

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**FHFC CASE NO. 2016-057VW
RFA NO. 2015-119C**

HOUSTON STREET MANOR LIMITED
PARTNERSHIP,

Petitioner
vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION**

PETITION FOR WAIVER OF RULE 67-48.002(95)

Petitioner, HOUSTON STREET MANOR LIMITED PARTNERSHIP, 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.”) (2014) (the “Rule”) pertaining to a tax credit exchange. In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone number, and facsimile number for Petitioner and its qualified representative are:

Houston Street Manor Limited Partnership
Attention: Donald W. Paxton
3550 S. Tamiami Trail
Sarasota, Florida 34239
Telephone: (941) 929-1270 ext. 110
Facsimile: (941) 929-1271
Email: dpaxton@beneficialcom.com

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

David F. Leon, L.L.C.
Broad and Cassel
390 N. Orange Avenue, Suite 1400
Orlando, FL 32801
Telephone: (407) 839-4200
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Email: dleon@broadandcassel.com

3. On February 2, 2015, Petitioner timely submitted its Application in response to the RFA 2014-115 – Housing Credit Financing for Affordable Housing Developments located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties (the “RFA”) to assist in the construction of a 72 unit high rise development with structured parking located in Duval County, Florida (the “Development”). Petitioner requested housing tax credits in the amount of \$1,587,818.00. The Development received an allocation of 2015 Low-Income Housing Tax Credits (“Tax Credits”) and was invited to credit underwriting on November 2, 2015. On December 22, 2015, Petitioner entered into a Carryover Agreement for allocation of 2015 Tax Credits. The “placed in service” date for the Development is December 31, 2017.

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, which provides 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 found in the 2015 QAP requires an applicant to return its allocation of housing 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 credit exchange to be approved by the Executive Director, or the Board of Directors of Florida Housing, at this time rather than in the last calendar quarter of 2017.

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 Low-Income Housing Tax Credits contained in Section 420.5099 of the Florida Statutes. See § 420.5099, *Fla. Stat.* (2016) (the “Statute”).

**E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND
SUBSECTION IL.K. OF THE 2015 QAP**

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 2017.

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—December 31, 2017. The nature of the development being a “high-rise” imposes design and construction challenges which add the need for more time than standard garden style developments, thus in order to meet the LIHTC standard two-year implementation requirement either necessitates a forward allocation of credits or an early start to the design and permitting process. Although the Development did not receive its credit allocation until December 2015, Petitioner started the design and permitting process early but suffered unforeseen delays when the general contractor originally identified had to be replaced through no fault of the Petitioner. Further, this past October, the East Coast of Florida was directly affected by Hurricane Matthew causing delays in the permitting process for the Development. Given that the Development is a 72-unit high-rise with a construction period of 14—18 months, it is clear that certificates of occupancy will not be issued prior to the placed in service deadline. Due to this certainty, the low-income housing tax credit investor is requiring a credit swap now instead of the last quarter of 2017.

10. The original general contractor identified for the Development was Siltek Group, Inc. (“Siltek”). As originally contemplated in early 2015, the Development was to be constructed using a design-build method in which the general contractor was to provide the design and ensure pricing and delivery. In the design-build approach, the general contractor engages the architect directly and works closely with the architect which reduces the risk of

change orders and keeps costs down. Siltek priced the development with the assumption that the design-build approach would be used.

11. In September of 2015, shortly after the indictment of Siltek's principal, it became clear that the Petitioner was not going to be able to use Siltek in its originally intended role. Facing higher construction costs, the Petitioner immediately began the alternative "Design-Build-Bid" process and worked to secure its own design team to keep the Development moving forward.

12. The design process was longer than usual because the Petitioner had to make considerable changes to the design to meet budget constraints and to comply with Total Development Costs standards imposed by the RFA. Because the construction costs were originally estimated using the design-build method, at the time of the re-design, almost a year later, not only had construction costs increased more than expected, but the Development had to bear the extended time attributable to bidding, Value Engineering and contractor selection process which is otherwise condensed utilizing the design-build approach.

13. The delays caused by the indicted general contractor caused a ripple effect. The delay in design process caused a delay in the permitting process. While all necessary submissions for permits have been made, the Petitioner is still awaiting final permits. In October, the East Coast of Florida, including Duval County, where the Development is located, was directly hit by Hurricane Matthew. The severe weather and resulting damages throughout Jacksonville have caused delays with the City permitting process; and as a result, the final permit review for the Development has been delayed but is anticipated to be completed in the first week of December.

14. Lastly, the nature of a high-rise development with structured parking makes it such that a slight variation from the timeline can result in the Development failing to meet the two year design, permit and build window. Generally, the construction period for a high rise development of this nature is estimated between 14 and 18 months, and in order to meet the two year implementation requirement, the development necessitates either an early allocation of credits or an early start on the design and permitting process. Here, although the Development received an allocation of credits late in the year, the Petitioner attempted to plan for this by starting the design and permitting process early. However, as explained above, for reasons outside the control of the Petitioner, multiple setbacks caused long delays to what already is a constrained timeline. As we are already in the last quarter of 2016, and closing is scheduled for the week following the December Board Meeting, it is evident that construction will not be completed by December of 2017, and the placed in service deadline will not be met.

15. The low-income housing tax credit investor is concerned about the uncertainty of the credit exchange if delayed until the last quarter of 2017 and is unwilling to close on the Development. Given that it is now known that the Development will not meet the placed in service deadline, the low-income housing tax credit investor is unwilling to invest millions of dollars in a Development that may not receive credits. Without the waiver request and approval of the credit swap the low-income housing tax credit investor will no longer participate in the Development resulting in the Development not being constructed.

16. As illustrated above, the delays have been caused by circumstances outside the control of the Petitioner. The legal issues affecting Siltek were unforeseen and quickly mitigated by the engagement of an alternative approach using competitive bidding. The changes in design to offset the increase in pricing of construction resulted in a longer than usual design period. In

addition to the already delayed design period, the permitting timeline was affected by Hurricane Matthew. Accordingly, these events coupled with the typical building period of 14 to 18 months make it impossible to meet the December 31, 2017 deadline.

17. Under Section 120.542(1), *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 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,¹ 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.* (2016).

18. 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 72 affordable housing units will be constructed and made available for the target population in Duval 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 low-income housing tax credit 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.

19. 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,

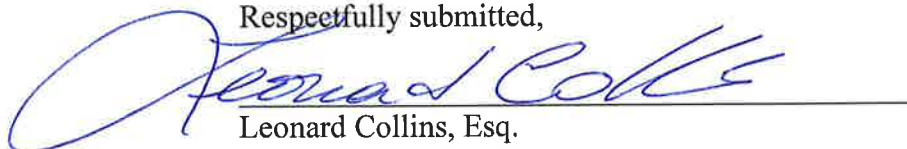
¹ "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. § 120.542(2), *Fla. Stat.* (2016).

and sanitary housing in the State of Florida for low-income households. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, the Corporation 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* § 420.5099(2), *Fla. Stat.* (2016).

F. ACTION REQUESTED

20. 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 2017; (ii) grant the Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

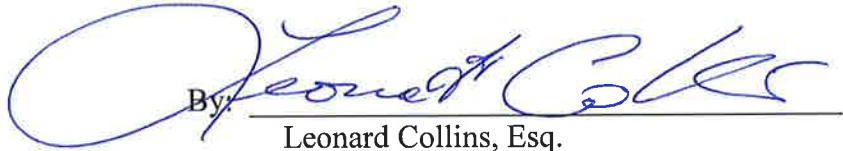
Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Leonard Collins", is written over a horizontal line.

Leonard Collins, Esq.
Fla. Bar No. 423210
David F. Leon, L.L.C.
Fla. Bar No. 53929
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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

The original Petition is being served by hand delivery, for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, with copies served by hand delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 15 day of November, 2016.

By:  Leonard Collins, Esq.

Fla. Bar No. 423210