

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

IN RE: BDG BANYAN COVE, LP /

FHFC CASE NO.: 2018-058VW

ORDER GRANTING WAIVER OF RULE 67-48.002(95)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on July 27, 2018, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on July 9, 2018, from BDG Banyan Cove, LP ("Petitioner"). Notice of the Petition was published on July 10, 2018, in Volume 44, Number 133, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. Petitioner was selected to receive financing under RFA 2016-110 – Housing Credit Financing for Affordable Housing Developments Located in Medium and Small Counties - to assist in the construction of a Development serving elderly tenants in Deland, Florida.
3. Rule 67-48.002(95), Fla. Admin. Code, provides:

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Wm. S. Delamater / PATL: 7/27/18

“QAP” or “Qualified Allocation Plan” means, with respect to the HC Program, the 2018 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the State of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits. The QAP is available on the Corporation’s website under the Multifamily Programs link or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-09578>.

4. Section II.K. of the 2016 QAP provides:

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.

5. Petitioner was invited to credit underwriting on August 2, 2017, and on November 8, 2017 executed a Carryover Allocation Agreement establishing an original Placed-In-Service date of November 30, 2019. Petitioner was granted an extension by Corporation staff on June 25, 2018, moving the Placed-In-Service date to December 31, 2019.

6. Petitioner now requests a waiver of the above provision of the 2016 QAP, to permit it to exchange its 2017 credits for an allocation of 2018 credits now, rather than wait until the last quarter of 2019, effectively extending the Placed-In-Service date to August 31, 2020.

7. The Board finds that 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.

8. 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.

9. Petitioner has demonstrated that the waiver is needed in order to efficiently serve elderly persons and that, if the waiver were not granted, Petitioner would suffer a substantial hardship. 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.

10. The Board finds that strict application of the above Rules under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

Petitioner’s request for a waiver of Rules 67-48.002(95) and 67-48.0075(3), Fla. Admin. Code and Section II.K. of the 2016 QAP, to permit Petition to exchange its 2017 credits for allocation of 2018 credits now, rather than to wait until the last quarter of 2019, effectively extending the Placed-In-Service date to August 31, 2020.

DONE and ORDERED this 27th day of July, 2018.

Florida Housing Finance Corporation



By:


Chair

Copies furnished to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL 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.