

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**FHFC CASE NO. 2019-083VW
Application No.: 2018-071C**

CATHEDRAL TOWNHOUSE, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION**

**PETITION FOR WAIVER FROM THE
PROVISIONS OF FLORIDA ADMINISTRATIVE CODE
RULE 67-48.002(95) F.A.C (2017) AND 2016 QAP**

Petitioner, Cathedral Townhouse, Ltd. ("Petitioner"), pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, hereby petitions 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 (2017) pertaining to a tax credit exchange (collectively, the "Rule"). In support of this Petition, Petitioner states as follows:

PETITIONER AND THE DEVELOPMENT

1. The name, address and telephone number for Petitioner and its qualified representative are:

Cathedral Townhouse, Ltd.
Attn: Shawn Wilson
5300 W. Cypress Street, Suite 200
Tampa, Florida 33607
Email: swilson@blueskycommunities.com
Telephone: 813-384-4825

2. For purposes of this Petition, the name, address, telephone and facsimile numbers of Petitioner's counsel is:

Samantha D'Angelo, Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801-4961
Email: samantha.dangelo@nelsonmullins.com
Telephone: 407-839-4218
Fax: 407-650-0914

3. On December 12, 2017, Petitioner submitted an application in response to RFA 2017-114 (the "RFA") for Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments and was assigned Application No. 2018-071C (the "Application") seeking Housing Credits in the annual amount of \$1,660,000 to assist in the acquisition and preservation of a 177-unit development located in Duval County, Florida, known as Cathedral Townhouse (the "Development"). Petitioner received an award of 2018 Low-Income Housing Tax Credits ("Tax Credits") and received an invitation into credit underwriting from Florida Housing on July 30, 2018. On December 10, 2018, Petitioner entered into a 2018 Carryover Allocation Agreement (the "Carryover Agreement") with Florida Housing for the allocation of the Tax Credits.

4. 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. Under the Carryover Agreement, the federally-mandated placed-in-service date is December 31, 2020. Furthermore, pursuant to 26 U.S.C. 42(h)(1)(E)(ii), and Florida Housing's requirements, the Petitioner must meet its 10% test by no later than December 10, 2019. In order to meet the 10% test, the Petitioner will need to acquire the Development. To acquire the Development, the Petitioner will need to close on its equity and debt financing. To close on such

financing, the Petitioner needed HUD approval of its request for the new HAP renewal being required by the tax credit investor in order to know the rent amounts for underwriting. A new 20-year HAP renewal is also a HUD requirement related to the prepayment of the existing HUD loans. The Petitioner initially began the process for the new HAP renewal in September of 2018, but due to delays beyond the control of the Petitioner, Petitioner's request for the HAP renewal was not approved until September 13, 2019. The delay in such approval has effected delays in the appraisal, the determination of the first mortgage amount, the finalization of the construction and development budget, the finalization of the construction contract and the plan and cost review. These delays will likely put the closing date of the financing for the acquisition of the Development beyond December 10, 2019.

TYPE OF WAIVER

5. The waiver being sought is permanent in nature.

RULE FOR WHICH WAIVER IS REQUESTED

6. Petitioner requests a waiver of Subsection II.K. of the 2016 QAP. At the time the Application was submitted, Rule 67-48.002(95), F.A.C. (2017) provided:

"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>.

Subsection II.K. of the 2016 QAP provided:

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).

7. 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 and requires Florida Housing to allocate credits from the year following the year in which the Development is required to be placed in service. 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 2020 and to allow an allocation of tax credits from 2019 rather than from 2020. The Petitioner will continue to diligently seek a closing of its financing and the acquisition of the Development by December 10, 2019 so that an allocation of 2019 credits is not necessary. This petition is being made now for placement on the October Florida Housing Board meeting agenda because the deadline for the September Florida Housing Board has been set, there is

no November meeting and the December meeting is scheduled for after the date the Petitioner is required to meet the 10% test.

STATUTES IMPLEMENTED BY THE RULE

8. 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.

FURTHER JUSTIFICATION FOR GRANTING WAIVER

9. The Development is an existing 177-unit community financed by HUD. In connection with the acquisition of the Development, the Petitioner requested HUD approval for the prepayment of the existing HUD loans on the Development and a new 20-year Chapter 15 HAP renewal as required by the tax credit investor. The process for the approval of the prepayment of the HUD loans and obtaining the new HAP renewal was delayed for various reasons outside Petitioner’s control, including government employees being out of the office, HUD’s failure to order their own Rental Comparable Study (“RCS”) the government shut down in December 2018 for 35 days and other events and circumstances described below.

10. Petitioner ordered an RCS for the Development, which was completed on September 11, 2018 and informally submitted to HUD on September 24, 2018 for the purpose of allowing HUD to determine whether HUD needed to order their own RCS in connection with Petitioner’s upcoming request for the Chapter 15 HAP renewal. Due to the rent levels in the RCS, HUD was required to order its own RCS; however, HUD did not do so. We believe HUD’s delay in ordering its own RCS was due to a lack of funding resulting from federal budgetary issues and staff absences due to federal use-or-lose vacation policies. HUD then closed due to the government shutdown from December 22, 2018 to January 25, 2019 without

having ordered the RCS. On April 29, 2019, Petitioner formally submitted its HUD package for the Chapter 15 HAP renewal and for prepayment of the HUD loans. On May 10, 2019, HUD notified the Petitioner that the RCS previously submitted by the Petitioner in September 2018 would be used for the 5th Year Rent Adjustment required by the existing HAP contract rather than in connection with the Chapter 15 HAP renewal request.

11. Therefore, on July 23, 2019, Petitioner submitted a new request to HUD for the Chapter 15 HAP renewal and rent increase and included a new RCS ordered by Petitioner along with a request for a waiver of the requirement that HUD order their own RCS.

12. On September 13, 2019, HUD approved the RCS submitted by Petitioner with its July 23, 2019 submission; HUD waived the requirement for a HUD-ordered RCS; and approved the 20-year Chapter 15 HAP renewal (the “HUD RCS Approval”). However, as of the date of this petition, HUD has not provided all approvals necessary for closing to occur, including an approval letter covering the change in ownership, assignment of the HAP contract and retention of the management agent and approval of closing document drafts (“Final HUD Approval”). With the HUD RCS Approval received, Petitioner is now able to engage the appraiser and finalize the contract with the general contractor. Petitioner fully intends to close on the acquisition of the Development by December 10, 2019, which date is the last day permitted by Code Section 42 for the Petitioner to meet the 10%. However, due to the delay in receiving the HUD RCS Approval described above (the “HUD Approval Delay”) and having not received Final HUD Approval, the Petitioner may not be able to close by this deadline.

13. Now that Petitioner has received the HUD RCS Approval and determined the rent amounts, it can begin other requirements to close on the acquisition of the Development, including the appraisal, determining the amount of the first mortgage, finalizing the

construction and development budget, finalizing the construction contract and the plan and cost review and final credit underwriting that it was not able to complete previously due to the HUD Approval Delay. Petitioner may be unable to complete the remaining requirements to close by the December 10, 2019 deadline. If Petitioner is unable to close on the acquisition of the Development before December 10, 2019, it cannot satisfy the 10% test and therefore will not meet the requirements of Florida Housing or federal law.

14. Petitioner, therefore, out of an abundance of caution, requests a waiver of the timing requirements found in the 2016 QAP to permit Florida Housing to approve a tax credit exchange on December 10, 2019 if the 10% test is not met on that date and to allow the allocation of 2019 tax credits pursuant to that exchange. A credit exchange for 2019 credits would enable the Petitioner to meet the purpose of the RFA. Without such a credit exchange, Petitioner may be unable to satisfy the 10% test and move ahead with the Development.

15. Except for the matters requested to be waived herein, the Development still meets in all respects the conditions upon which the Housing Credits were originally allocated. The Development remains necessary to meet affordable housing needs.

16. 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.* (2014).

17. In this instance, Petitioner meets the standards for the requested waivers. The requested waivers will not adversely impact the Development or Florida Housing, and will ensure that 177 affordable housing units will be preserved and made available for the target population in Duval County, Florida. The strict application of the 2016 QAP and the credit swap requirements will create substantial hardship for Petitioner because it may not be able to satisfy the 10% test due to delays in receiving HUD RCS Approval and close on the acquisition of the Development as may be required by the seller of the Development.

18. 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 for low-income households. By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing in persons of low-income and recognize the economic realities and principles of fundamental fairness in developing affordable rental housing. *See* § 420.5099(2), Fla. Stat.

19. In this instance, Florida Housing has jurisdiction to grant a waiver of the provisions of the Rule and Petitioner meets the standards for a waiver of such Rule.

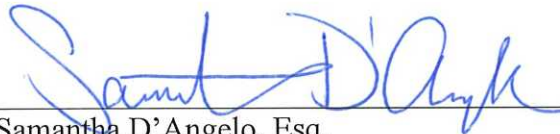
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ACTION REQUESTED

WHEREFORE, Petitioner respectfully requests that 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 and occur no later than December 10, 2019 and to allow 2019 credits to be allocated pursuant to the exchange;
- (ii) Grant this Petition and all relief requested therein; and
- (iii) Grant such further relief as may be deemed appropriate.

Respectfully submitted this 30th day of September, 2019.



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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

This 30th day of September, 2019.



Samantha D'Angelo, Esq.
Fla. Bar No. 1002952