

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Denton Cove, Ltd.

FHFC Case No.: 2017-081VW

**ORDER GRANTING WAIVER OF
RULE 67-48.002(95), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on December 8, 2017, pursuant to a "Petition for Waiver of Rule 67-48.002(95)" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on November 20, 2017, from Denton Cove, Ltd. ("Petitioner"). Notice of the Petition was published on November 21, 2017, in Volume 43, Number 225, 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. In December, 2014, Petitioner successfully applied for an award under Request for Applications 2014-114, Housing Credit Financing for Affordable Housing Developments Located in Medium and Small Counties (the "RFA"), to

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Ms. Slattery /DATE: 12/8/17

assist in the construction of a 52 unit development in Apalachicola, Franklin County, Florida (the “Development”).

3. The Development was invited into Credit Underwriting on May 15, 2015, and entered into a Carryover Allocation Agreement on December 21, 2016.

4. Pursuant to 26 U.S.C. §42(h)(1)(E)(i), the Development must be placed in service no 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, 2018.

5. Petitioner now requests a waiver of Rule 67-48.002(95), Fla. Admin. Code, to allow a tax credit exchange at this time instead of the last calendar quarter of 2018.

6. Rule 67-48.002(95), Fla. Admin. Code, provides in pertinent part:

(95) “QAP” or “Qualified Allocation Plan” means, with respect to the HC Program, the 2016 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-07355>.

7. Petitioner has experienced significant delays in the progression of this Development, due to local resident opposition to the construction of affordable

housing, and a resultant Fair Housing lawsuit, brought by Petitioner against the local government, and in which Petitioner was ultimately successful.

8. Due to the above circumstances, Petitioner will now be unable to meet the current placed-in-service deadline of December 31, 2018, and requires additional time to complete the Credit Underwriting process. This delay has also resulted in a risk that potential investors may be unwilling to provide funding with current deadlines.

8. Section 120.542(2), Fla. Stat., 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. The Board finds that Petitioner has demonstrated that Petitioner would suffer a substantial hardship if the waiver is not granted. 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.

IT IS THEREFORE ORDERED:

Petitioner’s request for waiver of Rule 67-48.002(95), Fla. Admin. Code, is hereby **GRANTED** to allow Petitioner to exchange its tax credits at this time, rather than in the last calendar quarter of 2018.

DONE and ORDERED this 8th day of December, 2017.

Florida Housing Finance Corporation



By:

Chair

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end, positioned above a horizontal line.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by electronic mail this 8th day of December, 2017 to the following:

Hugh R. Brown, General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Brantley Henderson, Director of Multifamily Development
Florida Housing Finance Corporation
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Tallahassee, Florida 32301

Brian J. McDonough, Esq.
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150 West Flagler Street, Suite 150
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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
120 Holland Building
Tallahassee, Florida 32399-1300

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

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