

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2018-034VW

WEST RIVER PHASE 1A, LP.

Petitioner,

vs.

FHFC APPLICATION: 2016-376S
REQUEST FOR APPLICATIONS: 2016-109

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER OF RULE 67-48.0072(21)(b), F.A.C.

Pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code, Petitioner West River Phase 1A, a Florida limited partnership, submits its Petition to Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of Rule 67-48.0072 (21)(b) (the “Rule”) in effect at the time the Petitioner submitted its application in response to Florida Housing’s Request for Applications 2016-109, SAIL Financing of Affordable Multifamily Housing Developments to be used in conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits (the “RFA”). Petitioner seeks to extend the time allowed under the Rule for the issuance of a firm loan commitment. In support of its Petition, the Petitioner states as follows:

A. THE PETITIONER

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

Eileen M. Pope
Banc of America Community Development Corp.
Bank of America, Merrill Lynch

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100 N. Tyron Street, 11th Floor
Charlotte, NC 28255
Eileen.M.Pope@baml.com
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2. The name, address, telephone and facsimile numbers, and email address for Petitioner's attorney are:

Brian J. McDonough
Stearns Weaver Miller Weissler Alhadeff & Sitterson
150 West Flagler Street
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B. THE DEVELOPMENT AND ITS FINANCING

3. Petitioner timely submitted its Application in response to the RFA for the development named "Bethune Residences I at West River," which later received an approval to change the development name to "The Renaissance at West River" (the "Development") on October 19, 2016. *See* Application No. 2016-376S. On March 31, 2017, FHFC staff issued a preliminary commitment letter and an invitation to enter credit underwriting with a firm loan commitment issuance deadline of January 4, 2018.

4. On December 8, 2017, the Florida Housing Board approved Petitioner's request to extend the firm loan commitment issuance deadline to July 5, 2018.

5. The extension was requested to allow additional time to: (a) submit the final permit package to the City of Tampa; (b) receive final building plan approvals; and (c) receive the RAD commitment and complete the underwriting process.

6. Petitioner is in need of a 41-day extension of the credit underwriting period through and including August 15, 2018.

7. The requested waiver is permanent in nature.

C. RULE FROM WHICH WAIVER IS SOUGHT

8. Petitioner requests a waiver from the Rule, which provides:

(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. Unless an extension is approved by the Corporation in writing, failure to achieve credit underwriting report approval and 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 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 nine (9) month deadline is approved. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

See Rule 67-48.072(21)(b), F.A.C.

D. STATUTES IMPLEMENTED BY THE RULE

9. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"),¹ Section 420.5087 (State Apartment Incentive Loan Program);

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes.

Section 420.5089 (HOME Investment Partnership Program and HOME Investment Partnership Fund); and Section 420.5099 (allocation of the low-income housing tax credit).

10. Further, pursuant to the RFA, “Proposed Developments funded under this RFA will be subject to the requirements of the RFA, the Application requirements outlined in Rule Chapter 67-60, F.A.C., the SAIL Loan requirements outlined in Rule Chapter 67-48, F.A.C., the ELI Loan requirements outlined in Exhibit D of the RFA, the MMRB and/or Non-Competitive HC requirements outlined in Rule Chapter 67-21, F.A.C., and the Compliance requirements of Rule Chapter 67-53, F.A.C.”

E. JUSTIFICATION FOR REQUESTED WAIVER

11. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Waivers must be granted when: (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat.

12. A firm loan commitment for the Development would have initially been required to be issued to Petitioner by no later than January 5, 2018. However, Petitioner was granted an extension of the firm loan commitment deadline, as allowed under the Rule, to July 5, 2018. Petitioner paid the extension fee applicable to the foregoing extension. A further extension of the firm loan commitment deadline may not be granted without a waiver of the Rule.

13. Petitioner is requesting a 41-day extension of the firm loan commitment deadline from July 5, 2018 to August 15, 2018. The extension is necessary in order to give the underwriter sufficient time to finalize the Credit Underwriting Report.

14. There are no obstacles known to Petitioner that would prevent Florida Housing's issuance of the firm loan commitment following delivery and approval of the Credit Underwriting Report.

15. The extension requested herein stems from a need for: (1) the architect to revise the foundation plans, which – despite quality control measures – was only recently detected; and (2) the contractor to modify the construction contract to accommodate the recommendations contained in an updated third party soils report. The recent change to the building's foundation plans and soil improvement requirements created additional costs that will increase the Development's Construction Contract. While the cost increase is absorbed into the development budget, Petitioner needs additional time to allow the underwriter's provider of the Plan and Cost Analysis to review these revisions and, if necessary, to comment. These factors impacted the lead time necessary for issuance of the credit underwriting report.

16. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive SAIL funding in the RFA, or Florida Housing. A denial of the Petition, however, would: (a) result in substantial economic hardship to Petitioner, as it has incurred significant costs to date in an effort to ensure that the Development proceeds to completion; (b) deprive Hillsborough County of essential affordable rental units set aside for the

elderly and homeless who desperately need the housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness². *See* § 120.542(2), F.S.

17. If this Petition is not granted, Petitioner will be unable to obtain SAIL financing and the Development will likely become infeasible.

18. As discussed herein, Petitioner is requesting a second extension of the deadline for issuance of the firm loan commitment from July 5, 2018 to August 15, 2018, which request requires a waiver of the Rule. Petitioner respectfully requests that no further extension fee be imposed for this short-term extension.

19. The requested waiver will ensure the availability of SAIL and ELI financing which will otherwise be lost as a consequence of the pre-development delays described herein.

20. The foregoing facts demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the loss of a substantial sum of money should the transaction not go forward, and the loss of critical housing for the elderly and homeless.

21. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. As demonstrated above, the requested waiver serves the purposes of Section 420.5087 and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe and sanitary

²“Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. “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 the rule. Section 120.542(2), Florida Statutes.

housing in the State of Florida to low-income persons and households. Further, by granting the requested waiver, Florida Housing would recognize principles of fundamental fairness in the development of affordable rental housing.

22. Should Florida Housing require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

F. ACTION REQUESTED

23. Petitioner requests the following:

- a. That Florida Housing grant Petitioner a permanent waiver from Rule 67-48.0072(21)(b), Florida Administrative Code, extend the deadline for issuance of the firm loan commitment from July 5, 2018 to August 15, 2018, and impose no further extension fee;
- b. That Florida Housing grant the Petition and all the relief requested therein; and
- c. That Florida Housing grant such further relief as may be deemed appropriate.

Respectfully submitted,

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/s/ Brian J. McDonough

BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The original Petition is being served by hand delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, CorporationClerk@floridahousing.org, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by hand delivery to the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 18th day of May, 2018.

/s Brian J. McDonough _____
Brian J. McDonough, Esq.