

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2017-039VW

EQUALITY PARK, LTD.,

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION

Respondent.

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

Petitioner Equality Park, Ltd., a Florida limited partnership ("Equality") submits its Petition to Respondent Florida Housing Finance Corporation (the "Corporation") for a waiver of the 2016 Qualified Allocation Plan's 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 Equality requests be immediately allocated. *See* Rule 67-48.002(95), Florida Administrative Code (the "Rules"), and Qualified Allocation Plan Section II.K.

1. Pursuant to Section 120.542, Fla. Stat. (2016) and Rules 28-104.001 through 28-104.006, F.A.C., Equality requests a waiver of Rule 67-48.002(95), Florida Administrative Code, and of Section II.K of the Qualified Allocation Plan ("QAP") to allow the immediate return of its 2016 Housing Credit Allocation, and an immediate allocation of new Housing Credits (2017 or later).

2. The name, address, telephone and facsimile numbers for Equality and its qualified representative are:

Equality Park, Ltd.
1398 SW 1st Street, 12th Floor
Miami, FL 33135
Attn: Stephanie Berman
(305) 371-8300 (telephone)
(305) 371-1376 (telecopier)
sberman@carrfour.org (e-mail)

3. The name, address, telephone and facsimile numbers of Equality's attorneys are:

Gary J. Cohen, Esq.
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4. Pursuant to RFA 2016-103, Equality timely submitted (on April 7, 2016) its application for competitive Housing Credits under the Low Income Housing Tax Credit program ("LIHTC Program" or "HC Program") and for loan funds. See Application Number 2016-332CL.

5. Equity raised from Housing Credits will be used for new construction of 48 residential units (all of which will be low-income housing tax credit units) to be known as The Residences at Equality Park (the "Development"). The Development will primarily serve low-income tenants who are disabled in Wilton Manors, Broward County, Florida. The Development entails the new construction of one residential building.

6. On June 24, 2016, Equality's application was preliminarily selected for funding by FHFC, and the award to Equality was finalized at the June 24, 2016 Corporation Board of Directors meeting.

7. 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 15, 2016, Equality and the Corporation entered into the carryover allocation agreement for the Development. The carryover allocation may (under Section 42 of the Internal Revenue Code) allow the applicant until the end of the second year following the year in which the carryover allocation is issued to place the development in service; in the instant case the Corporation mandated in the carryover allocation agreement that the development be placed in service by December 31, 2018. The carryover allocation agreement required that Equality satisfy the “10% test” by June 30, 2017.

8. As explained more fully below, there is uncertainty as to whether or not the Development will 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.

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 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. Equality’s tax credit investor has advised Equality that it will not be able to close on the terms that had previously been feasible. Because of these changes, Equality’s transaction will need to be re-underwritten and restructured in order to move forward.

10. 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 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 the Petitioner to construct the Development.

11. Equality is actively working to obtain additional funding sources in order to close this substantial funding gap created by the circumstances described in this Petition.

12. As discussed above, the delays have been caused by circumstances outside Equality'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 Equality, 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.

13. As set forth more fully below, Equality 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.

14. The requested waivers and variance will not adversely affect the Development. A denial of the Petition, however, would (a) result in substantial economic hardship to Equality, (b) deprive Wilton Manor and Broward County of essential affordable rental units set aside for

disabled/special needs low-income and very low-income tenants, and (c) violate principles of fairness.

15. 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.

16. 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 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).

17. The applicable Rules for which waivers are requested are implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"),¹ the statute that created the Housing Credits Program. *See* § 420.5099, Fla. Stat. (2016). The Act designates FHFC as the State of Florida's housing credit agency within the meaning of Section 42(h)(8)(A) of the Internal Revenue Code of 1986. As the designated agency, FHFC is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). §§ 420.5099(1) and (2), Fla. Stat. (2016). Accordingly, the

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.55 of the Florida Statutes (the "Act").

Rules subject to Moore's waiver requests are implementing, among other sections of the Act, the statutory authorization for the Corporation's establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2016).

18. The requested waivers 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 9 through 12 of this Petition demonstrate the hardship and other circumstances which justify Equality's request for Rule waiver.

20. As demonstrated above, the requested waivers serve the purposes of Section 420.5099 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, FHFC would recognize principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developer entities, such as Carrfour Supportive Housing, Inc., in meeting the purposes of the Act, regardless of the possible delays from factors outside of its control. 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.

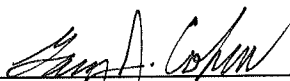
22. The requested waivers will not adversely impact the Development or the Corporation.

23. The waivers being sought are permanent in nature.

Should the Corporation require additional information, Equality is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver.

WHEREFORE, Petitioner Equality Park, Ltd., respectfully requests that the Corporation:

- A. Grant the Petition and all the relief requested therein;
- B. Waive the 2016 Qualified Allocation Plan's prohibition from returning Housing Credit Allocations prior to the last quarter of 2018;
- C. Allow the immediate return of Equality's 2016 Housing Credit Allocation;
- D. Immediately allocate new Housing Credits to Equality with a later placed in service date, in an amount equal to the amount of its 2016 Housing Credit Allocation; and
- E. Award such further relief as may be deemed appropriate.



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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The Original Petition is being served by facsimile and overnight delivery for filing with the Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, City Centre Building, Room 5000, Tallahassee, Florida 32399, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400 this 24th day of May, 2017.



GARY J. COHEN

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