

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2019-092VW

LOFTS ON LEMON DEVELOPMENT
PARTNERS, LLC,

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION

Respondent.

RECEIVED
19 OCT 15 PM 3:25
FLORIDA HOUSING
FINANCE CORPORATION

**PETITION FOR WAIVER OF THE QUALIFIED ALLOCATION PLAN'S
REQUIREMENT FOR RETURNING HOUSING CREDIT ALLOCATIONS AND RULE
67-48.002(96)**

Petitioner Lofts on Lemon Development Partners, LLC, a Florida limited liability company ("Petitioner") submits its Petition to Respondent Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's Qualified Allocation Plan's prohibition from returning its 2018 Housing Credit Allocation prior to the last quarter of 2020. The return of these Housing Credits is required before the Corporation may reserve an allocation of Housing Credits that Petitioner requests be immediately allocated. See Rule 67-48.002(96), Florida Administrative Code (2018) (the "Rules"), and Qualified Allocation Plan Section II.K.

1. Pursuant to Section 120.542, Fla. Stat. (2018) and Rules 28-104.001 through 28-104.006, F.A.C., Petitioner requests a waiver of Rule 67-48.002(96), Florida Administrative Code, and of Section II.K of the Qualified Allocation Plan ("QAP") to allow the immediate return of its 2018 Housing Credit Allocation, and an immediate allocation of new Housing Credits (2019 or later).

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

Lofts on Lemon Development Partners, LLC
c/o Sarasota Housing Authority
269 South Osprey Avenue, Suite 100
Sarasota, FL 34236
Attn: William Russell, Executive Director
941-361-6290 (telephone)
wrussell@sarasotahousing.org (e-mail)

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

Gary J. Cohen, Esq.
Shutts & Bowen LLP
200 S. Biscayne Blvd., Ste. 4100
Miami, Florida 33131
305-347-7308 (telephone)
305-347-7808 (telecopier)
gcohen@shutts.com (e-mail)

4. Pursuant to RFA 2017-111, Petitioner timely submitted its application for competitive Housing Credits under the Low Income Housing Tax Credit program ("LIHTC Program" or "HC Program"). *See* Application Number 2018-151C.

5. Equity raised from Housing Credits will be used for the construction of 76 residential units (all of which will be low-income housing tax credit units) to be known as Lofts on Lemon (the "Development"). The Development will serve low-income tenants in the City of Sarasota and Sarasota County, Florida.

6. Petitioner's application was selected for funding by FHFC, and Petitioner was invited to credit underwriting.

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 November 13, 2018, Petitioner 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 November 30, 2020. The carryover allocation agreement requires satisfaction of the 10% test by June 30, 2019 (extended to December 27, 2019 upon Petitioner's request).

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 deadlines, and as such Petitioner is requesting an exchange of Housing Credits in order to effectuate an extension of such deadlines.

9. Since being preliminarily selected for funding, the Development has suffered unforeseen events that make it clear that the Development will not be placed in service by December 31, 2020.

10. The Development encountered substantial delay in the site plan approval process with the City of Sarasota, which took over nine months and held up the commencement of full design work by the project architect. In addition, the Development has encountered substantial delay due to issues which have arisen between certain of the Development's developers (including the resignation of certain key members of such developer's team) and the Development's public housing authority sponsor (Sarasota Housing Authority). As a result of such disagreements (and delays resulting therefrom), Petitioner has terminated the services of two of the Development's co-developers. By separate letter attached hereto, Petitioner is requesting (pursuant to Rule 67-48) FHFC approval of the removal of two of Petitioner's

members and two of its co-developers, and substitution/admission of a new member and co-developer.

11. In connection with the departure of certain of its members and co-developers, additional credit underwriting will need to be undertaken with respect to the newly admitted member/co-developer, and the Development's lender and tax credit investor will need to approve such new member/co-developer.

12. As discussed above, the delays have been caused by circumstances outside Petitioner's control. As a result, the delay makes it impossible to meet the December 31, 2020 placed in service deadline or the December 27, 2019 10% test deadline.

13. As set forth more fully below, Petitioner seeks to return its 2018 Housing Credit allocation now, rather than wait for the last calendar quarter of 2020 as required under the QAP, and obtain from the Corporation an immediate allocation of new Housing Credits with a later required 10% test date and 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 Petitioner as set forth above, (b) deprive the City of Sarasota and Sarasota County of new constructed rental units set aside for 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 Corporation's Qualified Allocation Plan (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..."

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. (2018). 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. (2018). Accordingly, the Rules subject to Petitioner'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. (2018).

18. The requested waivers will ensure the availability of Housing Credits which might otherwise be lost as a consequence of development delays described herein.

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

19. The facts set forth in Sections 9 through 12 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for Rule waiver. Petitioner respectfully requests that no further fees be imposed in connection with the requested credit exchange, given (a) the significant amount of extension fees already paid for the extension of various dates under the carryover allocation agreement, and (b) that the reasons for the delays described herein were wholly outside of Petitioner's control. Not completing this Development will result in residents in the adjacent housing to be living next to a vacated property, resulting in security issues and other unwanted consequences. Since the vacated units have been stripped and are to be demolished, not proceeding with this development will result in a net loss of affordable housing to the community.

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. (2018).

21. Further, by granting the requested waivers, FHFC would recognize principles of fundamental fairness in the development of affordable rental housing. In addition, grant of the requested waivers will permit the construction of much needed housing for low-income and very low-income tenants. Finally, grant of the request to waiver will enable Petitioner to utilize (and

not lose) its significant investment in due diligence expenses that cannot be recouped if the requested waiver is not granted.

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, Petitioner is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver.

WHEREFORE, Petitioner Lofts on Lemon Development Partners, LLC, respectfully requests that the Corporation:

- A. Grant the Petition and all the relief requested therein;
- B. Waive the Qualified Allocation Plan's prohibition from returning Housing Credit Allocations prior to the last quarter of 2020;
- C. Allow the immediate return of Petitioner's 2018 Housing Credit Allocation;
- D. Immediately allocate new Housing Credits to Petitioner with a later placed in service date, in an amount equal to the amount of its 2018 Housing Credit Allocation with no further fees imposed; and
- E. Award such further relief as may be deemed appropriate.



GARY J. COHEN
Shutts & Bowen LLP
200 S. Biscayne Blvd., Suite 4100
Miami, Florida 33131
(305) 347-7308
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 ^{15th} day of October, 2019.



GARY J. COHEN