

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

SUNSET POINTE ASSOCIATES, LTD.,

Petitioner,

CASE NO.: 2017- 075VW

v.

APPLICATION NO. 2016-107H

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER OF RULE 67-48.0072 (26)

Petitioner Sunset Pointe Associates, 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 (26) (the "Rule") in effect at the time the Petitioner submitted its application in response to the Corporation's Request for Applications 2015-110, Financing of Affordable Multifamily Housing Developments with HOME funding to be used in conjunction with Florida Housing-Issued MMRB and Non-Competitive Housing Credits (the "RFA"), to allow Petitioner to extend the required closing date for the HOME loan proceeds allocated to Petitioner pursuant to the RFA. Petitioner received an extension of the closing date to December 31, 2017, pursuant to Order Granting Waiver of Rule 67-48.0072(26) granted on July 28, 2017 under FHFC Case No. 2017-055VW. Petitioner now seeks further extension to allow ample opportunity to close the HOME 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:

Sunset Pointe Associates, Ltd.
Attn: Mara Mades
2100 Hollywood Boulevard
Hollywood, FL 33020
Telephone: 305-443-8288
Fax: (954) 362-5987
e-mail: mara.mades@cornerstonegrp.com

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. See Application Number 2016-107H. Petitioner was preliminarily awarded \$4,346,000 in HOME funding under the RFA, and the firm commitment for closing of the HOME loan was issued on June 27, 2016.

3. The proceeds of the HOME financing will be used for new construction of 136 garden-style units to be known as "Sunset Pointe" (the "Development"). The Development will also be financed with (i) the proceeds of the syndication of low-income housing tax credits, (ii) the proceeds of multifamily mortgage revenue bonds anticipated to be issued by Florida Housing in the amount of \$9,200,000, (iii) a surtax loan from Miami-Dade County, Florida in the amount of \$2,750,000 and (iv) deferred developer fee in such amount as may be necessary. The Development will serve low-income households and families in Miami-Dade County, Florida.

Forty two units will be set aside as HOME-Assisted units.

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

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

(26) For SAIL, EHCL, and HOME, that is not in conjunction with Competitive HC, these Corporation loans and other mortgage loans related to the Development must close within 120 Calendar Days of the date of the firm loan commitment(s), unless the Development is a Tax-Exempt Bond-Financed Development which then the closing must occur within 180 Calendar Days of the firm loan commitment(s). Unless an extension is approved by the Board, failure to close the loan(s) by the specified deadline outlined above shall result in the firm loan commitment(s) being deemed void and the funds shall be de-obligated. Applicants may request one (1) extension of the loan closing deadline outlined above for a term of up to 90 Calendar Days..... In the event the Corporation loan(s) does not close by the end of the extension period, the firm loan commitment(s) shall be deemed void and the funds shall be de-obligated.

Rule 67-48.0072(26), F.A.C.¹

5. The applicable Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"),² the statute that created the HOME loan program. *See* § 420.5087, Fla. Stat. (2014). Further, pursuant to the RFA, "Proposed Developments funded with HOME funds will be subject to the requirements of the RFA, the MMRB requirements outlined in Rule Chapter 67-21, F.A.C., effective February 2, 2015, the Application requirements outlined in Rule Chapter 67-60, F.A.C., effective October 8, 2014, the HOME credit underwriting and program requirements outlined in Rule Chapter 67-48, F.A.C., effective October 8, 2014, the federal requirements of the HOME Program outlined in the July 24, 2013 edition of the Federal Register....and the Compliance requirements of Rule Chapter 67-53, F.A.C."

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

¹ It should be noted that the prior version of the Rule includes substantially the same text.

² The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes (the "Act").

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. The Corporation's issuance of a firm loan commitment for the HOME funds on June 27, 2016, means the closing date would have been established as not later than December 24, 2016. However, Petitioner was previously granted a ninety-day extension of the HOME loan closing deadline, to March 24, 2017. Further, Petitioner paid the extension fee applicable to the foregoing extension. Following that, Petitioner was granted an extension to June 22, 2017, pursuant to Order Granting Waiver of Rule 67-48.0072(26) granted on February 3, 2017 under FHFC Case No. 2017-002VW. Another extension was granted to December 31, 2017 pursuant to Order Granting Waiver of Rule 67-48.0072(26) granted on July 28, 2017 under FHFC Case No. 2017-055VW. A further extension of the closing deadline is required but may not be granted without a waiver of the Rule.

9. Petitioner is requesting an extension of the HOME loan closing date from December 31, 2017, to February 15, 2018. The extension is necessary due to delays in the process for obtaining building and development permits from Miami-Dade County (the "County") which existed prior to, but were exacerbated by, Hurricane Irma. The County's resources and attention were understandably diverted to preparation for the hurricane, and are now focused on recovery and clean-up efforts following the storm. Petitioner has timely

submitted to the County all required permit applications, drawings, and plans for the Development including but not limited to site plans, civil engineering plans, and water and sewer plans, and submitted its tentative plat. The County's requirements for plan approval have been followed to the letter but the County has not yet issued the permits required to proceed, and although they are expected to be issued in due course, the County has not been able to commit to a date for receipt of all final County approvals. Petitioner requests that the HOME loan closing date be extended to February 15, 2018, to allow for mobilization once it is certain that permits are available, and to account for any further unforeseen delay.

10. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive HOME 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 approximately \$2,977,792 in costs to date toward ensuring that the Development proceeds to completion; (b) deprive Miami-Dade County of essential affordable rental units set aside for persons of limited means who desperately need the housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness³. § 120.542(2), F.S.

11. If this Petition is not granted, the equity investor which has committed to serve as the Petitioner's limited partner and to syndicate the housing tax credits will likely withdraw from the transaction and the Development will fail to be constructed.

³"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.

12. As discussed herein, Petitioner is requesting an additional extension of the HOME loan closing date from December 31, 2017 to February 15, 2018, 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 HOME 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 critical housing for households 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 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 housing in the State of Florida to low-income persons and households. Further, by granting the requested waiver, the Corporation 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 Sunset Pointe Associates, 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,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
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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 3rd day of November, 2017.

By: _____



Brian J. McDonough, Esq.