

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO 2019-047VW

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FLORIDA HOUSING
FINANCE CORPORATION

RESIDENCES AT DR. KING BOULEVARD, LTD.,

Petitioner,

vs.

FHFC Application No. 2018-088C
REQUEST FOR APPLICATIONS: 2017-112

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), FLORIDA ADMINISTRATIVE CODE (2016)**

Pursuant to section 120.542, Florida Statutes, and rule 28-104.002, Florida Administrative Code, Petitioner Residences at Dr. King Boulevard, Ltd. ("Residences at Dr. King" or "Petitioner") submits this Petition to Respondent Florida Housing Finance Corporation ("Florida Housing") for a waiver of Subsection II.K. of the 2016 Qualified Allocation Plan ("2016 QAP"), which was incorporated by reference in rule 67-48.002(95) (2017).¹ Subsection II.K. of the QAP prohibits the return of Residences at Dr. King's 2018 Housing Credits before the last quarter of 2020. Residences at Dr. King proposes to return the 2018 credits now in exchange for an immediate allocation of 2019 Housing Credits. This exchange would have the effect of extending Residences at Dr. King's placed-in-service date from December 31, 2020, until December 31, 2021. In support of this Petition, Residences at Dr. King states:

¹ The current version of the rule is numbered 67-48.002(96) (2018). The wording of the rules is identical with the exception of the version of the QAP that is incorporated by reference.

A. PETITIONER AND ATTORNEY

1. The name, address, telephone number, and email address for Petitioner is Residences at Dr. King Boulevard, Ltd., 3 Miami Central, 161 NW 6th Street, Suite 1020, Miami, FL 33136; 305-357-4725; lwong@apcommunities.com. For purposes of this proceeding, the contact information for Petitioner shall be that of the undersigned counsel.

2. The name, address, telephone number, and email address for Petitioner's attorney is: Donna E. Blanton, Radey Law Firm, 301 South Bronough Street, Suite 200, Tallahassee, Florida 32301; 850-425-6654; dblanton@radeylaw.com.

B. BACKGROUND²

3. Residences at Dr. King submitted an application (No. 2018-088C) for Housing Credits (also known as tax credits) in response to Request for Applications 2017-112, Housing Credit Financing for Affordable Housing Developments Located in Miami-Dade County (the "RFA"). Residences at Dr. King proposed to use equity raised from the Housing Credits to build a 120-unit, high-rise development in Miami-Dade County to serve the family demographic.

² The following background information regarding Residences at Dr. King is provided to facilitate staff's preparation of a memorandum to the Florida Housing Board of Directors ("Board"):

- Development Name: Residences at Dr. King Boulevard, Ltd.
- Developer, including at least one natural person Principal: Residences at Dr. King Boulevard Development LLC; Howard D. Cohen
- County of Development: Miami-Dade
- Number of Units: 120
- Type: High Rise
- Set Asides: 10% at 28% AMI; 10% at 30% AMI; 70% at 60% AMI; 10% market rate
- Demographics: Family
- Funding Amounts: \$2,436,070 in 9% Housing Credits

4. On May 4, 2018, Florida Housing's Board of Directors preliminarily selected Residences at Dr. King for funding. Residences at Dr. King was invited to enter credit underwriting on July 30, 2018.

5. Pursuant to 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, the applicant must enter into a "carryover allocation agreement" with Florida Housing by December 31 of the year in which the preliminary allocation is issued. Residences at Dr. King and Florida Housing entered into the carryover allocation agreement on December 10, 2018. The carryover allocation may (pursuant to 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 this case, the carryover allocation agreement required that the Development be placed in service by December 31, 2020.

6. As discussed below, substantial uncertainty exists as to whether the December 31, 2020, placed-in-service deadline can be met. Consequently, Residences at Dr. King proposes to exchange its 2018 Housing Credits for an allocation of 2019 Housing Credits now, rather than wait until the last quarter of 2020, which would effectively extend the placed-in-service date of the Development until December 31, 2021. This exchange will require a waiver of Subsection II.K of the QAP, which 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.

(Emphasis supplied).

7. Residences at Dr. King's anticipated equity investor, Wells Fargo, has asked Residences at Dr. King to make this request. In 2018 Residences at Dr. King requested \$4,800,000 in a Surtax Conditional Loan Commitment from the Miami-Dade Public Housing and Community Development Department ("PHCD") in order to fund the development. In August 2018 PHCD funded only \$2,053,447 of the required \$4,800,000 in gap financing. This reduced funding allocation has prompted Residences at Dr. King to seek funding from other sources from both Miami-Dade County in the form of HOME funds and the City of Miami in the form of Forever Bonds. Residences at Dr. King anticipates receiving an allocation and commitment of these additional funds, which are needed to fill the remaining gap to allow for closing on the construction financing on the Development. However, these commitments are not anticipated until the 3rd quarter of 2019, which has resulted in the necessity for Residences at Dr. King to request a credit swap.

8. Given the unanticipated delays described above, the equity investor is concerned that there is insufficient time to complete construction before the December 31, 2020, placed-in-service deadline. Pursuant to Subsection II.K. of the QAP, an extension of the deadline can only

be achieved through a requested exchange of 2018 Housing Credit allocations for subsequent credits. Without this waiver request and approval of the credit swap, Residences at Dr. King's equity investor will not participate in the transaction, as there is a risk that Housing Credits will not be available if the placed-in-service deadline is not met. Without the participation of the equity investor, Residences at Dr. King will be unable to construct the Development.

9. The requested waiver is permanent in nature.

C. RULE FROM WHICH WAIVER IS SOUGHT

10. Residences at Dr. King seeks a waiver from Subsection II.K. of the 2016 QAP, which was incorporated by reference into rule 67-48.002(95) (2017). The current version of the rule, incorporating a later QAP, is numbered as 67-48.002(96).

D. STATUTES IMPLEMENTED BY THE RULE

11. Pursuant to section 420.5099(1), Florida Statutes, Florida Housing is designated as the "housing credit agency" for Florida within the meaning of section 42 of the Internal Revenue Code. Florida Housing is responsible for the allocation and distribution of Housing Credits and is required by federal law to adopt an allocation plan that includes priorities and selection criteria. Section 420.5099(2) also requires Florida Housing to "adopt allocation procedures that will ensure 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." Thus, the rules subject to this waiver request implement sections 420.5099(1) and (2), Florida Statutes, as well as

other provisions of Part V of chapter 420, Florida Statutes, the Florida Housing Finance Corporation Act.

E. JUSTIFICATION FOR REQUESTED WAIVER

12. Section 120.542(1), Florida Statutes, provides that “[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.” That procedure requires those seeking a variance of, or waiver from, a particular rule to demonstrate that application of the rule would create a substantial hardship or would violate principles of fairness. § 120.542(2), Fla. Stat. Petitions for variances and waivers also are required to demonstrate the purposes of the underlying statute will be achieved. *Id.*

13. Strict adherence to Subsection II.K. of the QAP would create a substantial hardship for Residences at Dr. King, as its equity investor is unwilling to participate in the financing of the project without the requested exchange of Housing Credits. Without the participation of the equity investor, the Development cannot be completed, which would deprive low-income residents of Miami-Dade County of 120 units of much needed affordable housing.

14. Strict adherence to Subsection II.K. of the QAP also would violate principles of fairness, as Florida Housing has granted similar waivers to other Developments facing similar circumstances. *See, e.g.*, Consent Agenda for the September 18, 2018, Florida Housing Board of Directors Meeting, Item C. In Re: Shull Manor REH, Ltd. – FHFC Case No. 2018-062VW (App. 2017-191C); Item D. In Re: Pinnacle at Peacefield, Ltd. – FHFC Case No. 2018-067VW (App. 2017-211C); Item E. (In Re: Verbena, Ltd. – FHFC Case No. 2018-068VW (App. 2017-161C).

Granting Residences at Dr. King's waiver request would recognize the fundamental fairness of granting the same relief to similarly situated Developments.

15. The statutes underlying the QAP and the rule will be served by the approval of Residences at Dr. King's waiver request. Section 420.502(4), Florida Statutes, states that Florida faces "a serious shortage of decent, safe, and sanitary housing in the state available to persons and families of low, moderate, and middle income" One of the primary purposes of the Act is to facilitate the availability of affordable housing. Granting Residences at Dr. King's waiver request will permit the Development to ultimately be placed in service, despite the challenging circumstances relating to funding and permitting, factors that are beyond the control of Residences at Dr. King.

16. The requested waiver will not adversely affect any party, including any other party that applied to receive an allocation of Housing Credits in RFA 2017-112, or Florida Housing. A denial of the requested waiver, however, would result in substantial economic hardship to Residences at Dr. King, as it may be unable to complete the Development, which would only contribute further to the shortage of affordable housing in Miami-Dade County. Additionally, denial of the waiver request would violate principles of fairness, as other similarly situated Developments have been granted waivers to Subsection II.K. of the QAP and the rule that incorporates it by reference.

F. ACTION REQUESTED

17. For the reasons expressed, Residences at Dr. King respectfully requests that the Florida Housing Board of Directors:

- Grant the requested waiver of Subsection II.K of the 2016 QAP and rule 67-48.002(95);

- Allow the immediate return of Residences at Dr. King's 2018 Housing Credit Allocation;
and
- Immediately allocate new Housing Credits to Residences at Dr. King with a later placed-in-service date.

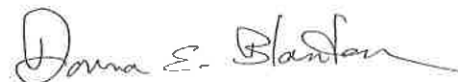
Respectfully submitted,



Donna E. Blanton, FBN 948500
Radey Law Firm
301 South Bronough, Suite 200
Tallahassee, Florida 32301
Telephone: (850) 425-6654
E-mail: dblanton@radeylaw.com
Secondary: lmcelroy@radeylaw.com
Counsel for Petitioner

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was filed by email to Ana McGlamory, the Florida Housing Finance Corporation Clerk, at corporationclerk@floridahousing.org and Ana.McGlamory@floridahousing.org and with a copy served by hand delivery to the Joint Administrative Procedures Committee, 680 Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 20th day of May, 2019.



Donna E. Blanton