STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

RECEIVED
MAY 16 2023 12:25 PM
FLORIDA HOUSING
FINANCE CORPORATION

CASE NO. _____

AMC HTG 2, Ltd.,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2023-040VW
Application No. 2021-323S
RFA 2021-208

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.0072(21)(b), F.A.C. (6/23/20)

Pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code ("F.A.C."), Petitioner AMC HTG 2, Ltd., a Florida limited partnership, submits this Petition to Respondent Florida Housing Finance Corporation ("Florida Housing") for a waiver of Rule 67-48.0072 (21)(b), F.A.C. (the "Rule") in effect at the time the Petitioner submitted its application in response to Florida Housing's Request for Applications 2021-208 SAIL And Housing Credit Financing For The Construction Of Workforce Housing (the "RFA"). Petitioner seeks an additional firm loan commitment extension for Application 2021-323S (the "Application"). Per Rule 67-48.0072 (21)(a), F.A.C., Florida Housing "shall issue a firm loan commitment after approval of the Credit Underwriter's recommendation for funding by the Board." However, Petitioner experienced significant delays beyond its control and anticipates that the credit underwriting report cannot be finalized until November 2023.

Petitioner's current deadline to achieve firm loan commitment issuance is by July 15, 2023, or an earlier Florida Housing Board meeting. Thus, Petitioner seeks a six-month extension of the

firm loan commitment deadline to January 15, 2024. In support of its Petition, the Petitioner states as follows:

A. THE PETITIONER

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

Matthew A. Rieger
AMC HTG 2, Ltd.
3225 Aviation Ave., 6th Floor
Coconut Grove, FL 33133
Telephone: (305) 860-8188
Fax: (305) 639-8427
Email: mattr@htgf.com

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

Brian J. McDonough
Stearns Weaver Miller Weissler Alhadeff & Sitterson
150 West Flagler Street
Suite 2200
Miami, FL 33130
bmcdonough@stearnsweaver.com
Tel: (305) 789-3350
Fax: (305) 789-3395

Bridget Smitha
Stearns Weaver Miller Weissler Alhadeff & Sitterson
106 East College Avenue, Suite 700
Tallahassee, FL 32301
bsmitha@stearnsweaver.com
Direct: 850-329-4852
Fax: 850-329-4844

B. THE DEVELOPMENT AND ITS FINANCING

3. The following information pertains to the development underlying Petitioner's Application (the "Development"):

- Development Name: Courtside Apartments, Phase II
- Development Address: NW 17th Street, NW 17th Street and NW 3rd Avenue, Miami; and NW 4th Avenue, NW 4th Avenue and NW 17th Street, Miami
- County: Miami-Dade

- Developer: AMC HTG 2 Developer, LLC
- Number of Units: 120 newly constructed units
- Type: Mid-Rise 5-6 Stories
- Set Asides: 15% @ 30% AMI (SAIL & 4% HC); 10% @ 50% AMI (SAIL & 4% HC); 20% @ 60% AMI (SAIL & 4% HC); 55% @ 70% AMI (SAIL & 4% HC) (Workforce)
- Demographics: Workforce
- Funding: $2,750,000 State Apartment Incentive Loan (SAIL); $1,780,620 Housing Credits (4% HC)

4. Petitioner accepted an invitation to enter credit underwriting dated July 12, 2021. Although the Rule provides that the firm loan commitment must be issued within twelve months of acceptance to enter credit underwriting, it also provides that Petitioner may request one extension of up to six months. Petitioner exercised this right and Florida Housing's Board approved the extension request on June 17, 2022 to extend the deadline from July 15, 2022 to January 15, 2023. Petitioner paid the extension fee required by the Rule. Petitioner received Board approval for a Petition for Waiver of Rule 67-48.0072(21)(b), F.A.C. (6/23/20) on December 9, 2022 for an additional extension for the deadline for firm loan commitment issuance deadline from January 15, 2023 to July 15, 2023.

C. <u>WAIVER IS PERMANENT</u>

5. The requested waiver is permanent in nature.

D. <u>RULE FROM WHICH WAIVER IS SOUGHT</u>

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

> (21) Information required by the Credit Underwriter shall be provided as follows:
>
> (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.

See Rule 67-48.072(21)(b), F.A.C. (6/23/20)

E. STATUTES IMPLEMENTED BY THE RULE

7. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"),[1] 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).

F. JUSTIFICATION FOR THE REQUESTED WAIVER

8. Under Section 120.542(l), 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

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

of the rule would 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.

9. Because Petitioner was previously granted a six-month extension of the firm loan commitment deadline, the requested extension may not be granted without a waiver of the Rule.

10. Petitioner is requesting an additional extension of the firm loan commitment deadline from July 15, 2023 to January 15, 2024 to allow sufficient time to finalize underwriting. Petitioner's current deadline to achieve firm loan commitment issuance is by July 15, 2023, or an earlier Florida Housing Board meeting. A temporary (*e.g.*, six-month) extension is requested in an abundance of caution and to prevent the need to make a subsequent petition for rule waiver.

11. The need for the requested extension was created by circumstances beyond Petitioner's control, as set forth below:

a. Unfortunately, there are a multitude of issues beyond the Petitioner's control which have caused a significant delay in the timeline for this development which include rising construction costs, interest rates, insurance costs, and prevailing wages. The project's financing gap has risen substantially. To address the financing gap, we have applied for additional funds from the City of Miami Housing and Community Development department ("Miami HCD") and plan to apply for additional funding from FHFC when the funds are made available in late 2nd quarter of 2023. Once these funds are obtained, we will be able to get the final underwriting approvals and close in January to February 2024.

b. The Development is located on a Miami-Dade County owned site with existing structures and is adjacent to a City of Miami owned site with shared parking and access.

This has required the Petitioner to solve an array of legal and planning issues between the County and City. These legal issues have affected the Petitioner's ability to attain timely site plan approval from the City of Miami which is underway in a lengthy review process.

12. Currently, the Development has fully completed construction documents and has received bids from various General Contractors. The Development is currently in the negotiating phase for a Contract with a General Contractor. Following the conclusion of negotiations the Development can proceed with Plan and Cost Review, after which it will be able to finalize the Credit Underwriting Report.

13. Due to these reasons, Petitioner does not anticipate the ability to meet the firm loan commitment deadline of July 15, 2023. Petitioner anticipates that the Credit Underwriting Report will be finalized in November 2023.

14. The requested waiver will not adversely affect Petitioner, 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 Petitioner, as it has incurred significant costs to date in an effort to ensure that the Development proceeds to completion; (b) deprive Miami-Dade County of essential affordable rental units set aside for Workforce individuals, who desperately need the housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness[2]. *See* § 120.542(2), F.S.

[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.

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

16. As discussed herein, Petitioner is requesting a third extension of the deadline for issuance of the firm loan commitment from July 15, 2023 to January 15, 2024, which request requires a waiver of the Rule.

17. The requested waiver will ensure the availability of SAIL and housing credit financing which will otherwise be lost as a consequence of the delays described herein.

18. The foregoing facts demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver.

19. 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 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.

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

G. ACTION REQUESTED

21. Petitioner requests the following:

a. That Florida Housing grant Petitioner an additional waiver from Rule 67-48.0072(21)(b), Florida Administrative Code, extend the deadline for issuance of the firm loan commitment from July 15, 2023 to January 15, 2024;

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,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, 22nd Floor
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@stearnsweaver.com
Counsel for Petitioner

By: */s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 16th day of May, 2023.

By: */s/ Brian J. McDonough*
Brian J. McDonough, Esq.