

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

ROYAL PALM PLACE, LTD.,

Petitioner,

FHFC Case No. 2016-047VW

CASE NO.: 2016-~~035VW~~

v.

APPLICATION NO. 2014-111/2014-429S

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER OF RULE 67-48.0072(4)(c)

Petitioner Royal Palm Place, Ltd., a Florida limited partnership (the “Petitioner”) submits its Petition to Respondent Florida Housing Finance Corporation (the “Corporation”) for a waiver of Rule 67-48.0072(4)(c) (the “Rule”) in effect at the time the Petitioner submitted its application in response to the Corporation’s Request for Applications 2014-111 SAIL Financing of Affordable Multifamily Housing Developments to be used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits (the “RFA”), to allow Petitioner to extend the required closing date for a State Apartment Incentive Loan (“SAIL”) program loan. In support of its Petition, the Petitioner states as follows:

A. The Petitioner and the Development

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

Royal Palm Place, Ltd.
3050 Biscayne Boulevard
Suite 300
Miami, Florida 33137
(305) 538-9552, ext. 103 (Phone)
(305) 538-9553 (Fax)

The name, address, telephone and facsimile numbers of Petitioner’s attorneys are:

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A
150 West Flagler Street, Suite 2200
Miami, Florida 33130
305-789-3350 (Phone)
305-789-3395 (Fax)

2. Pursuant to the RFA, Petitioner timely submitted its application for loan funding under the SAIL program. See Application Number 2014-429S. Petitioner was preliminarily awarded SAIL and ELI Gap funding, and received an invitation to enter credit underwriting on December 19, 2014. The invitation to credit underwriting represented a preliminary commitment for a SAIL loan in an amount up to \$4,750,000 and an ELI Gap loan in an amount up to \$495,900.

3. The proceeds of the above-referenced financing will be used for new construction of 125 low-income units (also financed with the proceeds of tax exempt bonds and 4% low-income housing tax credits) to be known as Royal Palm Place (the "Development"). The Development will serve low-income families in Palm Beach County, Florida.

B. Rule Requirements from Which Relief is Requested and Statute Implemented

4. The relevant portion of the Rule provides as follows:

(4) If the invitation to enter credit underwriting is accepted:...

(c) For SAIL, EHCL, and HOME Applicants, the loan must close within 12 months of the date of the invitation to enter credit underwriting. Applicants may request one (1) extension of up to 12 months....In the event the loan does not close by the end of the 12 month extension period, the preliminary commitment or firm commitment, as applicable, will be deemed void and the funds will be de-obligated.

Rule 67-48.0072(4)(c), F.A.C. (2013).

5. The applicable Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”),¹ the statute that created the SAIL loan program. *See* § 420.5087, Fla. Stat. (2014).

6. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its requirements when strict application of these requirements would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when (1) the person who is subject to the requirement demonstrates that the application of the requirement 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.

7. In this instance, Petitioner meets the standards for a waiver.

C. Justification for Petitioner’s Requested Waiver

8. Petitioner was previously granted a twelve-month extension to the SAIL loan closing deadline, extending such deadline to December 21, 2016. A further extension of the closing deadline may not be granted without a waiver of the Rule.

9. Petitioner is requesting an extension of the SAIL loan closing date from December 21, 2016 to August 31, 2017, due to delays in the development process caused by Petitioner’s continuing efforts to (a) obtain competitive pricing for the construction of the Development, (b) relocate the occupants of the public housing project which currently operates on the site of the Development, (c) demolish the existing public housing project which is currently located on the site of the Development and (d) obtain the requisite approvals from the

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

United States Department of Housing and Urban Development (“HUD”), including but not limited to HUD’s release of the Development site from an existing HUD Declaration of Trust.

10. The above-described facts have delayed the development process. Due to such delay, Petitioner will not be in a position to close the SAIL and ELI Gap funding by the December 21, 2016 deadline. Petitioner expects to have engaged its contractor, relocated the current residents and commenced the HUD disposition process in time for the Credit Underwriting Report for the Development to be presented to the Corporation’s Board at its March or May, 2017 meeting. Demolition of the existing on-site structures is anticipated to take place prior to the closing of the SAIL and ELI Gap loans. Closing of the SAIL and ELI Gap loans is anticipated to occur prior to June 30, 2017. An extension of the SAIL and ELI Gap closing deadline to August 31, 2017, is being requested to ensure adequate time for closing in the event there are other unforeseen minor delays.

11. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive SAIL funding in the RFA, or the Corporation. A denial of the Petition, however, would (a) result in substantial economic hardship to Petitioner, as it has incurred over \$500,000 in costs to date toward ensuring that the Development proceeds to completion; (b) deprive Palm Beach County of essential affordable rental units set aside for low-income and very low-income families who desperately need the housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness². § 120.542(2), F.S. Further, as the third phase of a 344-unit redevelopment of a public housing

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.

project dating from the 1930's, the Development will serve as a catalyst to revitalize the surrounding neighborhood.

12. As discussed herein, Petitioner is requesting an additional extension of the SAIL and ELI Gap loan closing date from December 21, 2016 to August 31, 2017, which request requires a waiver of the Rule. Petitioner respectfully requests that no further extension fee be imposed.

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

D. Conclusion

14. The facts set forth in Sections 8 through 13 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the delay in commencement of construction of the Development, the loss of a substantial sum of money should the transaction not go forward, and the loss of affordable housing for families of limited means.

15. Controlling statutes and the Corporation'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 waivers serve 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 housing in the State of Florida to low-income persons and households. Further, by granting the requested waivers, FHFC would recognize principles of fundamental fairness in the development of affordable rental housing.

16. The waiver being sought is permanent in nature.

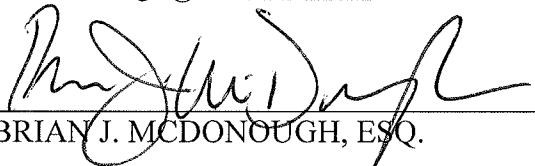
Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of its Petition.

WHEREFORE, Petitioner Royal Palm Place, Ltd., respectfully requests that the Corporation:

- A. Grant the Petition and all the relief requested therein; and
- B. Award such further relief as may be deemed appropriate.

Respectfully submitted,

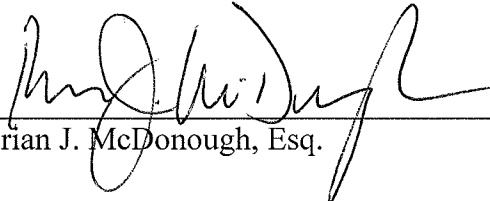
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By: 
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The 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, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 31st day of October, 2016.

By: _____


Brian J. McDonough, Esq.