

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

EMERALD VILLAS PHASE TWO, LLC,

Petitioner,

CASE NO.: 2018- 037VW

v.

APPLICATION NO. 2016-367BS

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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

Petitioner Emerald Villas Phase Two, LLC, a Florida limited liability company (the “Petitioner”) submits its Petition to Respondent Florida Housing Finance Corporation (the “Corporation”) 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 the Corporation’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 and the Development

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

Emerald Villas Phase Two, LLC
Attn: Albert Milo, Jr.
315 South Biscayne Boulevard
Miami, FL 33131
Telephone: 305-460-9900
Fax: (305) 460-9911
e-mail: amilo@relatedgroup.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 2016-367-BS. Petitioner was preliminarily awarded \$4,950,000 in SAIL funding under the RFA, and \$426,200 in ELI Loan Funding. An invitation to credit underwriting was extended to Applicant on March 31, 2017 and accepted on April 4, 2017.

3. The proceeds of the SAIL and ELI financing will be used for new construction of 96 garden-style units, to be known as "Emerald Villas Phase Two" (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 the Corporation in the approximate amount of \$9,000,000, (iii) a Neighborhood Stabilization Program loan from Orange County, Florida in the amount of \$3,200,000 and (iv) deferred developer fee in such amount as may be necessary. The Development will serve low-income elderly households in Orange County, Florida. One hundred percent of the units will be set aside for occupants whose income is equal to or less than 60% of the Area Median Income.

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

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

(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.

Rule 67-48.0072(21)(b), F.A.C.

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. 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."

5. 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

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

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.

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

C. Justification for Petitioner's Requested Waiver

7. The Applicant's acceptance of the Corporation's invitation to credit underwriting on April 4, 2017 means that a firm loan commitment for the Development would have initially been required to be issued to Applicant by no later than January 4, 2018. However, Petitioner was granted a six-month 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.

8. Petitioner is requesting an extension of the firm loan commitment deadline from July 5, 2018 to November 5, 2018. The extension is necessary due to unanticipated delays in Borrower's submission of all required materials to First Housing Development Corporation of Florida (the "Underwriter"), in order to enable it to issue its Credit Underwriting Report for the Development. Such Report is a prerequisite for the issuance of a firm loan commitment (See Rule 67-48.0072(21)(a), F.A.C.).

9. Petitioner has submitted to the Underwriter substantially all materials and documents necessary for the Underwriter to complete its task and issue its Credit Underwriting Report, which is anticipated to be released by the end of August, 2018. The construction drawings, diligence materials and proforma financial information are all in final form. Petitioner lacks only an executed construction contract, which it anticipates will be in hand by the end of July, 2018, and will be immediately provided to the Underwriter, to enable it to complete the

Credit Underwriting Report for consideration by the Corporation. There are no obstacles known to Petitioner that would prevent the Corporation's issuance of the firm loan commitment following delivery and approval of the Credit Underwriting Report.

10. The extension requested herein stems from the Petitioner's unanticipated need to restructure its financing for the Development, largely due to the threatened elimination of private activity bonds, as proposed in recent tax reforms. The uncertainty as to the existence of bond funding made it difficult to engage third-party professionals such as the architect and engineer for the Development, and to prepare financial projections. In addition, anticipated syndication proceeds from the sale of Low-Income Housing Tax Credits were diminished as a result of the final tax reform bill, due to the reduction in corporate tax rates, resulting in Petitioner's having to obtain additional funding sources, in the form of the County NSP Loan. Petitioner has successfully assembled funds for construction of the Development, and it is especially salient that Petitioner was able to do so without seeking additional funds from the Corporation in the form of a Viability Loan.

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 approximately \$500,000 in costs to date toward ensuring that the Development proceeds to completion; (b) deprive Orange 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 fairness². § 120.542(2), F.S.

12. If this Petition is not granted, the equity provider which has committed to serve as the Petitioner's investor member and to syndicate the Low-Income Housing Tax Credits will likely withdraw from the transaction and the Development will fail to be constructed.

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

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

D. Conclusion

15. The facts set forth in Sections 7 through 14 of this Petition 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 households of limited means.

16. 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,

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.

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.

17. 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 Emerald Villas Phase Two, LLC, 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.
Counsel for Emerald Villas Phase Two, LLC
150 West Flagler Street, Suite 150
Miami, Florida 33131
Tel: (305) 789-4107
Fax: (305) 789-3395
E-mail: bperlyn@stearnsweaver.com

By: 
BROOKE RUSS PERLYN, 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 18th day of May, 2018

By: Brooke Russ Perlyn
Brooke Russ Perlyn, Esq.