STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

RECEIVED
FEB 21 2023 4:25 PM
FLORIDA HOUSING
FINANCE CORPORATION

IN RE: QUAIL ROOST TRANSIT VILLAGE I, LTD.

FHFC CASE NO. 2023-026VW
Application No. 2020-461SN
RFA No. 2020-208

_____/

PETITION FOR WAIVER OF FLORIDA ADMINISTRATIVE CODE RULES 67-48.0072(4)(c) and (26)

Petitioner, Quail Roost Transit Village I, 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 (26), Florida Administrative Code (effective 7/11/2019) (the "Rule") in effect at the time Petitioner submitted its application in response to Florida Housing's Request for Applications No. 2020-208, for SAIL and Housing Credit Financing for the Construction of Workforce Housing (the "RFA"). Petitioner seeks to extend the time allowed under the Rule for closing of its SAIL program loans. In support of this Petition, Petitioner states:

A. Petitioner and the Development

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

Quail Roost Transit Village I, 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:

Christopher B. Lunny
Radey Law Firm
301 South Bronough Street, Suite 200
Tallahassee, Florida 32301
Telephone: 850-425-6654
Email: clunny@radeylaw.com

3. The RFA was issued on February 24, 2020.

4. Petitioner timely submitted Application No. 2020-461S in response to the RFA for the development named Quail Roost Transit Village I located in Miami-Dade County, Florida (the "Development"). The Development will consist of the new construction of a 200 unit, high-rise residential apartment complex that will serve low-income families.[1]

5. The application was assigned number 2020-461S. The Florida Housing Board of Directors (the "Board") approved the final scores and recommendations on June 11, 2020.

6. Petitioner was invited into credit underwriting on October 21, 2020. The invitation letter informed Petitioner that the firm loan commitment letter must be issued within 12 months of

---

[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: Quail Roost Transit Village I
- Developer, including at least one natural person: Quail Roost I Development, LLC/Howard D. Cohen
- County of Development: Miami-Dade
- Number of Units: 200
- Type: High-Rise Apartments
- Set Asides: 32 residential units at or below 30% of area median income (AMI); 40 residential units at or below 50% of AMI; 18 residential units at or below 60% of AMI; 84 residential units at or below 70% of AMI; and 26 residential units at or below 80% of AMI
- Demographics: Workforce
- Funding Amounts: $6,500,000 in Workforce SAIL
- Funding Amounts: $3,700,000 in NHTF CHIRP

the Applicant's acceptance to enter into credit underwriting. Petitioner's firm loan commitment was due on October 23, 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 Board on October 22, 2021, and which extended the firm loan commitment issuance deadline until April 25, 2022.

8. On February 16, 2022, Petitioner then requested a waiver from rule 67-48.0072(4)(c) & 21(b), Florida Administrative Code in order to further extend the deadline for the issuance of the firm loan commitment from April 25, 2022 until October 25, 2022.

9. On March 4, 2022, the Board granted the petition and Petitioner's deadline for issuance of the firm loan commitment became October 25, 2022.

10. On June 20, 2022, the Florida Housing Finance Corporation staff issued a firm loan commitment to Petitioner for the SAIL loan. On September 22, 2022, the Florida Housing Finance Corporation staff issued an updated firm loan commitment to Petitioner which included a request for funding under the 2022 Construction Housing Inflation Response Program ("CHIRP"). By operation of rules 67-48.0072(4)(c) and (26), Florida Administrative Code (2019), Petitioner's loan closing deadline was December 22, 2022.

11. Pursuant to the Rule, applicants such as Petitioner were permitted to request one extension of up to 90 days to close the SAIL program loans. On November 1, 2022, Petitioner requested that extension, which was granted by Board on January 27, 2023, and which extended SAIL program loans closing deadline until March 22, 2023.

12. Petitioner requires additional time to close its SAIL program loans. Petitioner has been pursuing HUD Section 220 financing for this development. In normal circumstances,

Petitioner's lender advised that from submitting the firm application to HUD, financial closing should be anticipated to occur approximately six (6) months later. Based on this information, Petitioner initially anticipated financial closing to be able to occur by July 2022.

13. However, before submitting the full application, HUD advised and requested that Petitioner submit a pre-application, which is an added step to the process and resulted in approximately six (6) more months added to the overall timeline. Upon learning of this added step, Petitioner worked to quickly compile the pre-application, which was then submitted to HUD on December 20, 2021. The pre-application then sat in a queue for 58 days before being assigned an underwriter to review the application. Despite constant following up by Petitioner and Petitioner's lender and answering all questions in a timely manner, it took until June 3, 2022 for HUD to complete their review of the pre-application and invite Petitioner to submit a full application.

14. Petitioner worked quickly to finalize the full application, which was then submitted on June 21, 2022. The full application then sat in the queue again for another 37 days before being assigned a new underwriter, despite multiple requests by Petitioner for the application to be reassigned to the same underwriter who reviewed the pre-application with the goal of a more efficient review process. Throughout the underwriting process, Petitioner and Petitioner's lender provided timely responses to any questions that arose. Petitioner finally received its HUD firm commitment on January 9, 2023, 385 days after the initial pre-application was submitted.

15. During this time, the feedback Petitioner received from its lender, Wells Fargo, was that HUD has had record deal volume over the past 12+ months resulting in lengthy queues of deals waiting for weeks, if not months, for an available underwriter to be assigned a FHA application for review. Quail Roost Transit Village I's application was unfortunately caught up in this backlog. In addition, even when queues nationally seemed to clear up within the last six

months, the HUD Southeast Regional office, which is the office handling Petitioner's transaction, continued to have lengthy queues due to a backlog of applications remaining in the underwriting process for longer than normal periods of time.

16. In addition to the delays pertaining to the HUD Section 220 financing, Quail Roost Transit Village I is part of a partial public housing conversion utilizing the Rental Assistance Demonstration ("RAD") program. Based on feedback from the Petitioner's HUD consultant, the Rental Assistance Demonstration Conversion Commitment ("RCC") (which is needed to close) is often issued within a couple of days from the HUD firm commitment. However, on Quail Roost Transit Village I there was not the typical coordination between the two different departments of HUD handling this transaction. Despite Petitioner's consistent follow up and quick responses to questions, the RCC was not issued by HUD until February 1, 2023, which is 23 days after the firm commitment was issued.

17. While the entire closing team is targeting and working diligently towards a March 7, 2023 financial closing date, Petitioner has been advised that HUD often requires sixty (60) days from issuance of the RCC to close, which would be April 2, 2023. While Petitioner is working hard to shorten this timeframe and press for closure by March 7, 2023, Petitioner will need the extension in the likely event that HUD requires additional time to close. Based upon the consistent delays that Petitioner has experienced in working with HUD on this project, Petitioner maintains that an additional six (6) months to close may be required.

18. For all these reasons, Petitioner requests a six (6) month waiver of the SAIL loan closing deadline through and including September 22, 2023, in order to allow more time to close its SAIL program loans.

B. Type of Waiver

19. The waiver being sought is permanent in nature.

C. Rule For Which a Waiver Is Requested

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

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

. . . .

(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.

. . . .

(26) For SAIL EHCL and HOME, unless stated otherwise in a competitive solicitation, these Corporation loans and other mortgage loans related to the Development must close within 120 Calendar Days of the date of the firm loan commitment(s), unless the Development is a Tax-Exempt Bond-Financed Development which then the closing must occur within 180 Calendar Days of the firm loan commitment(s). Unless an extension is approved by the Board, failure to close the loan(s) by the specified deadline outlined above shall result in the firm loan commitment(s) being deemed void and the funds shall be de-obligated. Applicants may request one (1) extension of the loan closing deadline outlined above for a term of up to 90 Calendar Days. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The Board shall consider the facts and circumstances of each Applicant's request, inclusive of the Applicant's ability to close within the extension term and any credit underwriting report, prior to determining whether to grant the requested extension. The Corporation shall charge an extension fee of one (1) percent of each Corporation loan amount if the Board approves the request to extend the loan closing deadline beyond the applicable 120 Calendar Day or 180 Calendar Day period outlined above. If an approved extension is utilized, Applicants must pay the extension fee not later than seven (7) Calendar Days after the original loan closing deadline. In the event the Corporation loan(s) does not close by the end of the extension period, the firm loan commitment(s) shall be deemed void and the funds shall be de-obligated.

Rule 67-48.0072(4)(c) & (26), Fla. Admin. Code (2019).

D. Statutes Implemented by the Rule

21. 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

22. 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, Florida Statute 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.

23. Over the last year, the Development has suffered unforeseen hardships with delays, particularly in its efforts to finalize HUD financing. These events make it clear that the Development will not meet the March 22, 2023 deadline to close its SAIL program loans.

24. Despite these delays, Petitioner has been working diligently to close its SAIL program loans and expedite the HUD closing process, to the extent possible.

25. With these delays, it is evident that Petitioner will not meet the March 22, 2023 deadline to close its SAIL program loans. Because Petitioner previously received an extension pursuant to the Rule, a waiver is necessary to obtain the requested additional extension.

26. 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. (2023).

27. 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 200 much-needed affordable housing units will be made available for a vulnerable segment of the population in Miami-Dade County, Florida.

28. 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.

29. 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.

30. 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. Action Requested

WHEREFORE, Petitioner respectfully requests that Florida Housing:

i. Grant the requested waiver from rule 67-48.0072(4)(c) & (26), Florida Administrative Code and extend the deadline for closing its SAIL program loans from March 22, 2023 until September 22, 2023;

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 21st day of February, 2023.

/s/ Christopher B. Lunny

Christopher B. Lunny, FBN 0008982
Radey Law Firm
301 South Bronough, Suite 200
Tallahassee, Florida 32301
Telephone: (850) 425-6654
E-mail: clunny@radeylaw.com
Secondary: kellis@radeylaw.com

COUNSEL FOR PETITIONER,
QUAIL ROOST TRANSIT VILLAGE I, 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 21st day of February, 2023.

/s/ Christopher B. Lunny
CHRISTOPHER B. LUNNY