

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**FHFC CASE NO. 2017-058VW**

**APPLICATION NO. 2016-019C**

**RFA 2015-106**

RST THE PINES, LP,

Petitioner

vs.

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**PETITION FOR WAIVER OF RULE 67-48.002(95)**

Petitioner, RST THE PINES, LP, a Florida limited partnership ("Petitioner"), by and through its undersigned counsel, hereby petitions Respondent, FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing"), for a waiver of the timing provisions of the 2015 Qualified Allocation Plan ("2015 QAP") as incorporated and adopted by Rule 67-48.002(95), Florida Administrative Code ("F.A.C.") (Oct. 8, 2014) (the "Rule") pertaining to a tax credit exchange. In support, Petitioner states as follows:

**A. THE PETITIONER**

1. The address, telephone number, facsimile number and e-mail address of Petitioner and its qualified representative are:

RST The Pines, LP  
c/o Roundstone Development LLC  
1605 LBJ Freeway, Suite 610  
Dallas, Texas 75234  
Attention: Clifton E. Phillips  
Telephone: (972) 243-4205 ext. 305  
Facsimile: (972) 972-243-2764  
Email: cep@rstdev.com

2. The address, telephone number, facsimile number and e-mail address of Petitioner's counsel is:

Heather Toft, Esq.  
Broad and Cassel LLP  
390 N. Orange Avenue, Suite 1400  
Orlando, Florida 32801  
Telephone: (407) 839-4200  
Facsimile: (407) 425-8377  
Email: htoft@broadandcassel.com

3. On October 13, 2015, Petitioner timely submitted its Application (2016-019C) in response to Request For Applications 2015-106 for Housing Credit Financing for Affordable Housing Developments Located in Medium and Small Counties (the "RFA") to assist in the construction of a 100-unit low-income housing residential rental development located in the City of DeLand, Volusia County, Florida, to be known as The Pines (the "Development"). The Developer is Roundstone Development, LLC, of which Clifton E. Phillips is a Principal. The Development will be 100% new construction Garden Apartments and will serve a Family Demographic with 90% of the units set aside for households at or below 60% area median income ("AMI"), and 10% of the units set aside for households at or below 40% of AMI. Petitioner requested federal low-income housing tax credits ("Tax Credits") in the annual amount of \$1,510,000. The Development received an allocation of 2016 Tax Credits from Florida Housing, and Petitioner was invited to credit underwriting on May 6, 2016. On or about September 29, 2016, Petitioner and Florida Housing entered into a carryover allocation agreement with respect to the 2016 Tax Credits (the "Carryover Allocation Agreement"). Pursuant to 26 U.S.C. § 42(h)(1)(E)(i), the placed-in-service date for the Development must be not later than the close of the second calendar year following the calendar year in which the allocation is made; in this case, the federally-mandated placed-in-service date would be December 31, 2018.

## **B. WAIVER IS PERMANENT**

4. The waiver being sought is permanent in nature.

## **C. THE RULE FROM WHICH WAIVER IS REQUESTED**

5. Petitioner requests a waiver of Rule 67-48.002(95), F.A.C., and Subsection II.K. of the 2015 QAP (“Subsection K”), which provides that Tax Credits may be returned only in the last calendar quarter of the year in which a residential rental apartment complex is required to be placed in service, and more particularly as follows:

“K. Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required or it is apparent that a Development will not be placed in service by the date required, and such failure is due to circumstances beyond the Applicant’s control, **and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service**, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may allocate such Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service, provided the following conditions have been met: (i) the sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant’s control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs.”

(emphasis added).

6. The process outlined in the 2015 QAP requires an applicant to return its allocation of Tax Credits in the last calendar quarter of the year in which it was otherwise required to be placed in service before a tax credit exchange request can be approved by the Executive Director of Florida Housing. Petitioner is requesting a waiver of this limitation on the timing of the tax credit exchange to allow a tax credit exchange to be approved by the Executive Director, or the

Board of Directors of Florida Housing, at the present time rather than in the last calendar quarter of the 2018 year.

**D. STATUTES IMPLEMENTED BY THE RULE AND THE 2015 QAP**

7. The 2015 QAP and the Rule implement, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statutes relating to the allocation of Tax Credits contained in Section 420.5099 of the Florida Statutes (the “Statute”).

**E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND SUBSECTION K**

8. As mentioned above, Petitioner requests a waiver of the timing requirements found in the 2015 QAP to permit Florida Housing to approve the credit exchange prior to the last quarter of the 2018 year.

9. Over the last year the Development has suffered unforeseen events that make it clear that the Development will not be placed in service by the required date of December 31, 2018. The Development was timely proceeding toward a closing when, unexpectedly, the equity markets suffered a significant pull-back in the price of Tax Credits (i.e., significant downward pressure on the pricing of Tax Credits). The result of this drop in equity pricing was felt not only by Petitioner and this Development, but by many residential rental apartment complexes scheduled to close in the near future. As a result, development sponsors are receiving less equity investment for the same allocation of Tax Credits. Petitioner’s low-income housing tax credit investor (the “Investor”) has advised Petitioner that it will not be able to close funding of the Development on the terms that previously were feasible. Because of these pricing changes (as well as a rising interest rate market coupled with a steady increase in construction costs),

Petitioner's transaction will need to be re-underwritten and, in part, restructured in order to move forward with completion of the Development.

10. The Investor is concerned about the uncertainty of the credit exchange if delayed until the last quarter of the 2018 year, and is unwilling to close on the Development without assurance that the Tax Credits will be available to the Development even though the Development will not be placed in service prior to December 31, 2018. Given that it is now known that the Development will not meet the original placed-in-service deadline, the Investor is unwilling to invest millions of dollars in a Development that may not receive the Tax Credits. Without the waiver request and approval of the credit swap occurring at an earlier date, the Investor will no longer participate in the Development, resulting in Petitioner unable to complete construction of the Development.

11. Petitioner is actively working to obtain additional financing sources and/or restructure the current financing sources in order to close the funding gap created by the circumstances outlined and described above in this Petition.

12. As illustrated above, the delays have been caused by circumstances outside the control of Petitioner. The issues which ensued due to the tax credit industry's reaction to the proposed reduction in marginal corporate income tax rates were not only unforeseen and unanticipated by Petitioner, such issues were unforeseen and unanticipated by the entire tax credit industry. Accordingly, the delay in closing, which has arisen due to the Investor's need to reevaluate the financing for the Development and the structure of the transaction, coupled with the rising interest rate market and the steady increase of construction costs, make it unfeasible to meet the original placed-in-service deadline of December 31, 2018.

13. The 2015 QAP and the Rule implement the statutory provisions governing the allocation Tax Credits. *See Fla. Stat. § 420.5099 (2017)*. The Act designates Florida Housing as

the State of Florida's housing tax credit agency, and as the State of Florida's designated agent, Florida Housing is responsible for, and is authorized to establish, procedures for the allocation and distribution of Tax Credits. *See Fla. Stat. §§ 420.5099(1)–(2) (2017).*

14. Under Section 120.542(1) of the Florida Statutes and Chapter 28-104, F.A.C., 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,<sup>1</sup> and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See Fla. Stat. § 120.542(2) (2017).*

15. In this instance, Petitioner meets the standards for a waiver of the Rule and timing limitations in the 2015 QAP. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 100 affordable residential housing units will be constructed and made available for the target population in the City of DeLand, Volusia County, Florida. The strict application of the 2015 QAP and the timing limitation on the credit swap will create substantial hardship for Petitioner because it will not be able to build the Development if the Investor does not participate. Further, the waiver will serve the purposes of the Statute and the Act because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida.

16. As mentioned above, the requested waiver 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. Moreover, the Statute

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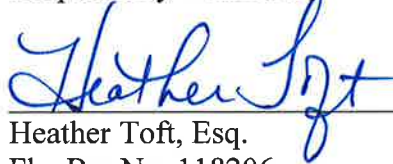
<sup>1</sup> "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. *See Fla. Stat. § 120.542(2) (2017).*

was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable rental housing. *See Fla. Stat. § 420.5099(2) (2017).*

**F. ACTION REQUESTED**

17. For the reasons set forth herein, Petitioner respectfully requests Florida Housing (i) grant the requested waiver of the timing requirements found in the 2015 QAP and allow the requested credit exchange to be approved before the last calendar quarter of 2018; (ii) grant this Petition and all of the relief requested herein; (iii) allow for an immediate return of Petitioner's 2016 allocation of Tax Credits; (iv) immediately allocate new Tax Credits to Petitioner with a later placed-in-service date, in an amount equal to Petitioner's 2016 allocation of Tax Credits; and (v) grant such further relief as it may deem appropriate.

Respectfully submitted,




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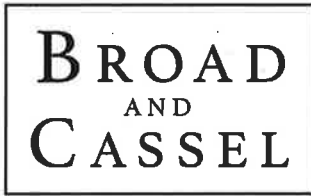
Heather Toft, Esq.  
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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, for filing with the Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 16<sup>th</sup> day of August, 2017.

By:   
Heather Toft, Esq.  
Fla. Bar No. 0118206





HEATHER TOFT, ESQ.  
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Direct Facsimile: 407.650.0966  
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August 16, 2017

**VIA FEDERAL EXPRESS**

Hugh Brown  
Florida Housing Finance Corporation  
227 N. Bronough Street, Suite 5000  
Tallahassee, FL 32301-1367

Re: Petition for Waiver of Rule 67-48.002(95) - RST The Pines, LP

Dear Mr. Brown:

Enclosed is a Petition for Waiver of Rule 67-48.002(95), requesting a waiver of the timing provisions of the 2015 Qualified Allocation Plan as incorporated and adopted by Rule 67-48.002(95), which Petition is being submitted on behalf of RST The Pines, LP, for consideration by the Board at its next meeting.

Please let me know if you have any questions or need anything further.

Very truly yours,

BROAD AND CASSEL LLP

Heather Toft, Esq.

HMT/nl  
Enclosure

cc: Clifton E. Phillips, via e-mail  
Joint Administrative Procedures Committee, via Federal Express

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FLORIDA HOUSING  
FINANCE CORPORATION