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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In re: Culmer Apartments, Ltd.

FHFC CASE NO. 2021-094VW
Application No. 2020-435BSN
RFA No. 2019-116

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PETITION FOR WAIVER OF FLORIDA ADMINISTRATIVE CODE RULES 67-48.0072(4)(c) and (21)(b)

Petitioner, Culmer Apartments, Ltd. (Petitioner), pursuant to section 120.542, Florida Statutes, and chapter 28-104, Florida Administrative Code, petitions Florida Housing Finance Corporation ("Florida Housing") for a waiver of rules 67-48.0072(4)(c) and (21)(b), Florida Administrative Code (2019) (the "Rule") in effect at the time Petitioner submitted its application in response to Florida Housing's Request for Applications No. 2019-116, for 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 this Petition, Petitioner states:

A. Petitioner and the Development

1. The name, address, telephone, and email address for Petitioner is:

Culmer Apartments, Ltd.
161 NW 6th Street, Suite 1020
Miami, Florida 33136
Telephone: 305-357-4725
Email: knaylor@apcompanies.com

2. The name, address, telephone and email address of Petitioner's counsel is:

Brittany Adams Long
Radey Law Firm
301 South Bronough Street, Suite 200
Tallahassee, Florida 32301
Telephone: 850-425-6654
Email: balong@radeylaw.com

3. The RFA was issued on November 6, 2019.

4. Petitioner timely submitted Application No. 2020-435BSN in response to the RFA for the development named Culmer Apartments located in Miami-Dade County, Florida (the "Development"). The Development will consist of 239 high-rise units in three buildings that will serve low-income families.[1]

5. The application was assigned number 2020-435BSN. The Florida Housing Board of Directors (the "Board") approved the final scores and recommendations on March 6, 2020.

6. Petitioner was invited into credit underwriting on July 14, 2020. The invitation letter informed Petitioner that the firm loan commitment letter must be issued within 12 months of

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[1] The following information regarding the Development is provided to facilitate staff's preparation of background material for the Florida Housing Board of Directors:

- Development Name: Culmer Apartments
- Developer: APC Culmer Development, LLC,
- County of Development: Miami-Dade
- Number of Units: 239
- Type: High-Rise Apartments
- Set Asides: 37 residential units at or below 30% of area median income (AMI); 6 residential units at or below 40% of AMI; 5 residential units at or below 50% of AMI; 127 residential units at or below 60% of AMI; and 64 residential units at or below 80% of AMI; 4 residential units at or below 22% AMI (NHTF units)
- Demographics: Family
- Funding Amounts: $7,000,000 in SAIL; $600,000 in ELI Loan; $33,500,000 in Corporation-Issued MMRB; and $2,145,840 in Housing Credits; $1,236,800 in NHTF Loan

the Applicant's acceptance to enter into credit underwriting. Petitioner's firm loan commitment was due on July 14, 2021.

7. Pursuant to the Rule, applicants such as Petitioner were permitted to request one extension of up to six months to secure a firm loan commitment. Petitioner requested that extension, which was granted by the Florida Housing Board of Directors on June 18, 2021, and which extended the firm loan commitment issuance deadline until January 14, 2022.

8. Petitioner requires additional time to secure its firm loan commitment, which will allow the credit underwriting process to be completed. In general, the COVID-19 pandemic and its associated precautionary measures have had a significant impact on the industry as a whole. Most of the third-parties' team members have been working remotely, and many government agencies reduced or ceased operations. As a result, the development has experienced extensive delays beyond our control. The need for additional time is the result of three primary issues: 1) a lengthy entitlement and permitting process, 2) additional time needed to obtain commitments for necessary gap subordinate financing, and 3) the additional time implications associated with securing HUD financing. The delays are a result of the following:

a) Petitioner submitted the initial set of plans to the City of Miami on February 21, 2021. Typically, the review timeline for the City of Miami is 30 days, but the turnaround time is now well beyond this timeframe. In an effort to expedite the entitlements and permitting process, Petitioner proceeded with completing Construction Drawings prior to site plan approval. Those plans were completed on October 4, 2021, and have now been submitted for review in advance of the site plan approval.

b) Like most urban infill high-rise affordable housing developments in the City of Miami, the proposed development requires significant gap financing. On July 21, 2020, Petitioner submitted a response to Miami-Dade County's Request for Application for a $6,500,000 Surtax loan. On August 10, 2021, the County provided a Conditional Loan Commitment for $6,500,000 required to proceed with credit underwriting to obtain a Firm Loan Commitment from the Florida Housing.

c) Petitioner has also applied for a HUD Section 221(d)(4) program loan. This lending program has an extended timeline due the various levels of HUD review and approval required. Petitioner has ordered all third-party reports and will be submitting the Firm Application to HUD in February of 2022.

9. Petitioner anticipates that by March of 2022, site plan approval will be obtained from the City of Miami, despite continued delays, and the application to HUD for 221(d)(4) financing will have been submitted. This will allow Petitioner to target a financial closing in the third quarter of 2022. Accordingly, because the final credit underwriting report will not come before the Board at its next meeting on December 10, 2021, and because the firm loan commitment issuance deadline of January 14, 2022, will not be met, Petitioner is in need of another extension.

10. Specifically, Petitioner requests a six-month waiver of the firm loan commitment deadline through and including July 14, 2022, in order to allow more time for the credit underwriting report to be finalized and approved by the Board and the firm loan commitment issued.

B. <u>Type of Waiver</u>

11. The waiver being sought is permanent in nature.

C. Rule For Which a Waiver Is Requested

12. Petitioner requests a waiver from the Rule, which provides:

> (4) If the invitation to enter credit underwriting is accepted:
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> . . . .
>
> (c) For SAIL, EHCL, and HOME, the credit underwriting process must be completed within the time frame outlined in subsection 67-48.0072(21), F.A.C., below and the loan must close within the time frame outlined in subsection 67-48.0072(26), F.A.C., below.
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> . . . .
>
> (21) Information required by the Credit Underwriter shall be provided as follows:
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> . . . .
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> (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 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, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original twelve (12) month deadline. 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(4)(c) & (21)(b), Fla. Admin. Code (2019).

D. Statutes Implemented by the Rule

13. The Rule implements, among other sections of the Florida Housing Finance Corporation Act; section 420.5087 (State Apartment Incentive Loan Program); and section 420.5099 (allocation of the low-income housing tax credit).

E. Justification for Granting Waiver of the Rule

14. Under Section 120.542(1), Florida Statutes, Florida Housing has the authority to grant waivers to or variances from its requirements when strict application of the requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, section 120.542(2) states:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the 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.

15. Over the last year, the Development has suffered unforeseen hardships that make it clear that the Development will not meet the January 14, 2022, deadline for the firm loan commitment issuance. These challenges are summarized as follows:

(a) The City of Miami site plan approval process has been particularly lengthy. Petitioner initially submitted the site plan approval package to the City of Miami in February of 2021 and has been expeditiously responding to comments; however, the City of Miami is taking up to 70 days to provide comments in each round of reviews.

(b) Petitioner has experienced delays related to obtaining subordinate gap financing necessary to complete credit underwriting.

(c) Currently there is an extensive timeline related to HUD 221(d)(4) financing reviews and approvals.

(d) Further, the COVID-19 pandemic had a significant impact. Most of Petitioner's project team members and many government agencies have been working remotely.

Document signatures, plan coordination, and the entitlement process have been hindered by challenges to complete previously seamless tasks with the new virtual work environment, which caused delays.

16. Despite these delays, Petitioner has been working diligently to complete the design of the development. To date, the project is in final stages of site plan approval with the City of Miami and construction drawings have been submitted to the building department.

17. With these delays, it is evident that Petitioner will not meet the January 14, 2022, deadline for the firm loan commitment issuance. Because Petitioner previously received an extension pursuant to the Rule, a waiver is necessary to obtain the requested additional extension.

18. Under section 120.542(1), Florida Statutes, and chapter 28-104, Florida Administrative Code, Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) 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. (2019).

19. In this instance, Petitioner meets the standards for a waiver of the Rule. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 239 much-needed affordable housing units will be made available for a vulnerable segment of the population in Miami-Dade County, Florida.

20. This Development will assist Florida Housing with fulfilling its statutory mandate to provide safe, sanitary, and affordable housing to the citizens of Florida. *See* § 420.502(2), Fla. Stat. Florida Housing is required by section 420.507(48), Florida Statutes, to reserve up to 5% of

its annual allocation of low-income housing tax credits to allocate by competitive solicitation for high-priority affordable housing developments, such as housing for low-income families, in communities throughout the state.

21. The requested waiver further serves the purpose of the statute because one of the primary goals of the statute is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida for low-income households. *Id.* By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing in persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable rental housing. *See* § 420.5099(2), Fla. Stat.

22. The strict application of the Rule requirements will create a substantial hardship for Petitioner because if the Petition is not granted, the SAIL allocation will automatically be withdrawn from the transaction and the Development will not be constructed as proposed. The denial of the Petition would result in an economic hardship to Petitioner because Petitioner has incurred significant costs to date in an effort to ensure that the development is completed.

F. <u>Action Requested</u>

WHEREFORE, Petitioner respectfully requests that Florida Housing:

(i) Grant the requested waiver from rule 67-48.0072(4)(c) & 21(b), Florida Administrative Code and extend the deadline for the issuance of the firm loan commitment from January 14, 2022 until July 14, 2022;

(ii) Grant this Petition and all of the relief requested herein; and

(iii) Grant such further relief as may be deemed appropriate

Respectfully submitted this 19th day of November, 2021.

/s/ Brittany Adams Long
Brittany Adams Long, FBN 504556
Radey Law Firm
301 South Bronough, Suite 200
Tallahassee, Florida 32301
Telephone: (850) 425-6654
E-mail: balong@radeylaw.com
Secondary: lmcelroy@radeylaw.com
Counsel for The Village of Casa Familia, Ltd.

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
CorporationClerk@floridahousing.org,

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
japc@leg.state.fl.us

This 19th day of November, 2021.

/s/ Brittany Adams Long
Brittany Adams Long