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IN RE: CULMER APARTMENTS, LTD.

FHFC CASE NO. 2023-025VW
Application No. 2020-435BSN
RFA No. 2019-116

_____/

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

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 (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. 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 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:

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:

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 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 the new construction of 239 units in three high-rise residential 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

[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; $4,300,000 SAIL CHIRP; $600,000 in ELI Loan; $58,970,000 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. On November 19, 2021, 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 January 14, 2022 until July 14, 2022.

9. On December 10, 2021, the Board granted the petition and Petitioner's deadline for issuance of the firm loan commitment became July 14, 2022.

10. On June 20, 2022, the Florida Housing Finance Corporation staff issued a firm loan commitment to Petitioner for the SAIL, ELI and NHTF loans.

11. On September 8, 2022, the Florida Housing Finance Corporation staff issued an updated firm loan commitment to Petitioner to include proposed increases of the MMRB amount and the SAIL funding amounts through 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 SAIL, ELI and NHTF loan closing deadline was December 22, 2022.

12. 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 October 28, 2022, Petitioner requested that extension, which was granted by Board on January 27, 2023, and which extended SAIL, ELI and NHTF program loans closing deadline until March 22, 2023.

13. Petitioner requires additional time to close its SAIL program loans. Petitioner has been pursuing HUD Section 221(d)(4) financing for this development and submitted a Firm Commitment Application to HUD in May 2022. 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, and given that HUD typically requires 60 days to close after issuing a Firm Commitment, Petitioner initially anticipated a Firm Commitment in September 2022 and financial closing to be able to occur by November 2022.

14. 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. Culmer Apartment's application was unfortunately caught up in this backlog and did not have an underwriter assigned for 41 days, at which point HUD communicated an expected Firm Commitment issuance in October 2022. In addition, even when queues nationally seemed to clear up within the last six months, the 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.

15. Additionally, during the HUD Environmental Review Online System (HEROS) review, the Petitioner incurred delays due to the request from the State Historic Preservation Office (SHPO) to submit a historic architecture review. The architectural review is typically requested when existing buildings are more than 50 years old, but Petitioner was asked to provide the report despite the existing buildings being 45-years old and below this threshold. Petitioner pointed out the age of the buildings to SHPO, but given the historical attributes of the neighborhood, SHPO

insisted the report be completed. Petitioner received SHPO clearance on October 20, 2023, but HUD did not clear HEROS until the end of November. In total, the request caused a 60-day delay. Petitioner finally received its HUD Firm Commitment on January 10, 2023, almost four months beyond the original projected timeline.

16. In addition, Culmer Apartments is a partial public housing conversion utilizing the Rental Assistance Demonstration ("RAD") program. Petitioner has still not received its Rental Assistance Demonstration Conversion Commitment ("RCC") from HUD, which is typically issued within a couple of days from the issuance of the HUD firm commitment. Since the issuance of the firm commitment, the Petitioner has experienced delays in being placed on the RCC Committee agenda. Petitioner was told they needed to have their updated Commitment to Enter into a Housing Assistance Payments Contract (CHAP) amendment from HUD in hand prior to being place on the RAD Committee agenda. The CHAP Amendment was received on January 12, 2023, and Petitioner was then expected to be placed on the following Committee agenda on January 19, 2023; however, no Committee meeting occurred that week. On February 7, 2023, Petitioner was informed that due to the offsite relocation of current tenants having a duration greater than 12 months, that an additional FHEO review and approval is required before Petitioner can be placed on a RAD Committee agenda. This FHEO review was kicked off on February 7, 2023, despite the Petitioner receiving FHEO approval of the relocation plan in April 2021. Though this lengthy process allows HUD up to 60 calendar days to review the case and issue a finding, which could cause additional delays, HUD has communicated that they will expedite their review and they are cognizant of the time-sensitive nature of the request. Petitioner has been advised that HUD often requires sixty (60) days from issuance of the RCC to close. As Petitioner has not received the RCC from HUD yet, Petitioner will need the extension as HUD is expected to issue

the RCC in the next few weeks and then require 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 will be required.

17. For all these reasons, Petitioner requests an additional six (6) month waiver of the SAIL, ELI and NHTF deadline through and including September 22, 2023, in order to allow more time to close its SAIL program loans.

B. Type of Waiver

18. The waiver being sought is permanent in nature.

C. Rule For Which a Waiver Is Requested

19. 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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> . . . .
>
> (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

20. 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

21. 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.

22. 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.

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

24. 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.

25. 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).

26. 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.

27. 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.

28. 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.

29. 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

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COUNSEL FOR CULMER APARTMENTS, 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