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FLORIDA HOUSING FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

TRANQUILITY MILTON, LLC
a Florida limited liability company,

Petitioner

v.

FHFC CASE NO. 2021-073VW
APPLICATION NO. 2020-173(C)

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OF THE QUALIFIED ALLOCATION PLAN'S REQUIREMENT FOR RETURNING HOUSING CREDIT ALLOCATIONS AND RULE 67-48.002(96), F.A.C.

Tranquility Milton, LLC ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's 2019 Qualified Allocation Plan's ("QAP") prohibition from returning its 2020 Housing Credit Allocation prior to the end of the last calendar quarter of the year a development must be placed in service. The return of these Housing Credits is required before the Corporation may reserve an allocation of housing credits that Petition requests be immediately allocated. *See* Rule 67- 48.002(96), Florida Administrative Code (the "Rule") and QAP Section II.K.

1. This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code ("F.A.C."), and Rules 28-104.001 through 28-104.006, F.A.C. Petitioner requests a waiver of Rule 67-48.002(96), F.A.C, and Section ILK of the QAP to allow the immediate return of its 2020 Housing Credit Allocation, and an immediate allocation of new Housing Credits (2021 or later). The relief requested by Petitioner is permanent in nature.

2. The name, address, e-mail address, and telephone number of the Petitioner is:

Tranquility Milton, LLC
Attn: Todd M. Wind
310 South Dillard Street, Suite 135
Winter Garden, FL 34787
Phone: 917-497-8520
Email: twind@timsheldevelopment.com

3. The name, address, e-mail address, and telephone number of the Attorney for the Petitioner is:

Gregory Q. Clark, Esq.
greg.clark@colemantalley.com
Coleman Talley LLP
1 Independent Dr.
Suite 3130
Jacksonville, FL 32202
Phone: (904) 456-8960

4. Pursuant to RFA 2019-113, Petitioner timely submitted on November 5, 2019 its application for competitive housing credits ("Housing Credits") under the Low Income Housing Tax Credit program. *See* Application Number #2020-173(C) (the "Application").

5. Equity raised from the Housing Credits will be used for the construction of 72 residential units (all of which will be low-income housing tax credit units) to be known as Tranquility at Milton (the "Development").

6. On March 6, 2020, the Corporation approved Petitioner's application for Housing Credits. On July 24, 2020, 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 in the preliminary allocation is issued. 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 in the carryover allocation is issued to place the development in service. Rule 67-48.028 (2) requires an applicant to have a tax basis in a Housing Credit development that exceeds 10% of the reasonably expected basis within 6 months of the date the Corporation issues the carryover allocation agreement (the "10% test"), unless extended as provided in the carryover allocation agreement, otherwise the Housing Credits will be deemed returned to the Corporation.

8. In the Petitioner's case, the Corporation mandated in the carryover allocation agreement that (a) the Petitioner satisfy the 10% test no later than May 31, 2021, which deadline was extended (after Petitioner paid the required fee to the Corporation) to November 13, 2021, and (b) the Petitioner place the Development in service no later than December 31, 2022 (collectively, the "Deadlines"). Petitioner must close on its construction and Housing Credit financing to acquire the land and commencement construction in order to meet the 10% test; delays thereto imperil the Development' s placed -in-service deadline. As explained more fully below, there is uncertainty as to whether or not the Development will meet the Deadlines.

9. After being invited into credit underwriting, the Petitioner has proceeded apace in preparation for closing in order to satisfy the 10% test, but due to unforeseen events, delays have occurred beyond the control the Petitioner that make meeting the Deadlines questionable.

10. With the Application being submitted prior to 2020, the construction cost estimates being utilized were in a “pre-COVID” time. As the pandemic made its impact felt across the world, since early 2020, construction costs have soared. From lumber costs rising more than 400%, at its peak, to steel and copper prices rising 200-300%, just to name a few,

the current economics of the Development have unexpectedly and drastically changed since the Application was submitted on November 5, 2019.

11. To mitigate the unexpected drastic rise in construction costs, Petitioner has successfully renegotiated the terms of the Local Government Area of Opportunity Loan ("LGAO Loan") with the City of Milton. The original terms of the loan required "hard" debt service payments, which limited the amount of first mortgage proceeds that could be secured. The new terms of the loan now call for "soft," or cash flow only payments, which allow for an increased first mortgage, and overall, more debt proceeds. In addition to the renegotiated LGAO Loan, Petitioner has also secured a new LIHTC equity investor that will result in more equity infusion due to higher equity pricing and more favorable bridge loan terms. Petitioner has also exhausted all efforts in value engineering the Development in an effort to reduce construction costs.

12. Despite Petitioner's efforts to compensate for the soaring construction costs, as a result of the pandemic, the economic viability of the Development is still in question. As a result of the pandemic affecting all developments equally, Florida Housing Finance Corporation has recently been approved by their Board to proceed with developing, and subsequently issuing, an RFA entitled "RFA 2021-211 Development Viability Loan Funding." It is anticipated that one of the requirements to apply for funding under this RFA will be that the Applicant has not yet begun construction. Preliminary Awards for this RFA are not expected to be given until December 2021. Construction would be unable to commence until sometime in 2022, providing only a few short months for Petitioner to complete construction and meet the placed in service requirements of the carryover allocation agreement. This would be an unattainable task.

13. In addition, the equity investor has expressed concerns to the Petitioner and has asked Petitioner to consider exchanging 2020 Housing Credits for subsequent credits. The equity investor may be unwilling to close its investment in the Development if there is any chance that it may not receive credits as expected. Without the approval of the credit swap, the tax credit investor may not participate in the transaction, resulting in the inability of the Petitioner to construct the Development.

14. As discussed above, the delays were caused by circumstances outside the Petitioner's control.

15. As set forth below, Petitioner seeks to return its 2020 Housing Credit Allocation now, rather than wait for the end of the last calendar quarter of the year the Development must be placed in service as required under the QAP. The Petitioner requests from the Corporation an immediate allocation of new Housing Credits with a later required placed in service date.

16. The requested waivers and variance will not adversely affect the Development. A denial of this Petition would, however, (a) result in substantial economic hardship to the Petitioner,

(b) deprive Santa Rosa County of essential affordable housing units, and (c) violate principles of fairness.

17. 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 plan.

19. The Corporation's QAP (Section 11.K) permits the return of Housing Credits in the

last calendar year quarter of the year in which it was otherwise required to be placed in service pursuant to Section 42 of the Internal Revenue Code:

> …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…
>
> QAP at Section II. K (emphasis added)

20. The applicable Rules for which waivers are requested are implementing, among other sections of Florida Housing Finance Corporation Act (the " Act"), which governs Florida's Housing Credits Program. *See* Section 420.5099, Fla. Stat. (2021). The Act designates the Corporation 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, the Corporation is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures") pursuant to Sections 420.5099(1) and (2) of the Act. 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 Housing Credits Program. *See* Sections 420.5099 (1) and (2), Fla. Stat. (2021).

21. The facts set forth in Sections 9 through 14 of this Petition demonstrate hardship and other unforeseen circumstances, which justify Petitioner's request for the waiver.

22. 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. (2021).

23. Further, by granting the requested waivers, FHFC would recognize principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developer entities, such as Timshel Development Group, LLC, in meeting the purposes of the Act, regardless of the possible delays from factors outside of its control. In addition, grant of the requested waivers will permit the development 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.

24. The requested waivers will not adversely affect the Development or the Corporation.

25. Should the Corporation require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this its Petition for Waiver.

WHEREFORE, Petitioner Tranquility Milton, LLC, respectfully requests that the Corporation:

A. Grant the Petition and all the relief requested therein;

B. Waive the QAP's prohibition from returning Housing Credit Allocations prior to the last quarter of 2022;

C. Allow the immediate return of Petitioner's 2020 Housing Credit Allocation;

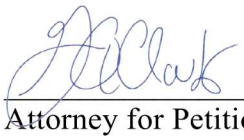
D. Immediately allocate new 2021 or later Housing Credits to Petitioner via a new carryover agreement, with a later placed in service date and in the amount equal to the amount of its 2020 Housing Credit Allocation;

E. Through a new carryover agreement, extend the existing deadline to satisfy the 10% test and extend the other deadlines in the existing carryover agreement to such date(s) acceptable to the Corporation and permissible with the new Housing Credits requested hereunder.

F. Award such further relief as it may deem appropriate.

Respectfully submitted this 1st day of October, 2021.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition is being served and filed by electronic mail delivery to the Corporation Clerk of the Florida Housing Finance Corporation at CorporationClerk@Floridahousing.org, pursuant to Rules 28-104.002 and 57-52.002 of the Florida Administrative Code, with a copy being served by email to Hugh Brown, General Counsel, Florida Housing Finance Corporation, hugh.brown@floridahousing.org. I further certify that pursuant to Rule 28-104.002, a copy is being served by overnight delivery to the Joint Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 1st day of October, 2021.

By: _____
Gregory Q. Clark, Esq.
Florida Bar No. 60303