

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

SPRINGHILL APARTMENTS, LLC,

FHFC Case No.: 2019-060VW

Petitioner,

FHFC ~~XXXX~~ NO. 2018-026S

REQUEST FOR APPLICATIONS 2017-108

v.

FLORIDA HOUSING
FINANCE CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER OF RULE 67-48.0072(4)(c) and (21)(b), F.A.C.

Pursuant to Section 120.542, Florida Statutes, ("F.S.") and Rule 28-104.002, Florida Administrative Code, Petitioner Springhill Apartments, LLC, ("Springhill") a Florida limited liability company, submits this Petition to Respondent, Florida Housing Finance Corporation, ("Florida Housing") for a waiver of Rule 67-48.0072(4)(c) and (21)(b), F.A.C. (2017) (the "Rule") in effect at the time Springhill submitted its application in response to Florida Housing's Request for Applications 2017-108, for SAIL Financing of Affordable Multifamily Housing Developments to be Used in Conjunction with Tax-Exempt Bonds and Non-Competitive Housing Credits (the "RFA"). Springhill seeks to extend the time allowed under the Rule for the issuance of a firm loan commitment. In support of its Petition, Springhill states as follows:

A. THE PETITIONER

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

James J. Kerr
2409 Mall Drive, Suite A
North Charleston, SC 29406
Telephone: (843) 345-8166
Email: jamielkerr@amcs-inc.com

2. The name, address, telephone and facsimile numbers, and email address for Springhill's attorney are:

Michael P. Donaldson, Esq.
Carlton Fields, P.A.
Post Office Drawer 190
Tallahassee, FL 32302-0190
Telephone: 850-224-1585
Facsimile: 850-222-0398
Email: mdonaldson@carltonfields.com

B. THE DEVELOPMENT AND ITS FINANCING

3. Florida Housing issued the RFA on August 31, 2017.

4. Springhill timely submitted its Application in response to the RFA for the development named "Springhill Apartments," located in Madison County (the "Development"). The Development will comprise 76 Garden Apartment Units. Springhill requested a SAIL loan in the amount of \$3,064,400, and an ELI loan in the amount of \$251,600, and an annual 4% housing credit in the amount of \$381,769. The set asides for the Development consist of 10% at 45%; and 90% at 60% area median income.

5. The Florida Housing Board of Directors ("Board") approved the final scores and recommendations for the RFA on December 8, 2017, and directed staff to proceed with all necessary credit underwriting activities.

6. On May 10, 2018, FHFC staff issued a preliminary commitment letter and an invitation to enter credit underwriting to Springhill, which stated that the firm loan commitment had to be issued within 9 months of the acceptance to enter credit underwriting. The acceptance was acknowledged on May 10, 2018, giving Springhill a

firm loan commitment issuance deadline of February 10, 2019. Per the Rule, applicants such as Springhill were permitted to request one extension of up to 6 months to secure a firm loan commitment. Springhill requested that extension, which was granted by the Board on February 10, 2018, and which extended the firm loan commitment issuance deadline to August 10, 2019.

7. Currently Springhill requires additional time to secure its firm loan commitment, which will allow the credit underwriting process to be completed. The need for additional time is the result of unforeseen delays in the preparation and third party review of project specific engineering drawings and plans to meet Development requirements. Springhill anticipates the necessary drawings and plans will be completed expeditiously and it is anticipated a firm loan commitment will issue in early September followed by a closing in October of 2019. Accordingly, because the final credit underwriting report will not come before the Board at its next meeting on August 2, 2019, and because the firm loan commitment issuance deadline of August 10, 2019, will not be met, Springhill is in need of another extension.

8. Specifically, Springhill requests a six-month extension of the firm loan commitment deadline through and including February 10, 2020, in order to allow more time for the firm loan commitment to issue and the credit underwriting report to be approved.

9. The requested waiver is permanent in nature.

C. RULE FROM WHICH WAIVER IS SOUGHT

10. Springhill requests a waiver from the Rule, which provides:

(4) If the invitation to enter credit underwriting is accepted:...

(c) For SAIL, EHCL, and HOME that is not in conjunction with Competitive HC, 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.

(21) Information required by the Credit Underwriter shall be provided 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.

See Rule 67-48.0072(4)(c) and (21)(b), F.A.C. (emphasis added).

D. STATUTES IMPLEMENTED BY THE RULE

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

E. JUSTIFICATION FOR REQUESTED WAIVER

12. Under Section 120.542(1), F.S. 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 principles fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), F.S.

13. As discussed in Paragraphs 7 - 8, above, Springhill was on course for a firm commitment issuance and closing activities to be completed prior to the August 2, 2019, Board Meeting. However, the desired timeline was derailed by an issue that arose requiring Springhill to request this additional extension to address and resolve the issue. Accordingly, Springhill is in need of the requested extension.

14. Because Springhill previously received an extension pursuant to the Rule, a waiver is necessary to obtain the requested additional extension.

15. The requested waiver will not adversely affect Springhill, the Development, any other party that applied to receive funding in the RFA, or Florida Housing. A denial of the request, however, would: (a) result in substantial economic hardship to Springhill,

as it has incurred significant costs to date in an effort to ensure that the Development proceeds to completion; (b) deprive Madison County of essential housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness.

16. If this Petition is not granted, the SAIL allocation will automatically be withdrawn from the transaction, the preliminary commitment for the ELI Loan will be withdrawn, and the Development will not be constructed and rehabilitated as proposed.

17. As discussed herein, Springhill is requesting a second extension of the deadline for issuance of the firm loan commitment from August 10, 2019 to February 10 2020, which request requires a waiver of the Rule.

18. The requested waiver will ensure the availability of SAIL and 4% HC financing which will be lost without the extension.

19. The foregoing facts demonstrate the hardship and other circumstances which justify Springhill'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 Madison County.

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 purposes of Section 420.5087, F.S. 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 principles of fundamental fairness in the development of affordable rental housing.

21. Should Florida Housing require additional information, a representative of Springhill is available to answer questions and to provide all information necessary for consideration of this Petition.

F. ACTION REQUESTED

22. Springhill requests the following:

- a. That Florida Housing grant Springhill a waiver from Rule 67-48.0072(4)(c) and (21)(b), Florida Administrative Code, extend the deadline for issuance of the firm loan commitment from August 10, 2019 to February 10, 2020, and to refrain from imposing an extension fee in relation to this extension;
- b. That Florida Housing grant the Petition and all the relief requested therein; and
- c. That Florida Housing grant such further relief as may be deemed appropriate.

Respectfully submitted,

/s/ Michael P. Donaldson

MICHAEL P. DONALDSON

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Attorney for Springhill Apartments, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Petition for Waiver is being served by electronic transmission for filing with Corporation Agency Clerk and Hugh Brown, General Counsel for the Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, with copies served via Hand-Delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, FL 32399 this 8th day of July 2019.

/s/ Michael P. Donaldson
Michael P. Donaldson