

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

IN RE: DENTON COVE, LTD.

FHFC CASE NO.: 2019-038VW

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**ORDER GRANTING WAIVER OF RULE 67-48.002(95)**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on May 10, 2019, pursuant to an “Petition for Waiver of Rule 67-48.002(95), F.A.C. and 2015 QAP” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on April 15, 2019 from Denton Cove, Ltd. (“Petitioner”). Notice of the Petition was published on April 17, 2019, in Volume 45, Number 75, 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. Petitioner successfully applied for an award of housing credits under RFA 2014-114. Petitioner was also awarded a Development Viability Loan under RFA 2018-109.

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

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3. The funding above was awarded to assist in the construction of a 52-unit development located in Apalachicola, Franklin County, Florida.

4. Petitioner requests waiver of Rule 67-48.002(95), Fla. Admin. Code, incorporating subsection II.K of the 2015 Qualified Allocation Plan (“QAP”), which provides as follows:

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 supplied).

5. Petitioner seeks waiver of Rule 67-48.002(95) to allow a tax credit exchange at this time instead of at the last calendar quarter of 2020.

6. On December 21, 2016, the Petitioner entered into a Carryover Agreement for the allocation of its Tax Credits, which required that the development be placed in service no later than the close of the second calendar year following the year in which the agreement is made, which would be December 31, 2018.

7. Due to litigation with the local government, Petitioner was required to seek a rule waiver to exchange its 2016 credits for 2017 credits on November 20, 2017 and Florida Housing's Board of Directors granted that Petition on December 8, 2017.

8. Petitioner then entered into another Carryover Agreement for the allocation of its Tax Credits, which requires that the development be placed in service no later than December 31, 2019. Renewed litigation with the local government (school board) again caused a delay that required the Petitioner to submit a second request for relief at the staff level under Revenue Procedure 2014-49, which Florida Housing granted in December 2018. By granting this second request, the placed in service deadline has been extended to December 31, 2020.

9. Petitioner asserts that ongoing litigation with the School Board of Franklin County regarding the subject property remains a barrier to Petitioner moving forward with the Development, and Petitioner's efforts to resolve litigation

without a trial have not succeeded (the school board declined to accept a proposed settlement agreement). A trial date in this matter will not be set until discovery is completed, and responses to requests for admissions is currently due on May 6, 2019. Petitioner expects a trial date to be set sometime in the summer of 2019.

10. Petitioner states that due to these circumstances, it will not be able to place the development in service until 12 – 18 months after the conclusion of this litigation, and potential investors are unwilling to invest if there is any chance that the development will not receive the Housing Credits. As such, Petitioner is also requesting a waiver of the timing requirements found in the 2015 QAP to permit Florida Housing to approve a tax credit exchange prior to the last quarter of 2020.

11. Petitioner now requests a waiver of the above provision of the 2015 QAP, to permit it to exchange its 2017 credits for an allocation of 2019 credits now, rather than wait until the last quarter of 2020.

12. The Board finds that granting the waiver will not impact other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

13. Section 120.542(2), Florida Statutes 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.

14. Petitioner has demonstrated that the waiver is needed in order to meet the urgent need for housing for low-income persons in Franklin County, particularly in the wake of Hurricane Michael, and that, if the waiver were not granted, Petitioner would suffer a substantial hardship. 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.

15. The Board finds that strict application of the above Rule and QAP provision under these circumstances would cause substantial hardship to Petitioner and violate the principles of fairness. Granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

**IT IS THEREFORE ORDERED:**

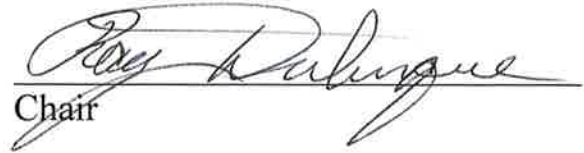
Petitioner’s request for a waiver of Rule 67-48.002(95), Fla. Admin. Code and Section II.K. of the 2015 QAP is GRANTED to permit Petitioner to exchange its 2017 credits for allocation of 2019 credits now rather than in the last calendar quarter of 2020.

DONE and ORDERED this 10th day of May 2019.



Florida Housing Finance Corporation

By:

  
Chair

**Copies furnished to:**

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**NOTICE OF RIGHT TO JUDICIAL REVIEW**

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