

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Cocoa Housing Preservation II, LLC

FHFC CASE NO.: 2017-063VW

ORDER GRANTING WAIVER OF RULE 67-48.002(95)

THIS CAUSE came on for final action before the Executive Director of the Florida Housing Finance Corporation on November 27, 2017, pursuant to a “Petition for Waiver” (“Original Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on August 24, 2017, from Cocoa Housing Preservation II, LLC (“Petitioner”). Petitioner filed an amended petition on October 4, 2017 (the “Petition”). Notice of the Petition was published on August 31, 2017, in Volume 43, Number 170, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition.

1. Florida Housing has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner was selected to receive competitive housing credits under Request for Application (“RFA”) 2015-111 to assist in the development of Pineda Village, a 144-unit family housing development in Brevard County, Florida. Petitioner’s Application Number was 2016-293C (the “Application”).

3. Petitioner seeks a waiver from Rule 67-48.002(95), Fla. Admin. Code.

4. Rule 67-48.002(95), Fla. Admin. Code which defines and incorporates by reference the following provision of the 2016 QAP provides the following:

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 Application 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.

5. Petitioner requests a waiver of the above Rule and bolded selection of the QAP provision above to permit it to exchange its tax credits now rather than in the last calendar quarter of 2018. Petitioner asserts that unforeseen events will cause the Development to not be placed in service by December 31, 2018. According to

Petitioner, the Development was proceeding towards a closing when the equity markets suffered a significant pull back which resulted in significant downward pressure on tax credit pricing. Petitioner asserts that its tax credit investor has advised that it will not be able to close on the terms that had previously been feasible and due to these changes, the transaction will need to be re-underwritten and restructured in order to move forward. Given these circumstances, Petitioner asserts that achievement of the scheduled placed in-service deadline is extremely unlikely. Petitioner therefore requests that it be permitted to swap the allocated tax credits now instead of the last quarter of 2018.

6. Granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

7. Section 120.542(2), Florida Statutes, provides in pertinent part:

Variations 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.

8. Petitioner has demonstrated that strict application of the above Rule under these circumstances would constitute a substantial hardship and violate the principals of fairness. Petitioner has also demonstrated that the purpose of the

underlying statute, which is to “encourage development of low-income housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

9. Strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, and granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

10. Section 120.542(8), Florida Statutes, provides “An agency shall grant or deny a petition for variance or waiver within 90 days after receipt of the original petition.... A petition not granted or denied within 90 days after receipt of a completed petition is deemed approved.”

11. Petitioner filed the original petition on August 24, 2017. Ninety days from the original filing is November 22, 2017. Pursuant to operation of the above statute, the Petition as amended is deemed approved.

IT IS THEREFORE ORDERED: Petitioner’s request for a waiver of Rule 67-48.002(95), Florida Administrative Code, and 2016 QAP provision is hereby **GRANTED** to allow Petitioner to exchange its 2016 credits for a subsequent year’s allocation now rather than in the last calendar quarter of 2018.

DONE and ORDERED this 27th day of November, 2017.

Florida Housing Finance Corporation

By:



Harold L. "Trey" Price, Executive Director

Copies furnished to:

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NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.