

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

CASE NO. 2017-063VW

**COCOA HOUSING PRESERVATION
II, LLC**

Petitioner,

vs.

**FHFC APPLICATION: 2016-293C
REQUEST FOR APPLICATIONS: 2015-111**

**FLORIDA HOUSING FINANCE
CORPORATION,
Respondent.**

**AMENDED PETITION FOR WAIVER OF THE QUALIFIED ALLOCATION PLAN'S
REQUIREMENT FOR RETURNING HOUSING CREDIT ALLOCATIONS AND
RULE 67-48.002(95)**

Petitioner Cocoa Housing Preservation, II, LLC, a Florida limited liability company (“Petitioner”) submits this Amended Petition (the “Petition”) to Respondent Florida Housing Finance Corporation (the “Corporation”) for a waiver of the 2016 Qualified Allocation Plan (“QAP”) prohibition from returning its 2016 Housing Credit Allocation prior to the last quarter of 2018. The return of these Housing Credits is required before the Corporation may reserve an allocation of Housing Credits that Petitioner be immediately allocated. See Rule 67-48.002(95), Florida Administrative Code (the “Rule”), and Section II.K of the QAP.

In support of this Petition, Petitioner states:

A. PETITIONER

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

Cocoa Housing Preservation, II, LLC
Attention: Herbert Hernandez
828 Stone Street
Cocoa, Florida 32922
Telephone: (321) 636-8535
Facsimile: (321) 632-4729
E-mail: hhernandez@haccfl.com

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

Bernice S. Saxon, Esq
Saxon Gilmore & Carraway, P.A.
201 E. Kennedy Boulevard, Suite 600
Tampa, FL 33602
Telephone: (813) 314-4501
Facsimile: (813) 314-4555
E-Mail: bsaxon@saxongilmore.com

B. THE DEVELOPMENT

3. Petitioner timely submitted its application in response to the RFA, seeking competitive low-income housing tax credits ("Housing Credits") in the amount of \$1,350,000.00, to assist in the financing of the rehabilitation of a 137-unit residential development in Cocoa, Brevard County, Florida (the "Development"), and was assigned Application No. 2016-293C. Petitioner was awarded such Housing Credits and received an invitation to enter into credit underwriting from the Corporation. The Corporation's 2016 Carryover Allocation Agreement (the "Carryover Agreement") was executed by Petitioner and the Corporation.

4. Under Rule 67-48.028(1), if an Applicant cannot complete its development by the end of the year in which the preliminary allocation of Housing Credits is issued, such applicant must enter into a "carryover allocation agreement" with the Corporation by December 31 of the year in which the preliminary allocation is issued. On December 20, 2016, Petitioner and the Corporation entered into the Carryover Agreement for the Development. The Carryover Agreement required that Petitioner satisfy the "10% test" by June 30, 2017, and place the Development in service by December 31, 2018.

5. Pursuant to request submitted by Petitioner on June 20, 2017, the Corporation extended the date for satisfying the "10% test" until December 8, 2017. This extension

did not affect the required placed in service deadline, which continued to be December 31, 2018. As explained more fully below, the Development will not be able to meet the above placed in service deadline, and as such, is requesting an exchange of Housing Credits in order to effectuate an extension of the placed in service deadline.

6. Over the last year, the Development has suffered unforeseen events that make it clear that the Development will not be placed in service by December 31, 2018. The Development was proceeding towards a closing when the equity markets suffered a significant pull back resulting from the recent Presidential election and the resulting possibility of significant marginal tax rate adjustments, resulting in significant downward pressure on tax credit pricing. Petitioner's tax credit investor has advised Petitioner that it will not be able to close on the terms that had previously been feasible. Because of these changes, Petitioner's transaction will need to be re-underwritten and restructured in order to move forward.

7. The tax credit investor is concerned about the uncertainty of the credit swap if delayed until the last quarter of 2018 and is unwilling to close on the Development without assurance 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 placed in service deadline, the tax credit investor is unwilling to close its investment in the Development if there is any chance that it may not receive credits. Without the waiver request and current approval of the credit swap, the tax credit investor will not participate in the transaction, resulting in the inability of Petitioner to construct the Development.

8. The equity that will be generated by the Housing Credits is a critical part of the financing for the rehabilitation of the Development.

9. Petitioner has previously filed a petition for rule waiver with the Corporation, which was granted, to replace Pinnacle Housing Group, LLC (“Pinnacle”) as a co-Developer, remove an affiliate of Pinnacle as a member of Petitioner, and remove Pinnacle’s principal as the initial retiring member of Petitioner. The Development process was substantially delayed as a function of the uncertainty related to Pinnacle’s participation in the Development.

10. As discussed above, the delays have been caused by circumstances outside Petitioner’s control. The issues which ensued due to the tax credit industry’s reaction to the proposed reduction in marginal corporate tax rates were not only unforeseen and unanticipated by Petitioner, they were unforeseen and unanticipated by the entire credit industry. As a result, the delay in closing which has arisen due to the tax credit investor’s need to re-evaluate the structure of the transaction, coupled with the anticipated building period of 14 to 18 months, make it impossible to meet the December 31, 2018 placed in service deadline.

11. As set forth more fully below, Petitioner seeks to return its 2016 Housing Credit allocation now, rather than wait for the last calendar quarter of 2018 as required under the QAP, and obtain from the Corporation an immediate allocation of new Housing Credits with a later required placed in service date.

12. The requested waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in a substantial economic hardship to Petitioner; (b) could result in a reduction of services to the residents of the Development; (c) could deprive Cocoa and Brevard County, Florida of essential affordable housing units in a timely manner; and (d) would violate principles of fairness¹.

¹ “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 the literal application of a rule

C. RULE FROM WHICH WAIVER IS SOUGHT

13. Pursuant to Section 120.542, Florida Statutes, and Rules 28-104.001 through 28-104.006, Florida Administrative Code, Petitioner requests a waiver of Rule 67-48.002(95), Florida Administrative Code, and of Section II.K of the QAP to allow the immediate return of its 2016 Housing Credit allocation, and an immediate allocation of new Housing Credits (2017 or later).

14. Section 42(m) of the Internal Revenue Code requires each state allocating agency to adopt an allocation plan for the allocation and distribution of federal low income housing tax credits. The Corporation, as the allocating agency for the State of Florida, must distribute Housing Credits to applicants pursuant to its qualified allocation plan.

15. The 2016 QAP (Section II.K) provides that Housing Credits may be returned **only** in the last calendar quarter of the year in which a development is required to be placed in service:

...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...

2016 QAP at Section II.K (emphasis added).

16. The waiver being sought is permanent in nature.

D. STATUTE IMPLEMENTED BY THE RULE

17. The Rule is implementing among other sections of the Florida Housing Finance

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.

Corporation Act (the “Act”), the statute that designated the Corporation as the housing credit agency responsible for the allocation and administration of low-income housing tax credits. See Section 420.5099, Florida Statutes.

E. PETITIONER REQUESTS A WAIVER FROM THE RULE FOR THE FOLLOWING REASONS

18. The requested waiver will ensure the availability of Housing Credits which might otherwise be lost as a consequence of development delays described herein.

19. The facts set forth in Sections 6 through 12 of this Petition demonstrate the hardship and other circumstances which justify Petitioner’s request for Rule waiver.

20. As demonstrated above, the requested waivers serve the purposes of Section 420.5099, Florida Statutes, 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 by ensuring:

... the maximum use of available tax credits in order to encourage development of low-income housing in the state, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.

§ 420.5099(2), Fla. Stat. (2016)

21. Further, by granting the requested waivers, the Corporation would recognize principles of fundamental fairness in the development of mixed-income housing projects, particularly in urban areas well-suited to a mixed-income housing project, and enabling developers to meet the needs of both low-income families and households in need of non-Housing Credits subsidized housing. In addition, grant of the requested waivers will permit

the development of much needed housing for disabled low-income and very low-income tenants, a severely underserved sub-category of such tenant groups.

22. The requested waivers will not adversely impact the Development or the Corporation.

23. Should the Corporation require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

F. ACTION REQUESTED

Petitioner requests that the Corporation:

- a. Waive the 2016 QAP's prohibition from returning Housing Credit Allocations prior to the last quarter of 2018;
- b. Allow the immediate return of Petitioner's 2016 Housing Credit Allocation;
- c. Immediately allocate new Housing Credits to Petitioner with a later placed in service date, in an amount equal to the amount of its 2016 Housing Credit Allocation;
- d. Grant Petition and all the relief requested therein; and
- e. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

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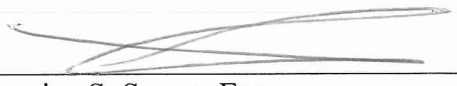
By: _____

Bernice S. Saxon, Esq.

CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 4th day of October, 2017.

By: _____


Bernice S. Saxon, Esq.