach
- Number of Units: 22
- Type: Mid-Rise, 4 stories
- Set-Asides: 100% @ 60% AMI (SAIL & HOME); 6 Units (27%) @ 22% AMI (NHTF)
- Demographics: Persons with Special Needs
- Funding from Florida Housing: $2,367,282 State Apartment Incentive Loan (SAIL), $1,920,000 National Housing Trust Fund (NHTF), and $3,822,058 HOME-ARP (HOME)

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(21)(b), effective July 6, 2022, which provides:

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 meeting of the Board of Directors that is after the twelve (12) month deadline. Unless an extension is approved by the Corporation in writing, failure to achieve issuance of a firm loan commitment by the specified deadline shall result in withdrawal of the preliminary commitment. 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. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting the extension and shall detail the time frame to achieve a firm loan commitment. In determining whether to grant an extension, the Corporation shall consider the facts and circumstances of the Applicant's request, inclusive of the responsiveness of the Development team and its ability to deliver the Development timely. The Corporation shall charge a non-refundable extension fee of one (1) percent of each loan amount if the request to extend the credit underwriting and firm loan commitment process beyond the initial twelve (12) month deadline is approved. If an approved extension is utilized, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original twelve (12) month deadline. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

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 March 21, 2023 in response to RFA 2023-102 SAIL and HOME-ARP Financing For Smaller Developments For Persons With Special Needs (the "RFA").

2. On May 10, 2023, 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 May 11, 2023, giving MBHI a firm loan commitment issuance deadline of May 11, 2024.

3. On May 10, 2024, the Florida Housing Board approved a request for a firm loan commitment issuance deadline extension from May 11, 2024, to November 11, 2024 subject to payment of the required non-refundable extension fee of one percent of the loan amount, pursuant to the terms of the RFA.

4. On May 20, 2024, the non-refundable fee of $81,093.40 was received by Florida Housing staff.

5. MBHI requires additional time to secure its firm loan commitment, which will allow the credit underwriting process to be completed.

6. 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 credit underwriting process. MBHI anticipates that the building permit will be issued within the next forty-five days.

7. MBHI received a formal notice of termination for convenience from Atlantic Pacific Community Builders, LLC (APCB) for the construction of the Development which now requires the Developer to solicit new construction bids. The HACMB, as a public housing authority, is required by U.S. HUD regulations to competitively procure the services of a general contractor. The HACMB is finalizing the bid process which is pending HACMB Board approval expected within 120 days, and additional review by the underwriter.

8. Lastly, the Applicant Principal, Miguell Del Campillo, suddenly and unexpectedly resigned as Executive Director of the HACMB and MBHI. The HACMB Board is expected

to finalize the selection of his replacement within the next ninety (90) days. The replacement of the Applicant and Developer Principal will require approval by the credit underwriter and Florida Housing.

9. Unfortunately, due to delays related to the foregoing, MBHI does not believe it will be able to satisfy the current deadline to secure its firm loan commitment.

10. Thus, MBHI is in need of a Rule waiver to obtain an extension of the deadline to secure its firm loan commitment

11. 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.

12. If the Petition is denied, the preliminary commitment will be withdrawn per Rule 67-48.0072(21)(b), 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-two permanent supportive housing units.

13. 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.

14. 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.

15. 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 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.

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

17. 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 firm loan commitment issuance deadline to the June 13, 2025 Florida Housing Board meeting; (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/ Miriam Soler Ramos
MIRIAM SOLER RAMOS
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Florida Bar No. 581348
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Telephone: (305) 789-7530
Email: Miriam.SolerRamos@hklaw.com

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 whose address is 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 25th day of November, 2024.

/s/ Miriam Soler Ramos
Miriam Soler Ramos