

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

REDDING DEVELOPMENT PARTNERS,
LLC

Petitioner,

FHFC CASE NO. 2018-073VW
Application No. 2016-042C

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER OF RULE 67-48.002 (95)

Petitioner Redding Development Partners, LLC (the "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.") (the "Rule") pertaining to a tax credit exchange. In support, Petitioner states as follows:

A. THE PETITIONER

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

Redding Development Partners, LLC
205 E. Central Blvd.
Suite 304
Orlando, FL 32801
Attn.: Joe Chambers
Telephone: 407-341-4550
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2. On October 15, 2015, Petitioner timely submitted its Application in response to RFA 2015-106 for Housing Credit Financing for Affordable Housing Developments located in Small and Medium counties (the “RFA”) to assist in the construction of a 90 unit development located in Seminole County, Florida (the “Development”). On November 11, 2017, Petitioner entered into a Carryover Agreement for the allocation of its Tax Credits. Pursuant to 26 USC 42(h)(1)(E)(i), the Development must be placed in service 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, 2019.

B. WAIVER IS PERMANENT

3. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

4. 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).

5. 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 2019.

D. STATUTES IMPLEMENTED BY THE RULE AND THE 2015 QAP

6. 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 II.K OF THE 2016 QAP

7. As mentioned above, Petitioner requests a waiver of the timing requirements found in the 2015 QAP to permit Florida Housing to approve the tax credit exchange prior to the fourth quarter of 2019.

8. Due to a multitude of challenges, which have been overcome at this point, a financial closing for the subject project has been delayed. These challenges are summarized as follows:

- a) Petitioner has successfully overcome a number of obstacles such as site plan approval, HUD Disposition approval, and HUD project-based voucher and Subsidy Layering approvals. Petitioner also faced substantial headwinds with regard to uncertainty in debt and equity markets which have been outside of petitioner's control and led to significant delays in securing an equity investor and lender. Additionally, since the application was submitted in the fall of 2015, construction pricing has continued to escalate and the project costs have risen considerably higher than originally estimated in the application, requiring a lengthy process of restructuring to mitigate those costs. In fact, petitioner received a letter from Tri-State Electrical Contractors on 9/26/18 stating that the recent tariffs against Chinese goods that came into effect on 9/24/18 are significantly impacting their suppliers pricing on electrical and lighting components imported from China and would thus impact their pricing on this project.
- b) After being invited to Credit Underwriting for an FHFC Viability Loan, petitioner was able to secure equity and debt commitments and has been working towards a closing with the Sanford Housing Authority, investor, and lender. However, the equity investor is concerned about placed-in-service/completion timing risk of a 2019 placed-in-service deadline and has said they cannot close without an extension of that placed-in-service date. By not being able to close with the equity investor and receive an equity contribution, the project faces a substantial hardship and would not be able to move forward. Unfortunately, the only solution available to meet the syndicator's

requirement would be for FHFC to allow a credit swap to ensure a sufficient timeline for PIS.

- c) Furthermore, a credit swap will enable petitioner to meet the 10% test as it will extend the current due date of November 2018 to a date in 2019. Because this is a Public Housing Authority redevelopment that is also all concrete construction, there is no land acquisition cost that would enable us to meet the 10% test, and unlike a wood- frame project where we could complete a large lumber purchase and store the material, we cannot reasonably purchase concrete (hollow-core slabs) in advance, mostly due to structural engineering concerns.
- d) Equity and debt providers have completed most of their due diligence, with the FHFC approvals of the Credit Underwriting Report and extension of the PIS being the key outstanding items. The Credit Underwriting Report will be submitted at the December 2018 FHFC Board Meeting and all closings will follow immediately after. The team has submitted final plans to the City of Sanford and expects building permits within the next month.
- e) The proposed development has generated tremendous excitement and hope for the Sanford Housing Authority and the City of Sanford. Redding Redevelopment will be a catalyst for change within the community that will help jump-start additional affordable housing redevelopments. Without the successful implementation of Redding Redevelopment, the City of Sanford's redevelopment efforts will be significantly hindered and its low-income citizens will continue to struggle finding quality, safe, and affordable housing.

9. 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. 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).

10. 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 90 affordable elderly housing units will be preserved and made available for the target population in Seminole County, Florida. 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.

11. 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 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* § 420.5099(2), *Fla. Stat.* (2016).


F. ACTION REQUESTED

12. 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 to allow the requested credit exchange to be approved before the third calendar quarter of 2019; (ii) approve the exchange of 2017 tax credits for 2018 tax credits and (iii) grant this Petition and all of the relief requested herein; and (iv) grant such further relief as it may deem appropriate.

Respectfully submitted,

Redding Development Partners, LLC

By: Redding GP, LLC

By: 

Joseph Chambers, Manager