

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2018-051VW

SUNCREST COURT
REDEVELOPMENT, LLC,

Petitioner,

vs.

FHFC Application No. 2016-378S
REQUEST FOR APPLICATIONS: 2016-109

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.0072(21)(b),
FLORIDA ADMINISTRATIVE CODE

Pursuant to section 120.542, Florida Statutes, and rule 28-104.002, Florida Administrative Code, Petitioner Suncrest Court Redevelopment, LLC (“Suncrest Court”) submits this Petition to Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of rule 67-48.0072(21)(b) 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”). Suncrest Court seeks to extend the time allowed under the rule for the issuance of a firm loan commitment. In support of this Petition, Suncrest Court states:

A. PETITIONER AND ATTORNEY

1. The name, address, telephone number, and email address for Petitioner is: Suncrest Court Redevelopment, LLC, c/o HEF-Suncrest, Inc., 437 SW 4th Avenue, Fort Lauderdale,

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Florida 33315; 954-528-6444; tenglish@hacfl.com. For purposes of this proceeding, the contact information for Petitioner shall be that of the undersigned counsel.

2. The name, address, telephone number, and email address for Petitioner's attorney is: Donna E. Blanton, Radey Law Firm, 301 South Bronough Street, Suite 200, Tallahassee, Florida 32301; 850-425-6654; dblanton@radeylaw.com.

B. BACKGROUND

3. Florida Housing issued the RFA on September 19, 2016. Suncrest Court was recommended for an award of funding. On December 9, 2016, the Florida Housing Board of Directors ("Board") approved the final scores and recommendations for the RFA and directed staff to proceed with all necessary credit underwriting activities. *See* Consent Agenda, p. 29, Board Agenda, March 16, 2018.

4. The original Developers of Suncrest Court were Pinnacle Housing Group, LLC ("PHG"), and HEF-Dixie Court Development, LLC. On March 24, 2017, the Board authorized Florida Housing's staff to issue Administrative Complaints and Orders of Ineligibility against PHG, PHG Builders, LLC, and several Principals of PHG. The Administrative Complaint was issued by the Board's counsel on May 1, 2017. The Board approved a Settlement Agreement with PHG on September 8, 2017. *See* Consent Agenda, p. 29, Board Agenda, March 16, 2018.

5. On July 28, 2017, the Board approved an RFA waiver request from Suncrest Court to remove PHG and any other PHG affiliated entities and/or PHG affiliated persons/Principals from the Suncrest Court development. This action included the removal of (a) PHG Suncrest and David O. Deutch as members of the Applicant; (b) PHG as a Developer of Suncrest Court; and (c) PMI as the Management Company of Suncrest Court. *Id.*

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6. On August 7, 2017, Florida Housing's staff issued a preliminary commitment letter and an invitation to enter credit underwriting to Suncrest Court. In accordance with rule 67-48.0072(21)(b), Florida Administrative Code, that letter stated that the firm loan commitment must be issued within nine months of the acceptance to enter credit underwriting. The acceptance was acknowledged on August 8, 2017, which gave Suncrest Court a firm loan commitment issuance deadline of May 8, 2018. *See* Consent Agenda, p. 29, Board Agenda, March 16, 2018.

7. Rule 67-48.0072(21)(b) allows Applicants to ask for one extension of up to six months to secure a firm loan commitment. On January 29, 2018, Florida Housing received an extension request from Suncrest Court to extend the firm loan commitment issuance deadline to November 8, 2018. The extension was sought because Suncrest Court encountered multiple, unexpected delays as it progressed through the pre-development process as a direct result of PHG's removal. Specifically, because the remaining Principals of Suncrest Court are affiliated with the Housing Authority of the City of Fort Lauderdale (the "Authority"), a governmental agency, which was created pursuant to Florida Statutes Chapter 421, all aspects of the development going forward must adhere to certain procurement provisions as specified by the United States Department of Housing and Urban Development ("HUD"). This procurement process, while undertaken immediately after PHG's removal, nonetheless caused a delay. In addition, a substantial portion of the funding required to make the development financially feasible is coming from the Authority's Rental Assistance Demonstration ("RAD") application and corresponding subsidy from HUD. The Authority's RAD application processing was delayed because of HUD's backlog in processing such applications, HUD's involvement in responding to Hurricanes Harvey and Irma, and a government shutdown. Based on the staff recommendation that the extension request

was in compliance with the RFA, the Board approved the request at its Board meeting on March 16, 2018. *See* Consent Agenda, p. 30, Board Agenda, March 16, 2018; *see also* Board Meeting Minutes, March 16, 2018, pp. 3-4. Suncrest Court paid a non-refundable extension fee of one percent of the loan amount after approval of the extension, as required by rule 67-48.0072(21)(b).

8. Suncrest Court is in need of a 180-day extension of the time to obtain a firm loan commitment, up to and including May 7, 2019, for the reasons discussed below. Because rule 67-48.0072(21)(b) allows only one six-month extension of up to six months to secure a firm loan commitment, which has already been approved, a rule waiver is now required and is requested through this Petition.

9. The requested waiver is permanent in nature.

C. RULE FROM WHICH WAIVER IS SOUGHT

10. Rule 67-48.0072(21)(b) 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.

(Emphasis supplied).

D. STATUTES IMPLEMENTED BY THE RULE

11. Rule 67-48.0072(21)(b) implements section 420.5087 (State Apartment Incentive Loan Program), section 420.5089 (HOME Investment Partnership Program and HOME Investment Partnership Fund), and section 420.5099 (allocation of the low-income housing tax credit program). All of these programs are part of the Florida Housing Finance Corporation Act, found at sections 420.501-420.517, Florida Statutes. One of the purposes of the Act is “to create new programs to stimulate the construction and substantial rehabilitation of rental housing for eligible persons and families.” § 420.502(8), Fla. Stat.

E. JUSTIFICATION FOR REQUESTED WAIVER

12. Section 120.542(1), Florida Statutes, provides that “[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.” That procedure requires those seeking a variance of, or waiver from, a particular rule to demonstrate that application of the rule would create a substantial hardship or would violate principles of fairness; § 120.542(2), Fla. Stat. Petitions for variances and waivers also are required to demonstrate the purposes of the underlying statute will be achieved. *Id.*

13. Suncrest Court involves the demolition of 66 units of traditional public housing, which are under HUD’s protection and jurisdiction, and the rebuilding of 116 new affordable rental units under RAD, including Project Based Rental Assistance and a \$7 million lump sum investment of the Authority’s accumulated reserves. RAD projects must meet all requirements contained in the PIH Notice 2012-32, Revision 3 (“Notice”) and all subsequent revisions. In

addition, the Authority must fulfill and comply with the provisions of HUD's Commitment to Enter into a Housing Assistance Payments ("CHAP"), which includes established milestones and deadlines identified in the Notice. The Authority must submit, through the RAD Resource Desk, certain documents and certifications so HUD can monitor compliance with the Notice and CHAP milestones. Such milestones involve detailed review by HUD and include items such as a RAD Physical Condition Assessment (RPCA), an environmental review, a Significant Amendment to the Authority's annual plan, and FHEO/HUD pre-approval of Specific Activities. If HUD, in its sole judgment, at any time determines the Authority or any aspect of the Suncrest Court redevelopment plan fails to meet any requirement, HUD will cease processing any further review until the Authority addresses, to HUD's satisfaction at its sole discretion, the alleged shortcoming.

14. Although the Authority has been working diligently to submit all documentation and certifications, two significant delays in securing HUD's required approvals have occurred. First, the project's design was put on hold for approximately 90 days until HUD's Region IV Office of Fair Housing and Equal Opportunity ("OFHEO") approved the Authority's request to remove five-bedroom units from the development's unit mix. When originally built in the 1950s, the development included eight (8) five-bedroom units, which are no longer supported by the existing multifamily market. On March 26, 2018, the OFHEO disapproved the Authority's request to remove the large units based on its review of the RAD Unit Reduction Checklist. The Authority immediately re-submitted the RAD Unit Reduction Checklist to address OFHEO's concerns, but the OFHEO is under no obligation to expedite review. Upon resubmittal, the Authority's application essentially went to the "back of the line." Until the Authority was certain OFHEO would approve the removal of the five-bedroom units, it had no choice but to instruct the design

professional to cease work. The Authority received OFHEO's approval of the RAD Unit Reduction Checklist on May 11, 2018. Accordingly, the design professionals have once again commenced work on the project. Second, the RAD Notice contains a number of regulations and statutory requirements, while stressing the continued applicability of others or imposing alternative or new requirements. One such regulation is the Fair Housing Act and Title VI of the Civil Rights Act of 1964 that addresses site selection and neighborhood standards. To date, HUD has rejected Suncrest Court based on certain surrounding neighborhood factors. The Authority continues to diligently address HUD's concerns. The Authority received a 15-day extension of its deadline to submit the Financing Plan so it can continue to work with OFHEO on this issue. The Authority fully expects to receive HUD's approval of this requirement in due course.

15. Another reason for the requested waiver relates to the City of Fort Lauderdale's notorious delays in reviewing and approving construction documents. See "Fort Lauderdale trying to fix 'grossly broken' building permit system," <http://www.sun-sentinel.com/local/broward/fl-lauderdale-building-permit-delays-20160710-story.html>, Sun-Sentinel, July 10, 2016. Because of delays associated with HUD's processing of the Authority's RAD application, Suncrest Court has intentionally delayed submitting any further permitting documentation to the City. Once the final HUD approval is received, Suncrest will proceed with haste on construction documents and the subsequent permitting process, but the City's process is known to be tedious and time consuming.

16. The issues described above have created a "substantial hardship" for Suncrest Court that justifies a waiver of rule 67-48.0072(21)(b). The delays associated with HUD's lengthy approval processes have been particularly onerous. Suncrest Court believes an extension of 180 days would allow Suncrest Court sufficient time to secure the firm loan commitment.

17. The requested waiver will not adversely affect any party, including any other party that applied to receive SAIL funding in the RFA or Florida Housing. A denial of the requested waiver, however, would result in substantial economic hardship to Suncrest Court, as it has incurred significant costs to date in an effort to ensure that the proposed development proceeds to completion. Additionally, denial of the waiver would deprive the City of Fort Lauderdale of much-needed new affordable rental units. If this Petition is not granted, Suncrest Court will be unable to obtain SAIL funding, which would cause the proposed development to be infeasible.

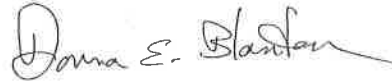
18. The statutes underlying rule 67-48.0072(21)(b) will be served by the approval of Suncrest Court's waiver request. One of the statutory goals of the Florida Housing Finance Corporation Act is for proceeds of a SAIL loan to be used to facilitate the availability of decent, safe, and sanitary housing in Florida to low-income persons and households. § 420.502(4), Fla. Stat. This Act was passed 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 waiver request, Florida Housing would further the goal of increasing the supply of affordable housing units through the construction of new developments.

F. ACTION REQUESTED

19. For the reasons expressed, Suncrest Court respectfully requests that the Florida Housing Board grant the requested waiver of rule 67-48.0072(21)(b), as Suncrest Court has demonstrated a "substantial hardship." Suncrest Court is specifically requesting an additional 180 days – up to and including May 7, 2019 – to secure the firm loan commitment.

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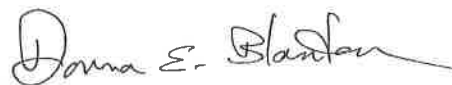
Respectfully submitted,



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Counsel for Petitioner

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 at corporationclerk@floridahousing.org, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, and with a copy served by hand delivery to the Joint Administrative Procedures Committee, 680 Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 25th day of June 2018.



Donna E. Blanton

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