

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

REDDING DEVELOPMENT PARTNERS,
LLC

Petitioner,

FHFC CASE NO. 2017-074VW
Application No. 2016-042C

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

AMENDED

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 2016 Qualified Allocation Plan (“2016 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 September 30, 2016, 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 September 30, 2018.

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 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).

5. 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 2018.

D. STATUTES IMPLEMENTED BY THE RULE AND THE 2016 QAP

6. 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. (2016)* (the “Statute”).

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND SUBSECTION ILK OF THE 2016 QAP

7. 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 third quarter of 2018.

8. The recent Presidential election has created uncertainty in the tax credit equity markets which has significantly impacted the feasibility of the proposed development. In the original tax credit application, applicant provided an equity LOI from Regions Bank with tax credit pricing at \$0.98. The team was also in contact with several other equity investors at time of application submission who were confident that Redding could receive pricing well above

\$1.00. Following the election, many investors feared a lower corporate tax rate and thus rescinded their equity offers. Regions rescinded their equity LOI and revised tax credit pricing to \$0.89, and then to \$0.93 in early 2017. The difference in equity between the \$0.98 and \$0.93 pricing is approximately \$755,000. Additionally, since the application was submitted in the Fall of 2015, construction pricing has continued to rise and the project costs are expected to be approximately \$300,000 more than originally stated in the application. The combination of lower tax credit pricing and increased construction pricing has left the team with a sources gap of approximately \$1,050,000. The project is not able to absorb this financing gap without a significant reduction in units or conversion to a wood frame structure (proposed project is 4-story concrete). Furthermore, applicant has applied for development viability loan funding in RFA 2017-109 for Redding Redevelopment and was preliminarily awarded funding from the Board. Applicant will need ample time to navigate the award process for the Viability Loan prior to closing on any equity commitments from investors. In summary, meeting the current 2018 placed in service deadline is no longer possible for Redding Redevelopment, creating a significant hardship. Without the requested credit swap, the deal will not be able to proceed forward.

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 2016 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 2016 QAP to allow the requested credit exchange to be approved before the third calendar quarter of 2018; (ii) approve the exchange of 2016 tax credits for 2017 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