

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

FHFC CASE NO.: 2020-052VW
APPLICATION NO.: 2019-371CS

SEVEN ON SEVENTH, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.0072(21)(b)

SEVEN ON SEVENTH, LTD., a Florida limited partnership (the "Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-48.0072(21)(b), Florida Administrative Code (July 8, 2018), which provides for a six (6) month extension of the firm loan commitment issuance deadline. Petitioner seeks to extend the time allowed under the rule for the issuance of a firm loan commitment. This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code. In support, the Petitioner states as follows:

A. THE PETITIONER

1. The mailing address, telephone number and email of the Petitioner is as follows:

SEVEN ON SEVENTH, LTD.
Attn: Oscar Sol
100 SE 3rd Avenue
Ft. Lauderdale, Florida 33394
Telephone: (305) 898-2188
Email: osol@greenmillsgroup.com

2. The mailing address, telephone number and email of the Petitioner's legal counsel is as follows:

Samantha D'Angelo, Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4200
Email: Samantha.dangelo@nelsonmullins.com

3. On February 4, 2019, the Petitioner timely submitted an application in response to RFA 2019-106 Housing Credit and SAIL Financing for the Development of Housing for Homeless Persons ("RFA") (the "Application") to finance the construction of a multifamily apartment complex to be known as Seven on Seventh in Fort Lauderdale, Florida (the "Property"), which will serve low income families in Broward County. The Petitioner received a preliminary award for \$5,040,000 in SAIL Funding and \$370,800 in ELI funding (collectively, the "SAIL Award") from the Corporation.

4. The SAIL Award Firm Loan Commitment issuance deadline was April 2, 2020 ("Initial Deadline"). On February 6, 2020, the Petitioner submitted a letter to the Corporation requesting a six (6) month extension of the Initial Deadline to receive a final loan commitment for the SAIL Award and the Board of Directors of the Corporation (the "Board") approved the request to extend to the Initial Deadline to October 2, 2020 at the Board meeting on March 6, 2020. Petitioner paid a non-refundable extension fee of one percent (1%) of the combined loan amount after approval of the extension, as required by the Rule.

5. The SAIL Award Firm Loan Commitment will not be issued by October 2, 2020 as a result of permitting and design delays caused by COVID-19 (as set forth further below).

Therefore, Petitioner is requesting an extension of the loan commitment issuance deadline until April 2, 2021.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

6. The Petitioner requests a waiver from Rule 67-48.0072(21)(b), Florida Administrative Code (effective July 8, 2018) (the “Rule”), which provides in part:

67-48.0072(21)(b) – Credit Underwriting and Loan Procedures.

(b) For SAIL, EHCL, 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. 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 twelve (12) month deadline is approved. If an approved extension is utilized, for profit Applicants must pay the extension fee not later than seven (7) Calendar Days after the original twelve (12) month deadline. Non-Profit Applicants may request to pay the extension fee at the time of closing. Any such request must be made in writing to the Corporation. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

C. STATUTES IMPLEMENTED BY THE RULES

7. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statute that created the SAIL program. *See* Fla. Stat. § 420.5087.

8. Pursuant to Chapter 120.542(1), Florida Statutes, “[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.” See Fla. Stat. § 120.542(1). The pertinent statute regarding granting of waivers provides: “[W]aivers shall be granted . . . when application of a rule would create a substantial hardship or would violate principles of fairness.” See Fla. Stat. § 120.542(2). “Substantial Hardship” is defined as a demonstrated economic, technological, legal or other type of hardship to the person requesting the waiver. See Fla. Stat. § 120.542(2).

D. JUSTIFICATION FOR PETITIONER’S REQUESTED WAIVER

9. Petitioner was previously granted a six (6)-month extension to secure a firm loan commitment of the SAIL Award, extending the Initial Deadline to October 2, 2020. A further extension of the deadline to secure a firm loan commitment may not be granted without a waiver of the Rule.

10. The Petitioner is requesting an extension of the deadline to secure a loan commitment from October 2, 2020 to April 2, 2021, for the following reasons:

- a. The development site plan, floor plans and elevations are currently undergoing the City of Fort Lauderdale Development Review process, which typically takes several months to complete. However, due to the global pandemic caused by COVID-19, the review process is taking longer than anticipated. As a result of COVID-19 and various state and local government “stay at home orders” instituted in Florida, work by various professionals involved in the review process has slowed down significantly.

Until the review process is completed, Petitioner cannot submit final building plans for permit review. Therefore, Petitioner needs additional time to complete the permitting for the Property.

- b. Furthermore, design-related delays have occurred at the Property due to the relocation of utilities and building re-orientation due to various site constraints and a lack of area wide draining capacity.

11. The Rule provides that a failure of the Petitioner to receive the Corporation's issuance of a firm loan commitment by October 2, 2020 will result in a withdrawal of the preliminary commitment for the SAIL Award. If this Petition is denied and the Petitioner is not granted the six-month extension, it would result in substantial economic hardship to the Petitioner, as it has incurred substantial costs to date in furtherance of completion of the Property. Furthermore, it would deprive Broward County of much needed affordable housing and violate principles of fairness given the circumstances surrounding the delays are outside of the Petitioner's control and the result of the COVID-19 pandemic.

12. Consequently, the six-month extension is necessary to avoid unfairness and substantial hardship on the Petitioner and the Property. By granting the requested extension, the Property will be able to proceed to reach completion in the future, which will provide 72 much needed affordable housing units in Broward County, Florida, including housing for homeless individuals and families, and such a result assists the Corporation with fulfilling its statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

13. The Petitioner believes that a waiver of this Rule will serve the purposes of Section 420.5087 and the Act that are implemented by Chapter 67-48 of the Florida Administrative Code, because one of the goals is for the proceeds of Corporation financing to be used to facilitate the

availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. The Act (Section 420.501, *et seq.*) was passed in order to create inducements and opportunities for private and public investment in rental housing to increase the supply of affordable housing for low-income persons and households. By granting this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing units via the construction of new developments throughout Florida, particularly in Broward County.

14. The requested waiver will not adversely affect Petitioner, the Property, any other party that applied to receive funding in the RFA or the Corporation.

E. TYPE OF WAIVER

15. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

16. For the reasons set forth herein, the Petitioner respectfully requests the Corporation (i) grant a waiver of the Rule to extend the deadline to secure a firm loan commitment from October 2, 2020 to April 2, 2021, and not require that an additional extension fee be imposed; (ii) grant this Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,



Samantha D'Angelo, Esq.

Fla. Bar No. 1002952

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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
Email: corporationclerk@floridahousing.org

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Email: joint.admin.procedures@leg.state.fl.us

By: 
Samantha D'Angelo, Esq.
Fla. Bar No. 1002952