STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: 2021-053VW
APPLICATION NO.: 2020-369C

WELLS LANDING APARTMENTS LLC

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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AUGUST 19 2021 8:00 AM
FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR VARIANCE FROM FLORIDA ADMINISTRATIVE CODE RULE 67-48.002(96) AND THE 2019 QAP

Petitioner, Wells Landing Apartments LLC ("Petitioner"), pursuant to section 120.542, Florida Statutes, and chapter 28-104, Florida Administrative Code, petitions Florida Housing Finance Corporation (Florida Housing) for a waiver of the timing provisions of the 2019 Qualified Allocation Plan (2019 QAP) as incorporated and adopted Rule 67-48.002(96) (2019), Florida Administrative Code, pertaining to a tax credit exchange. Due to forces outside of Petitioner's control, Petitioner cannot meet the Placed-In-Service, the Notice of Commencement, the Credit Underwriting Report, the close of its tax credit partnership, and the 10% Test deadlines as required by the Carryover Allocation Agreement. In support of this Petition, Petitioner states:

A. THE PETITIONER AND THE DEVELOPMENT

1. The address, telephone number and email address of the Petitioner are:

Wells Landing Apartments LLC
7735 NW 146th Street
Miami Lakes, Florida 33016
Attention: Lewis Swezy
Phone: (305) 821-0330
Email: lswezy@centennialmgt.com

2. The address and telephone number of Petitioner's counsel are:

Nicholas W. Heckman, Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4241
Email: nick.heckman@nelsonmullins.com

3. Petitioner submitted Application No. 2020-369C in response to Request for Applications No. 2019-114, Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties (the "RFA"), for competitive housing credits to assist in the construction of a 124-unit development located in Palm Beach County, Florida, to be known as Wells Landing (the "Development") to serve low-income individuals and families.[1]

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1 The following information regarding the Development is provided to facilitate staff's preparation of background material for the Florida Housing Board of Directors:

- Development Name: Wells Landing
- Developer, including at least one natural person Principal: RS Development Corp and Lewis V. Swezy
- County of Development: Palm Beach County
- Number of Units: 124
- Type: Mid-Rise, 4 Stories
- Set Asides: 10% of residential units at 28% of area median income and 90% of residential units at 60% of area median income
- Demographics: Family
- Funding Amounts: $1,980,000 in Competitive Housing Credits

4. The Development will be built on land owned in fee simple by the Petitioner. Petitioner was awarded 9% annual tax credits not to exceed $1,980,000 for the Development in RFA 2019-114.

5. The application was assigned number 2020-369C. Petitioner was invited into credit underwriting on April 22, 2020. On September 23, 2020, Petitioner entered into a 2020 Carryover Allocation Agreement with Florida Housing for the allocation of tax credits.

6. Pursuant to 26 U.S.C. 42(h)(1)(E)(i), the Development is required to be Placed In Service not later than the close of the second calendar year following the calendar year in which the allocation is made. Pursuant to 26 U.S.C. 42(h)(1)(E)(ii), and Florida Housing's requirements, Petitioner's deadline to meet the 10% Test was March 31, 2021. On March 19, 2021, Petitioner requested, and Florida Housing granted, an extension of the 10% Test to September 23, 2021. On May 26, 2021, Petitioner requested, and Florida Housing approved, an extension of (i) the credit underwriting report, (ii) the notice of commencement, and (iii) the limited partnership agreement deadlines to September 30, 2021. However, this extension did not affect the Placed-In-Service deadline stated in the Carryover Agreement, which is on or before December 31, 2022. In order to meet the 10% Test, Petitioner will need to have closed financing, which will not be completed by September 23, 2021.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

7. Petitioner requests a waiver of subsection II.K. of the 2019 QAP.

8. Rule 6748.002(96) (2019) provided:

"QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2019 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-10769.

9. Subsection II.K. of the 2019 QAP provided:

Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required pursuant to Section 42 of the IRC, or it is apparent that a Development will not be placed in service by the date required pursuant to Section 42 of the IRC, 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 pursuant to Section 42 of the IRC, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may issue a Carryover Allocation Agreement allocating such Housing Credits to the Applicant for either the current year or the year after the year in which the Development was otherwise required to be placed in service pursuant to Section 42 of the IRC, 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. A Development located in a HUD-designated DDA or QCT at the time of original allocation may retain its designation as such.

10. The process in the 2019 QAP requires an applicant to return its allocation of housing tax credits in the last quarter of the calendar year in which it was otherwise required to be Placed In Service before a tax credit exchange 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 2022.

C. STATUTES IMPLEMENTED BY THE RULES

11. The 2019 QAP and the Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statute that designated the Corporation as the housing credit agency and created the Housing Tax Credit Program. See § 420.5099, Fla. Stat.

D. WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

12. Under Section 120.542(1), Florida Statutes, Florida Housing has the authority to grant waivers to or variances from its requirements when strict application of the requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, section 120.542(2) states:

> Variances 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. For purposes of this

> section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

13. Petitioner requests a waiver of the timing requirements found in the 2019 QAP to permit Florida Housing to approve the tax credit exchange prior to the fourth quarter of 2022. Petitioner cannot satisfy the requirements in the Carryover Agreement, as extended, to spend 10% of the reasonably expected basis of the Development by September 23, 2021. Further, Petitioner cannot satisfy the requirements in the Carryover Agreement, as extended, to meet the deadlines for the Notice of Commencement, the Credit Underwriting Report, and the close of its tax credit partnership by September 30, 2021.

14. Over the last year, the Development has suffered unforeseen hardships, outside of Petitioners control that make it clear that the Development will not meet the 10% Test by September 23, 2021 and cannot meet the Notice of Commencement, the Credit Underwriting Report, and the close of its tax credit partnership deadlines by September 30, 2021. These challenges are summarized as follows:

(a) The COVID-19 pandemic and associated precautionary measures had a significant impact on daily life and the industry as a whole. Most of the Petitioner's project team members were working from home or were not able to work altogether. Further, many time sensitive processes such as site approval by the City, the civil engineering plan review, utility connection approval, and required building permits that need city or county approval were significantly delayed as the architect, the engineer, and many city and county local government agencies have been working remotely or unable to work in

general. As such, document signatures, plan coordination, and the entitlement process have been hindered by challenges to complete previously seamless tasks with the new virtual work environment, which caused significant delays.

(b) The Covid-19 pandemic and its associated precautionary measures also had a significant impact on the total construction costs of the Development. Dramatic cost increases to construction supplies and materials, such as lumber, which were not originally anticipated in the development's cost pro forma, forced the Petitioner into value engineering. This forced the Petitioner to countlessly revise its construction budget to adjust for such unprecedented increases in construction prices, which in turn led to significant delays in Petitioner receiving its required permits.

15. Despite these delays caused outside of the Petitioner's control, Petitioner has been working diligently to complete all pre-development activities and has to date completed the construction drawings and has obtained an expedited permitting process. The permits are expected by the end of 2021. Moreover, Petitioner is working diligently to close on the financing and commence construction and hopes to close by December 31, 2021, with construction completed by June 30, 2023. As of the date hereof, Petitioner has incurred over $2,186,218 in development/third party costs.

16. With these delays, it is evident that Petitioner will not meet a placed-in-service deadline of December 31, 2022. With a credit exchange, Petitioner is confident that it will be able to meet the 10% Test, the Notice of Commencement, the Credit Underwriting Report, the close of its tax credit partnership, and Placed-In-Service

deadlines, as extended due to the credit exchange. Therefore, the requested 2021 credit exchange would extend the Development's Placed-In-Service date to December 31, 2023.

17. Under section 120.542(1), Florida Statutes, and chapter 28-104, Florida Administrative Code, 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.

18. In this instance, Petitioner meets the standards for a waiver of the Rule and timing limitations in the 2019 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 124 much needed affordable housing units will be made available for a vulnerable segment of the population in Palm Beach County, Florida.

19. This Development will assist Florida Housing with fulfilling its statutory mandate to provide safe, sanitary, and affordable housing to the citizens of Florida. See § 420.502(2), Fla. Stat. The strict application of the 2019 QAP and the credit exchange requirements will create substantial hardship for Petitioner because it likely will not be able to satisfy the 10% Test, the Notice of Commencement, the Credit Underwriting Report, the close of its tax credit partnership or its Placed-In-Service deadlines.

20. The requested waiver further 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. *Id.* By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing 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.

E. TYPE OF WAIVER

21. The waiver or variance being sought is permanent in nature.

F. ACTION REQUESTED

22. For the reasons set forth herein, Petitioner respectfully requests the Corporation (i) grant the requested waiver of the timing found in the 2019 QAP to allow the requested credit exchange to be approved before the fourth calendar quarter of 2022; (ii) grant the Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted on the 18th day of August, 2021.

Respectfully submitted,

Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356
Nelson Mullins Broad and Cassel
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Orlando, Florida 32801
Telephone: (407) 839-4241
Email: nick.heckman@nelsonmullins.com
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org,

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

The 18th day of August, 2021

NELSON MULLINS BROAD & CASSEL

By: _____
Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356