

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

SILVER POINTE DEVELOPMENT PARTNERS,
LLC

Petitioner,

FHFC CASE NO. 2018-075VW
Application No. 2017-002C/2018-334V

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER OF RULE 67-48.002 (95)

Petitioner Silver Pointe 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:

Silver Pointe 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 December 2, 2016, Petitioner timely submitted its Application in response to RFA 2016-110 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 Marion County, Florida (the “Development”). On December 22, 2017, 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 December 31, 2019.

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 2019.

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 fourth quarter of 2019.

8. Silver Pointe has faced significant challenges over the last year as tax credit equity pricing decreased while construction costs rose simultaneously. These challenges are summarized as follows:

- (a) The recent changes to the corporate income tax rate has created downward pressure in the tax credit equity markets which has reduced tax credit equity pricing and 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 \$1.00. The team was also in contact with several other equity investors at time of application submission who were confident that Silver Pointe could receive pricing at or above \$1.00. Following the 2016 presidential election, Regions and other investors rescinded their equity offers. The applicant has worked diligently with various equity providers and has received two LOI's and expects at least two more LOI's if a credit swap is approved. Enterprise Community Investment has provided the team with an LOI for \$0.89 tax credit pricing and Boston Financial has provided an LOI at \$0.88. The difference in raised equity between the original \$1.00 and current \$0.88 pricing is over \$1,600,000.

(b) Additionally, since the application was submitted in the winter of 2016, construction pricing has continued to rise and the project costs are expected to be approximately \$2,000,000 higher than original estimates from time of application. The combination of lower tax credit pricing and increased construction pricing created a sources gap of approximately \$3,600,000.

(c) Applicant has entered credit underwriting for \$1,250,000 in Viability Loan funding through RFA 2018-109 which improved the project's feasibility and allowed for renewed negotiations with equity providers. With the Viability Loan, the sources gap is reduced to \$2,350,000. Alternative general contractors have been identified and the development team is working diligently with them and the project's architect to reduce overall construction costs.

(d) The team continues to move forward with City approvals and has submitted the site plan application with approval expected by late October. Permit drawings are 90% complete and are undergoing various value engineering changes that have been discussed with the General Contractor and will be submitted to the City of Ocala for building permits by the end of October. In addition, the development team continues to seek out additional soft funding and more favorable equity terms but has found that most equity providers are unwilling to commit until a swap to 2018 credits is granted. Petitioner faces a substantial hardship since a lack of equity contribution will prevent the project from moving forward as equity partners are unwilling to close until a swap is approved.

(e) Furthermore, a credit swap will enable petitioner to meet the 10% test as it will extend the current due date of November 2018 to a date in 2019. As petitioner continues to explore value engineering opportunities with the design team, it would not be prudent to make a bulk purchase of materials at this time in order to meet the 10% test as lumber quantities and types are still being contemplated. Without a credit swap, and thus an extension of the 10% test deadline, Petitioner will be unable to meet the test.

(f) In summary, petitioner has submitted to the City of Ocala for site plan approval, entered credit underwriting for an FHFC Viability Loan, developed 90% construction drawings, and is currently in talks with debt and equity providers- both of which are unwilling to commit until a credit swap is granted.

9. Petitioner has previously requested a 3-month extension of the September 30, 2018 deadline for submission of the Credit Underwriting Report, construction commencement, and closing of the tax credit partnership. The development team expects permit plans to be submitted by mid-October with permits being received by November 30, 2018. With a credit swap, petitioner is confident we can close on the tax credit partnership, commence construction, and complete credit underwriting before the end of 2018.

10. 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).

11. 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 family housing units will be preserved and made available for the target population in Marion 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.

12. 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

13. 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 fourth calendar quarter of 2019; (ii) approve the exchange of 2017 tax credits for 2018 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,

Silver Pointe Development Partners, LLC

By: Silver Pointe GP, LLC

By: 

Joseph Chambers, Manager