

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

WRDG T3A, LP, a Florida
limited partnership,

Petitioner,

FHFC CASE NO. 2019-025VW
Application No. 2018-283C

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.002 (95) (2017)

Petitioner WRDG T3A, LP (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 2016 Qualified Allocation Plan ("2016 QAP") as incorporated and adopted by Rule 67-48.002(95), Florida Administrative Code ("F.A.C.") (May 24, 2017 (the "Rule") pertaining to a tax credit exchange. In support, Petitioner states as follows:

A. THE PETITIONER

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

WRDG T3A, LP, a Florida limited partnership
c/o Brett Green
444 Brickell Ave., Suite 301
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2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel is:

Brian J. McDonough, Esq.
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3. On December 22, 2017, Petitioner timely submitted its Application in response to RFA 2017-113 for Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties (the "RFA") to assist in the construction of 118 new construction high-rise family units in Hillsborough County, Florida (the "Development"). Petitioner submitted an eligible housing credit request in the amount of \$2,110,000 with 10% of the units at or below 40% AMI, 70% at or below 60% AMI and 20% of the units at market-rate. The Development received an allocation of the 2018 Housing Credit dollar amount meeting the requirements of Section 42(h)(1)(E) and (F) of the Internal Revenue Code ("Tax Credits") and was invited to credit underwriting on August 2, 2018. On December 4, 2018, Petitioner entered into a Carryover Allocation Agreement for the allocation of its Tax Credits. Pursuant to 26 U.S.C. 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, 2020.

B. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver of Rule 67-48.002(95), F.A.C. (May 24, 2017), which defines “QAP” with reference to the 2016 QAP and which adopts and incorporates the 2016 QAP by reference. Petitioner further requests a waiver of Subsection II.K. of the 2016 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).

6. The process found in the 2016 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 2020.

D. STATUTES IMPLEMENTED BY THE RULE AND THE 2016 QAP

7. The 2016 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. (the "Statute").

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND SUBSECTION I.L.K OF THE 2016 QAP

8. As mentioned above, Petitioner requests a waiver of the timing requirements found in the 2016 QAP to permit Florida Housing to approve the tax credit exchange prior to the last quarter of 2020.

9. Although the Board approved the Review Committee's RFA recommendation on March 16, 2018, litigation involving the RFA was not resolved until July 27, 2018 and Petitioner did not receive an invitation to credit underwriting until August 2, 2018.

10. Petitioner promptly entered into an architect agreement in September 2018 and has been diligently working to move the project forward.

11. Petitioner has preliminary drawings and expects to have full drawings by the second quarter of 2019.

12. Petitioner has also been working with the City of Tampa to create and finalize its site plan. Given the complexity of the site plan, with significant infrastructure and utility work, the City has imposed requirements, such as relocating grand oak trees. Petitioner is in the process of satisfying these requirements and anticipates obtaining a building permit, and Rental Assistance Demonstration approval, by the third quarter of 2019.

13. Based on its progress to date, Petitioner expects to close on the financing towards the end of the third quarter of 2019.

14. Despite Petitioner's diligence and progress, there exists insufficient time between now and the last calendar quarter of 2020 to meet the placed in service date. Even if Petitioner is able to complete the construction drawing, obtain local approval, and receive a building permit by September 2019, it would have only about 15 months to construct a 118 unit high-rise. Typically, construction takes 15 to 18 months barring any natural disasters or other contingencies.

15. The tax credit investor is concerned about the uncertainty of the credit swap if delayed until the last quarter of 2020 and is unwilling to close on the Development without assurance that tax credits will be available to the Development even if the Development is not placed in service prior to December 31, 2020. 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 for the Petitioner to construct the Development.

16. As discussed above, the delays have been caused by circumstances outside of the Petitioner's control. Had the invitation to credit underwriting not been delayed by months of third-party litigation, it is unlikely Petitioner would need the requested waiver.

17. 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,¹

¹ "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. *See* § 120.542(2), *Fla. Stat.*

and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Fla. Stat.

18. In this instance, Petitioner meets the standards for a waiver of the Rule and timing limitations in the 2016 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 118 affordable housing units will be preserved and made available for the target population in Hillsborough County, Florida. The strict application of the 2016 QAP and the timing limitation on the credit swap will create substantial hardship for Petitioner because it will not be able to construct the Development if the tax credit investor does not participate. 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.

19. 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 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 housing. *See* § 420.5099(2), Fla. Stat.

F. ACTION REQUESTED

20. For the reasons set forth herein, Petitioner respectfully requests Florida Housing (i) grant the requested waiver of the timing requirements found in the 2016 QAP and allow the requested credit exchange to be approved before the last calendar quarter of 2020; (ii) grant this

Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

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Counsel for Petitioner

By: *Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The Petition For Rule Waiver is being served by electronic transmission for filing with the Florida Housing Clerk for the Florida Housing Finance Corporation at Corporation.Clerk@FloridaHousing.org and a hard copy is being furnished via U.S. Mail to the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 25th day of March, 2019.

By: *Brian J. McDonough*
Brian J. McDonough, Esq.