

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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Lofts at Southbank, Ltd.,
a Florida limited partnership,

FLORIDA HOUSING
FINANCE CORPORATION

Petitioner,

FHFC CASE NO. 2026-002VW
Application No. 2025-137C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.002(96), F.A.C. (7/7/24)
AND THE 2024 QAP

Lofts at Southbank, Ltd. (the “Petitioner”) by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation (“Florida Housing”), for a waiver of the provisions of the 2024 Qualified Allocation Plan (“2024 QAP”) as incorporated and adopted by Rule 67-48.002(96), Florida Administrative Code (“F.A.C.”) (7/7/24), such that Petitioner may return its 2025 Housing Credit Allocation now as opposed to waiting until after the end of the second calendar quarter of 2027. Due to events outside of Petitioner’s control, Petitioner will not be able to incur costs necessary to meet the 10% test by the February 5, 2026 deadline.¹ In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone, facsimile numbers and e-mail address for Petitioner and its qualified representative are:

Lofts at Southbank, Ltd.
Attn: James R. Hoover
1649 Atlantic Boulevard
Jacksonville, FL 32207

¹ The original deadline of December 31, 2025, was extended to February 5, 2025.

Phone: 904-260-3030
Fax: N/A
E-mail: rhoover@vestcor.com

2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel is:

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff &
Sitterson, P.A.
150 West Flagler Street
Suite 2200
Miami, Florida 33130
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Tallahassee, FL 32301
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Fax: 850-329-4844
Email: BSmitha@stearnsweaver.com

B. DEVELOPMENT BACKGROUND

3. The following information pertains to the development underlying Petitioner's application:

- Development Name: Lofts at Southbank
- Development Address: Prudential Dr., SW of the intersection of Prudential Dr. and Hendricks Avenue, Jacksonville, FL 32207
- County: Duval
- Developer: TVC Development, Inc.
- Number of Units: 100 new construction
- Type: High Rise
- Set Asides: 10% at or below 35% AMI; 65% at or below 60% AMI
- Demographics: Family
- Funding: 9% HC request of \$3,200,000 annually

C. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

D. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver of Rule 67-48.002(96), effective July 7, 2024, , which provides in pertinent part:

“QAP” or “Qualified Allocation Plan” means, with respect to the HC Program, the 2024 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-16735>.

6. Subsection II.J. of the 2024 QAP, provides as follows:

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 the Applicant has returned its Housing Credit Allocation after the end of the second 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 will reserve allocation in an amount not to exceed the amount of Housing Credits returned, and will 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 Applicant 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) A site inspection reflecting the Development is at least fifty (50) percent complete and (iii) 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 basis boost as authorized by Section 42(d)(5)(B)(v) of the IRC.

E. STATUTES IMPLEMENTED BY THE RULE AND THE 2024 QAP.

7. The Rule implements Section 420.5087 (State Apartment Incentive Loan Program), Section 420.5089 (HOME Investment Partnership Program; HOME Investment Partnership Fund), and Section 420.5099 (creating the Housing Credits Program) of the Florida Housing

Finance Corporation Act (the “Act”).² The Act designates Florida Housing 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, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits (“Allocation Procedures”). *See* § 420.5099(1) and (2), Fla. Stat. Accordingly, the Rule implements, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the HC Program. *Id.*

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

8. Petitioner timely submitted Application No. 2025-137C on July 17, 2024, in response to RFA 2024-202 Housing Credit Financing For Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties (the “RFA”).

9. The Development received an allocation of the 2025 Housing Credit dollar amount meeting the requirements of Section 42(h)(1)(E) and (F) of the Internal Revenue Code of 1986 as amended (“Tax Credits”) and was invited to credit underwriting.

10. Florida Housing staff executed a 2025 Carryover Allocation Agreement (“CAA”) on or about February 5, 2025 for the allocation of its Tax Credits. The CAA required Petitioner to incur at least ten percent of the reasonably expected basis of the Development (the “10% Test”) on or before December 31, 2025 (the “CAA Deadline”). Upon Petitioner’s request, the CAA Deadline was subsequently extended to February 5, 2026.

11. Failure to comply with the CAA Deadline will cause the Housing Credits allocated within the CAA to be deemed returned to Florida Housing under 26 U.S.C. § 42(h)(3)(C).

² The Act is set forth in Sections 420.50 through 420.55 of the Florida Statutes.

12. Pursuant to 26 U.S.C. § 42(h)(1)(E)(i), the Development must be placed in service no 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, 2026. Due to circumstances beyond Petitioner's control, described herein, the 10% Test cannot be met before the CAA Deadline. Since being selected for funding and invited to credit underwriting, progress on the Development has been delayed in relation to unforeseen events related to construction pricing. Petitioner was invited into credit underwriting on September 20, 2024 and immediately engaged the architect and engineer. Petitioner received 50% construction plans on or about January 10, 2025. Petitioner provided the construction plans to the general contractor for preliminary pricing. The preliminary pricing reflected a construction cost that was significantly higher than was budgeted. Upon receipt of the preliminary pricing, Petitioner immediately began working with the architect and engineers to identify ways to reduce the overall construction costs. From February 2025 through April 2025, Petitioner analyzed a number of options to reduce construction costs. It was determined that significant cost savings could be achieved through a redesign with an emphasis on the structural design. The redesign was authorized on August 1, 2025. The updated permit set of plans was complete on November 21, 2025. The general contractor is pricing the revised construction plans with pricing due on or about January 23, 2026. Petitioner has invested more than \$2,160,000 to date in efforts to progress the Development. However, Petitioner will not be able to expend additional funds necessary to meet the 10% Test by the CAA Deadline. Petitioner cannot commence construction, much less purchase the land or materials, until a general construction contract is executed. Until that contract is finalized, too much uncertainty exists to make purchases in such large amounts and Petitioner needs the flexibility to make changes (including to the size and shape of the development) to ensure

the financial feasibility of the development. Because research and negotiations are ongoing, the general construction contract will not be executed until after the CAA Deadline and the 10% Test therefore cannot be met before the CAA Deadline. Similarly, Petitioner will not know the final development costs until the general contractor contract is executed. Because Petitioner will not know how much, if any, developer fee can be paid prior to the CAA Deadline, Petitioner cannot use the developer fee to satisfy the 10% Test.

13. Because Petitioner believes that circumstances outside of its control will prevent it from satisfying the 10% Test by the CAA Deadline, Petitioner respectfully requests a waiver of the 2024 QAP to permit Florida Housing to approve the tax credit exchange now as opposed to waiting until after the end of the second calendar quarter of 2026.

14. As set forth above, this request was not necessitated through any fault of Petitioner. Rather, Petitioner exercised due diligence in attempting to move the Development towards construction.

15. If the Petition is denied, and Petitioner loses the allocated Housing Credits as a result of insufficient time to satisfy the 10% Test, Petitioner will be forced to abandon the Development. Stated differently, losing this funding source will cause Duval County to lose the Development's 100 affordable housing units, of which 75 units are for households at or below 60% AMI and 25 units are for households at or below 100% AMI.

16. This Petition should be granted, as opposed to de-obligating the award, because Duval County is currently experiencing a shortage of affordable housing units. Granting the Petition will result in the delivery of 100 new affordable housing units, of which 75 new affordable housing units are for households at or below 60% AMI and 25 affordable housing units are for households at or below 100% AMI, much faster than would reallocating the funding to a new

development.

17. 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,³ and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), *Fla. Stat.*

18. Strict adherence to Subsection II.J. of the QAP would violate principles of fairness, as Florida Housing has granted waivers to other Developments similarly facing unforeseen delays beyond their control (*e.g.*, Arbor Village- granted credit swap in November 2019; Georgian Gardens- granted credit swap in November 2019; Luna Trails- granted credit swap in 2019; Northside Transit Village- granted credit swap in November 2019; Residences at Dr. King Boulevard, Ltd.- granted credit swap in 2019).⁴

19. In this instance, Petitioner meets the standards for a waiver of the Rule and the 2024 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 100 affordable housing units will be made available for the target population in

³ “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. *See* § 120.542(2), *Fla. Stat.*

⁴ The reasons that precipitated the credit swaps include, but are not limited to: need for off-site improvements, which required negotiation with neighboring property owners; revision to construction plans due to increased construction costs, which required the securing of additional funds; redesign requirements due to a fire code violation in the design of a staircase; post-Hurricane clean up; and title issues, which only became known after the design process.

Duval County, Florida. The strict application of the 2024 QAP would prevent Petitioner from completing the swap now and will create a substantial hardship for Petitioner because it likely cannot – due to no fault of its own – meet the 10% Test by the CAA deadline. 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. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, and further ensuring the development of 100 affordable housing units in Duval County, 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 housing. *See* § 420.5099(2), Fla. Stat.

20. The foregoing demonstrates the hardship and other circumstances justifying this Petition.

21. The requested waiver should be granted because, as demonstrated above, the delay was caused by circumstances beyond Petitioner's control, due diligence was employed in an attempt to resolve those circumstances, the Development in all respects, except timing, still meets the conditions upon which the Housing Credits were originally allocated, and the Development is still desirable in terms of meeting affordable housing needs.

22. Should Florida Housing require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

G. ACTION REQUESTED

23. For the reasons set forth herein, Petitioner respectfully requests Florida Housing:

(i) grant the requested waiver to permit the requested credit exchange, immediate return of Petitioner's 2025 Housing Credit Allocation, and an immediate allocation of new Housing Credits;

(ii) grant a corresponding extension of deadlines relative to those credits; (iii) grant this Petition and all of the relief requested herein; and (iv) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
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Counsel for Petitioner

By: /s/ Brian J. McDonough
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with a copy served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 13th day of January, 2026.

By: /s/ Brian J. McDonough
Brian J. McDonough, Esq.