

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2011-013VW

MBCDC: The London, LLC

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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FINANCE CORPORATION

**AMENDED AND RESTATED**  
**PETITION FOR WAIVER OR VARIANCE FROM**  
**RULE 67-38.007(5)(a), FLORIDA ADMINISTRATIVE CODE**

Petitioner, MBCDC: The London, LLC, a Florida limited liability company (“MBCDC”) petitions Respondent FLORIDA HOUSING FINANCE CORPORATION (“FHFC”) pursuant to Section 120.542, Florida Statutes and Rule Chapter 28-104, Florida Administrative Code (“F.A.C.”), for a waiver or variance from Rule 67-38.007(5)(a), F.A.C. (the “Rule”) to allow MBCDC under PLP Loan No. 05-123 (the “PLP Loan”) to either: a) repay the PLP Loan in two installments, based on the calculations attached as Exhibit “A” to this Petition, upon closing on the first source of permanent or construction financing for each building of the Project, or b) repay the entire amount of the PLP Loan on the date of closing on the first source of permanent or construction loan for the entire Development, which consists of both buildings of the Project. In support of this Petition, MBCDC states as follows:

**A. THE PETITIONER**

1. The name, address, telephone and facsimile numbers for MBCDC and its qualified representative are:

MBCDC: The London, LLC  
c/o Miami Beach Community Development Corporation, Inc.  
Attention: Roberto Datorre  
945 Pennsylvania Avenue  
Miami Beach, Florida 33139  
Telephone: 305-538-0090  
Facsimile: 305-538-2863

2. The name, address, telephone and facsimile numbers, and e-mail address of MBCDC's attorney, for the purposes of this Petition are:

Legal Services of Greater Miami, Inc.  
Attention: Shahrzad Emami, Esq.  
3000 Biscayne Blvd. Suite 500  
Miami, Florida 33137  
Telephone: 305-438-2425  
Facsimile: 305-573-5800  
E-mail: SEmami@lsgmi.org

3. On May 29, 2008 MBCDC closed on the PLP Loan in order to pay for predevelopment costs associated with the substantial rehabilitation of the Development, which consists of two separate buildings totaling thirty-one (31) units (the "Project").

4. On April 8, 2011, MBCDC applied for an extension for repayment of the PLP Loan and was granted the extension on June 10, 2011.

5. Notwithstanding the extension granted by FHFC, MBCDC hopes to close, prior to the extension date, on partial construction financing in the form of an NSP loan (the "NSP Funds") from the City of Miami Beach.

6. The NSP Funds will not be a construction loan for the entire Project (both buildings), but rather will only be a construction loan for one of the buildings of the Project.

7. MBCDC is concerned that the closing on the NSP Funds may trigger repayment of the entire PLP Loan, although the NSP Funds will only apply for the rehabilitation of one building of the Project.

8. As such, MBCDC is requesting a waiver or variance from the Rule to allow for either: a) the repayment of the PLP Loan in two installments, based on the calculations attached as Exhibit "A" to this Petition, upon closing on the first source of permanent or construction financing for each building of the Project, or b) the repayment of the entire amount of the PLP Loan on the date of closing on the first source of permanent or construction loan for the entire Development, which consists of both buildings of the Project.

9. The requested Rule waiver will not adversely affect the Project. However, a denial of this Petition would (a) result in substantial economic hardship to MBCDC; (b) could deprive Miami-Dade County of essential affordable housing units in a timely manner, and (c) would violate principles of fairness. §120.542(2) Fla. Stat.

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

**B. Rule from Which Relief is Requested and Statute Implemented by the Rule**

11. MBCDC requests a waiver or variance from Rule 67-38.007(5)(a), F.A.C., which provides the following:

(5) With respect to rental Developments, the PLP Loan's Maturity Date shall be on the earlier of:

(a) The date of closing on the first source of permanent or construction loan for the Development;

12. Accordingly, MBCDC hereby petitions FHFC to grant a waiver or variance from the provisions of Rule 67-38.007(5)(a), F.A.C., to allow MBCDC to either: a) partially repay a portion of the PLP Loan based on the square footage of the building to receive the NSP Funds, which such repayment would be in the amount of \$73,067.00 (See Attached Exhibit "A" for the calculation

method), with full repayment of the balance of the PLP loan upon closing on construction or permanent financing for the second building; or b) repay the entire PLP Loan on the date of closing on the first source of permanent or construction loan for the entire Project, which consists of both buildings.

13. Pursuant to Section 120.542, F.S., and Rule Chapter 28-104, F.A.C., FHFC has the authority to grant waivers or variances from its rules when strict application of such rules in particular circumstances would lead to unreasonable, unfair, and unintended results.

14. A waiver or variance will be granted when the person subject to the rule demonstrates that the strict application of the rule would: (a) result in substantial hardship or violate principles of fairness, and (b) the purpose of the underlying statute has been or will be achieved by other means. Fla. Stat. §120.542 (2009).

15. The applicable Rule for which the waiver is requested is implementing Florida Housing Finance Corporation Act's statute that created the Predevelopment Loan Program, §420.526 Fla. Stat. (2007) (the "Act"). The Act designates FHFC as the designated agency responsible for and authorized to establish procedures for the allocation and distribution of predevelopment loan funds. Accordingly, the Rule that is the subject of MBCDC's waiver or variance request is implementing among other sections of the Act, the statutory authorization for FHFC's establishment of loan procedures for the predevelopment loan program.

**C. Justification for MBCDC's Requested Waiver or Variance**

16. In this case, the Rule functions as a substantial hardship on MBCDC in the event MBCDC closes on partial construction financing (the NSP Loan) and is therefore required by the Rule to repay the entire amount of the PLP Loan.

17. The NSP Loan funds are allocated solely for the rehabilitation of one building of the Project and the NSP Loan mortgage would only encumber one building of the Project and as such, the repayment of the entire PLP Loan renders the redevelopment of the Project financially unfeasible.

18. Denial of the requested waiver or variance would lead to a substantial financing gap that would jeopardize the completion of the Project.

19. Further, denial of the waiver or variance would deprive the future residents of the Project of much needed affordable housing.

20. Grant of the waiver or variance will also serve the purpose of the statute that the PLP Loan Program rules, including Rule 67-38.007(5)(a) F.A.C. implement since the PLP Loan will be repaid in its entirety once permanent or construction financing is received for the entire Development.

**D. Conclusion**

21. The requested waiver will not adversely impact the Project or FHFC, and will ensure that 30 affordable housing units will be available for the low-income population in Miami-Dade County, Florida for those at or below 60% of AMI.

22. Controlling statutes and FHFC Rules are designed to allow the flexibility necessary to provide relief for changes circumstances that arise through no fault of an applicant.

23. The requested waiver serves the purposes of Section 420.526, Florida Statutes (2007), and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to low-income persons and households.

24. Finally, by granting the requested waiver, FHFC would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing for the low-income.

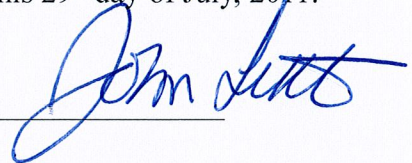
25. Should FHFC require additional information, MBCDC is available to answer questions and to

provide all information necessary for consideration of its Petition for Waiver or Variance of Rule 67-38.007(5)(a) F.A.C.

WHEREFORE, Petitioner MBCDC: The London, LLC, respectfully requests that the Florida Housing Finance Corporation grant the Petition and provide the following relief:

- A. Allow MBCDC to partially repay a portion of the PLP Loan based on the square footage of the building to receive the NSP Funds, which such repayment would be in the amount of \$73,067.00 (See Attached Exhibit "A" for the calculation method), and pay the balance of the PLP Loan when MBCDC closes on construction or permanent financing for the second building; or
- B. Allow MBCDC to repay the entire balance of the PLP Loan on the date of closing on the first source of permanent or construction loan for the entire Project (both buildings); and
- C. Grant such further relief as may be deemed appropriate.

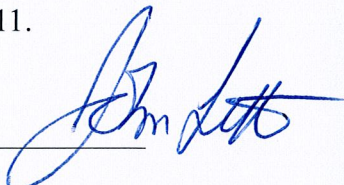
Respectfully submitted this 29<sup>th</sup> day of July, 2011.



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John Little, Esq., for  
Shahzad Emami, Esq.  
Fla. Bar No.: 0032218  
LEGAL SERVICES OF GREATER MIAMI, INC.  
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E-mail: [SEmami@lsgmi.org](mailto:SEmami@lsgmi.org)  
Counsel for MBCDC: The London, LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that this original Petition is being served by overnight delivery, with a copy served by electronic transmission 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 Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1300, this 29<sup>th</sup> day of July 2011.

  
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John Little, Esq., for  
Shahrzad Emami, Esq.

**Exhibit A**

LONDON HOUSE APARTMENTS	SQ FT	%
1965 WASHINGTON AVE	6,194	25
1975 WASHINGTON AVENUE	18,794	75
TOTAL	24,988	100
BALANCE OWING ON PLP LOAN	292,269	
25% =	73,067	
75% =	219,202	
TOTAL	292,269	