

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2018-080VW

WOODLAND PARK
REDEVELOPMENT I, LLC

Petitioner,

v.

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(95) AND RULE 67-48.0072(4)(c)**

Petitioner Woodland Park Redevelopment I, LLC, a Florida limited liability limited company ("Woodland") submits its Petition to Respondent Florida Housing Finance Corporation (the "Corporation" or "Respondent") for a waiver of (i) the Qualified Allocation Plan's prohibition from returning its 2017 Housing Credit Allocation prior to the last quarter of 2019, and (ii) a waiver of certain provisions of its Request for Proposal 2015-106 (the "RFP") and Rule 67-48.0072(4)(c) (2014) pertaining to the required closing date for a SAIL loan. The return of these Housing Credits is required before the Corporation may reserve an allocation of Housing Credits that Woodland requests be immediately allocated. *See* Rule 67-48.002(95), Florida Administrative Code (2017) (the "Rules"), and Qualified Allocation Plan Section II.K.

1. Pursuant to Section 120.542, Fla. Stat. (2017) and Rules 28-104.001 through 28-104.006, F.A.C., Woodland requests a waiver of Rule 67-48.002(95), Florida Administrative Code, and of Section II.K of the Qualified Allocation Plan ("QAP") to allow the immediate

return of its 2017 Housing Credit Allocation, and an immediate allocation of new Housing Credits (2018 or later). Woodland also requests a waiver of certain provisions of the RFP and Rule 67-48.0072(4)(c) pertaining to the required closing date for a SAIL loan, in order to obtain an extension of the SAIL loan closing date.

2. The name, address, telephone and facsimile numbers for Woodland and its qualified representative are:

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3. The name, address, telephone and facsimile numbers of Woodland's attorneys are:

Gary J. Cohen, Esq.
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4. Pursuant to RFA 2015-106, Woodland timely submitted its application for competitive Housing Credits under the Low Income Housing Tax Credit program ("LIHTC Program" or "HC Program") and for SAIL loan funds. *See* Application Number 2016-008CS.

5. Equity raised from Housing Credits will be used for redevelopment of 96 residential units (all of which will be low-income housing tax credit units) to be known as Woodland Park Phase I (the "Development"). The Development will primarily serve low-

income tenants in Gainesville, Florida. The Development entails the new construction of four residential buildings.

6. On January 29, 2016, Woodland's application was preliminarily selected for funding by FHFC, and the award to Woodland was finalized at the January 29, 2016 Corporation Board of Directors meeting. Petitioner received an invitation to enter credit underwriting on May 6, 2016. The invitation to credit underwriting represented a preliminary commitment for a SAIL loan in the amount of \$3,840,000.00.

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 the preliminary allocation is issued. On November 7, 2017, Woodland and the Corporation entered into the carryover allocation agreement for the Development. The carryover allocation mandated that the development be placed in service by October 31, 2019. The carryover allocation agreement required that Woodland satisfy the "10% test" by April 30, 2018.

8. Pursuant to Woodland's request the Corporation extended the date for satisfying the "10% test" until October 30, 2018. This extension did not affect the required placed in service deadline, which continues to be October 31, 2019. Pursuant to Internal Revenue Code Section 42(h)(1)(E)(ii), the "10 % Test" must be met no later than one year after the date of the carryover allocation (November 7, 2018). There is no ability to further extend the date for satisfaction of the "10% Test". As more fully explained below, the development will not be able to meet the above "10% Test" deadline and also will not be able to meet the October 31, 2019 placed in service deadline. As such, Woodland is requesting an exchange of Housing Credits in order to obtain a later date for satisfying the "10% Test" and in order to effectuate an extension of the placed in service deadline.

9. Under Section 11.f of Exhibit C to the RFA and Rule 67-48.0072(4)(c), the SAIL Loan must close within twelve months of the date of the invitation to enter credit underwriting. Applicants may request one extension of up to twelve months. In the event the loan does not close by the end of the twelve-month extension period, the preliminary commitment or firm commitment, as applicable, for the SAIL loan will be deemed void and the funds will be de-obligated. Woodland was previously granted a twelve-month extension to the closing deadline, extending such deadline to May 6, 2018, and was granted a further extension of the SAIL loan closing deadline to November 6, 2018. For the reasons set forth below, Woodland is requesting an extension of the SAIL loan closing deadline to May 1, 2019.

10. Woodland has encountered difficulty in procuring a construction contract with the general contractor within the limits of the Corporation's total development cost per unit ("TDC") limitations. Due to the involvement of a public housing authority with the Development, construction must comply with federal Davis-Bacon requirements and also with HUD Section 3 requirements. There are few local subcontractors in the Gainesville submarket, and those based locally are involved with market rate developments and are uninterested in bidding on a small Davis-Bacon/Section 3 development. The scarcity of local subcontractors has caused prospective general contractors to look to other markets (Orlando and Jacksonville) for subcontractors. Such subcontractors may be willing to travel to Gainesville; however, such travel (and compliance with Davis-Bacon and Section 3 requirements) increases subcontractor pricing. To date, Woodland has had to exclude prospective bids from several general contractors who were unable to meet the total construction price necessary to comply with the Corporation's TDC requirements. In addition, volatility in the current construction market (due to real and potential tariffs) has made negotiating an agreement with a general contractor extremely difficult. General contractors are seeking escalation clauses based on potential future cost

increases. Such escalation clauses are not allowed by FHFC to the extent they may cause the Development to exceed guaranteed maximum price limitations, which has decreased the pool of general contractors potentially available to undertake construction of the Development.

11. The Development's equity investor is concerned about the uncertainty of the credit swap if delayed until the last quarter of 2019 and is unwilling to close on the equity financing for the Development without assurance that the tax credits will be available to the Development if the Development is not placed in service prior to October 31, 2019. Given that it is now known that the Development may not meet the ten percent test deadline or the placed in service deadline, the equity investor is unwilling to close its investment in the Development if there is any chance that they may not receive credits. Without the waiver request and the current approval of the credit swap, the Petitioner will not be able to construct the Development.

12. Due to the delays described above, Woodland is unable to meet the current November 6, 2018 closing date for the SAIL loan.

13. Woodland expects to finalize bids for the construction contract by the first week of November 2018, and anticipates obtaining final building permits from the City of Gainesville by mid to late November 2018. It is anticipated that credit underwriting would be completed by late November 2018, in time for the credit underwriting report to be submitted and approved at the December 14, 2018 Board meeting. Petitioner would anticipate closing upon debt and equity financing for the development in late March/early April 2019, and would commence demolition and construction at that time. Completion of construction of the development is anticipated to occur in May 2020.

14. As discussed above, the delays have been caused by circumstances outside Woodland's control.

15. As set forth more fully below, Woodland seeks to return its 2017 Housing Credit allocation now, rather than wait for the last calendar quarter of 2019 as required under the QAP, and obtain from the Corporation an immediate allocation of new Housing Credits with a later required placed in service date. In addition, Woodland seeks an extension of the SAIL loan closing deadline from November 6, 2018 to May 1, 2019. Petitioner respectfully requests that no further extension fee be imposed, given that the reason for the delay described herein was wholly outside of Woodland's control.

16. The requested waivers and variance will not adversely affect the Development. A denial of the Petition, however, would (a) result in substantial economic hardship to Woodland, (b) deprive Gainesville and Alachua County of essential affordable rental units set aside for low-income and very low-income tenants, 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 allocation plan.

18. The QAP (Section II.K) provides that Housing Credits may be returned **only** in the last calendar quarter of the year in which a development is required to be placed in service:

...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 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..."

QAP at Section II.K (emphasis added).

19. Section 11.f of the Exhibit C of the RFP and Rule 67-48.072(4)(c) (2014) sets forth the required timeline for closing upon SAIL financing. The loan must close within the twelve months from the date of the invitation to credit underwriting, with an applicant able to request one extension of up to twelve months. In the event the loan does not close by the end of the twelve month extension period, the preliminary commitment for SAIL funds will be deemed void and the funds will be deemed obligated. As discussed herein, Petitioner is requesting an additional extension of the SAIL loan closing date from November 6, 2018 to May 1, 2019, which request requires waiver of the foregoing rule. Petitioner respectfully request that no further extension fee be imposed, given that the reason for the delay described herein was wholly outside of Woodland's control.

20. The applicable Rules for which waivers are requested are implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"),¹ the statute that created the SAIL loan program and the Housing Credits Program. See § 420.5087 and § 420.5099, Fla. Stat. (2017). The Act designates FHFC 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, FHFC is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). §§ 420.5099(1) and (2), Fla. Stat. (2017). Accordingly, the Rules subject to Woodland's waiver requests are implementing, among other sections of the Act, the statutory authorization for the Corporation's establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2017).

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.55 of the Florida Statutes (the "Act").

21. The requested waivers will ensure the availability of Housing Credits and SAIL loan financing which might otherwise be lost as a consequence of development delays described herein.

22. The facts set forth in Sections 10 through 11 of this Petition demonstrate the hardship and other circumstances which justify Woodland's request for Rule waiver.

23. As demonstrated above, the requested waivers serve the purposes of Sections 4420.5087 and 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.

24. 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 in meeting the purposes of the Act, regardless of the possible delays from factors outside of their control. In addition, grant of the requested waivers will permit the development of much needed housing for low-income and very low-income tenants. The residential units to be developed by Woodland are intended to replace existing public housing units, from which tenants have already been relocated. Utilities to the existing (to-be-demolished) units have been disconnected, and such units are not habitable, resulting in hardship to such relocated tenants should the Development not proceed.

25. The requested waivers will not adversely impact the Development or the Corporation.

26. The waivers being sought are permanent in nature.

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

WHEREFORE, Petitioner respectfully requests that the Corporation:

- A. Grant the Petition and all the relief requested therein;
- B. Waive the Qualified Allocation Plan's prohibition from returning Housing Credit Allocations prior to the last quarter of 2019;
- C. Allow the immediate return of Woodland's 2017 Housing Credit Allocation;
- D. Immediately allocate new Housing Credits to Woodland with a later placed in service date, in an amount equal to the amount of its 2017 Housing Credit Allocation;
- E. Waive the requirement that the SAIL loan close by November 6, 2018 and grant an extension of such closing date by through May 1, 2019 with no further extension fee imposed; and
- F. Award such further relief as may be deemed appropriate.



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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The original Petition is being served by facsimile and overnight delivery for filing with the Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, City Centre Building, Room 5000, Tallahassee, Florida 32399, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400 this 16th day of October, 2018.



GARY J. COHEN

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