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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

PINELLAS AFFORDABLE LIVING, INC.,

Petitioner,

FHFC CASE NO. 2022-054VW
APPLICATION NO. 2021-299S

v.

FLORIDA HOUSING
FINANCE CORPORATION,

Respondent.
_____/

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

Petitioner, PINELLAS AFFORDABLE LIVING, INC., a Florida corporation ("PAL") hereby petitions Respondent, FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing") and requests a waiver of Florida Housing's Rule 67-48.0072(21)(b), Florida Administrative Code ("F.A.C.") and the relevant provisions of RFA 2021-102 SAIL Financing for Smaller Developments for Persons with Special Needs ("RFA") which incorporates deadlines for the issuance of a firm loan commitment.

In support of this Petition, PAL provides as follows:

1. The contact person, address, telephone number, facsimile number, and e-mail address of the PAL is:

Jack Humburg
Pinellas Affordable Living, Inc.
455 31st Street N
St. Petersburg, Florida 33713
Telephone: (727) 821-4819 ext. 5717
Email: Jack.Humburg@Boleycenters.org

2. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address of PAL's counsel is:

Michael P. Donaldson, Esq.
Carlton Fields
Post Office Drawer 190
Tallahassee, FL 32302-0190
Telephone: 850-224-1585
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THE DEVELOPMENT

3. PAL timely submitted its Application in response to the RFA requesting $4,350,585 in SAIL Funding and $296,000 in ELI funding to supplement the construction of an affordable housing complex in St. Petersburg, Pinellas County, Florida. PAL was awarded its requested funding on April 30, 2021,by the Florida Housing Board of Directors ("Board"). The funds are being used to supplement the development of 20 affordable apartment units in a complex named Whispering Pines ("Development").

4. PAL was invited into Credit Underwriting on May 13, 2021, and accordingly a firm loan commitment issuance deadline of 12 months or May 13, 2022, was established.

5. On March 23, 2022, PAL submitted a request to extend the firm loan issuance commitment deadline from May 13, 2022, to November 13, 2022. Florida Housing staff reviewed the request and found that it met all requirements of the RFA and on April 29, 2022, the Florida Housing Board of Directors approved the extension until November 13, 2022. This Petition seeks a further 6 month extension of the firm loan issuance commitment deadline to May 13, 2023.

6. This requested waiver will not adversely affect the Development. However, a denial of this Petition (a) could result in substantial economic hardship to PAL, (b) could deprive Pinellas County, Florida of essential affordable low-income housing units in a timely manner, and

(c) would violate the principals of fairness. See Section 120.542.(2), F.S.

THE RULES FROM WHICH WAIVER IS SOUGHT

7. PAL requests a waiver from Rule 67.48.0072(21)(b)[1] F.A.C., which in relevant part provide as follows:

> 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.

8. Under Section 120.542(1), Fla. Stat. and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Waivers must be granted when: (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship or violate principals 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.

[1]The RFA incorporates the above rule and timelines at pages 83 and 84 of 111.

9. Because PAL was previously granted a six-month extension of the firm loan commitment issuance deadline, the current requested extension may not be granted without the approved waiver of the Rule and Board approval. PAL is requesting an additional 6 month extension of the firm loan commitment deadline from November 13, 2022, to May 13, 2023.

STATUTES IMPLEMENTED BY THE RULES

10. The Rules are implementing sections of the Florida Housing Finance Corporation Act and specifically, Section 420.5087, Fla. Stat. (State Apartment Incentive Loan Program).

PETITIONER REQUESTS A WAIVER FROM THE RULES FOR THE FOLLOWING REASONS

11. Current inflation has caused some unexpected and unforeseen delays and increases in construction costs prompting the need for additional resources and a further extension.

12. Specifically, PAL solicited competitive bids from three general contractors in order to comply with secondary financing requirements imposed by the City of St. Petersburg.

13. The lowest bid received was approximately 25% higher than originally anticipated resulting in increased construction costs also not initially contemplated.

14. In an effort to keep the Development viable, PAL has been working to find additional funding sources to fill in this funding gap and has successfully obtained additional funding from the City of St. Petersburg.

15. Additionally, PAL is currently working with Pinellas County to secure additional funding. However this approval will take Pinellas County Commission approval at a properly noticed board meeting which is forthcoming but will not occur before November 13, 2022.

16. There are no obstacles known to PAL that would prevent Florida Housing's issuance of the firm loan commitment following the award of additional funding from Pinellas

County.

17. In a further attempt to obtain additional funding PAL on June 29, 2022, submitted an application under the Construction Housing Inflation Response Program ("CHIRP"). However PAL has been advised by Florida Housing that the CHIRP funding for this development is still being determined.

18. The requested waiver will not adversely affect PAL, the Development, any other party that applied to receive SAIL funding in the RFA, or Florida Housing. A denial of the Petition, however, would: (a) result in substantial economic hardship to PAL, as it has incurred significant costs to date in an effort to ensure that the Development proceeds to completion; (b) deprive Pinellas County of essential affordable rental units; and (c) violate principals of fairness. *See* §120.542(2), F.S.

19. The foregoing facts demonstrate the hardship and other circumstances which justify PAL's request for a Rule waiver, that is, the loss of a substantial sum of money should the transaction not go forward, and potentially the loss of critical housing for households with special needs.

20. Controlling statutes and Florida Housing'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 purpose 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, Florida Housing would recognize principals of fundamental fairness in the development of affordable rental housing.

21. If this Petition is not granted, the preliminary commitment will be withdrawn and the Development will not be constructed.

WAIVER WILL SERVE UNDERLYING PURPOSE OF THE STATUTE

21. PAL believes that a waiver of the Rule will serve the purpose of the Statute which is implemented by the Rule. The Florida Housing Finance Corporation Act (Section 420.501, Fla. Stat. *et seq.)* was passed in order to encourage private and public investment in facilities for persons of low-income. The purpose and the creation of the SAIL and ELI programs is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting the waiver requested in this Petition, Florida Housing would recognize the goal of increasing the supply of affordable housing.

TYPE OF WAIVER

22. The waiver being sought is permanent in nature.

ACTION REQUESTED

23. Should Florida Housing require additional information, PAL is available to answer questions and to provide all information necessary for consideration of its Petition.

WHEREFORE, PAL respectfully requests the following:

A. Grant the Petition and all relief requested herein;

B. Waive Rule 67-48.0072(21)(b), F.A.C., and the RFA allowing PAL an additional extension of 6 months to May 13, 2023.

C. Grant such further relief as may be deemed appropriate.

Respectfully submitted this 10th day of October 2022.

Michael P. Donaldson
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Attorney for Pinellas Affordable Living, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Petition for Waiver is being served by electronic transmission for filing with Ana McGlamory, Agency Clerk (CorporationClerk@Floridahousing.org) and Hugh Brown, General Counsel (Hugh.Brown@floridahousing.org) for the Florida Housing Finance Corporation, at 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, and that a copy served via electronic transmission on the Joint Administrative Procedures Committee, at (JAPC@leg.state.fl.us), at 680 Pepper Building, 111 W. Madison Street, Tallahassee, FL 32399, this 10th day of October 2022.

/s/ Michael P. Donaldson
Michael P. Donaldson