

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING  
FINANCE CORPORATION

WRDG T3A, LP, a Florida  
limited partnership,

Petitioner,

FHFC CASE NO. 2019-086VW  
Application No. 2018-283C

v.

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.  
\_\_\_\_\_ /

**PETITION FOR WAIVER OF RULE 67-48.002 (95) (2017)**

Petitioner WRDG T3A, LP (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, 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 ("F.A.C.") (May 24, 2017 (the "Rule") pertaining to a tax credit exchange. Due to forces outside of its control, Petitioner cannot spend 10% of the Reasonably Expected Basis by December 10, 2019, as required by the Carryover Allocation Agreement. 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:

WRDG T3A, LP, a Florida limited partnership  
c/o Brett Green  
444 Brickell Ave., Suite 301  
Miami, FL 33131  
Telephone: (305) 533-0015  
Fax: (305) 460-9911  
Email: BGreen@RelatedGroup.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  
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Telephone: 305-789-3350  
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Email: Bmcdonough@stearnsweaver.com

**B. THE DEVELOPMENT**

3. On December 22, 2017, Petitioner timely submitted its Application in response to RFA 2017-113 for Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties (the "RFA") to assist in the construction of 118 new construction high-rise family units in Hillsborough County, Florida (the "Development"). Petitioner submitted an eligible housing credit request in the amount of \$2,110,000 with 10% of the units at or below 40% AMI, 70% at or below 60% AMI and 20% of the units at market-rate. The Development received an allocation of the 2018 Housing Credit dollar amount meeting the requirements of Section 42(h)(1)(E) and (F) of the Internal Revenue Code ("Tax Credits") and was invited to credit underwriting on August 2, 2018. On December 10, 2018, Petitioner entered into a Carryover Allocation Agreement for the allocation of its Tax Credits. Per the Carryover Allocation Agreement, Petitioner must spend 10% of the Reasonably Expected Basis by December 10, 2019. Pursuant to 26 U.S.C. 42(h)(1)(E)(i), the Development must be placed in service not 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, 2020.

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(95), F.A.C. (May 24, 2017), which defines “QAP” with reference to the 2016 QAP and which adopts and incorporates the 2016 QAP by reference. Petitioner further requests a waiver of Subsection II.K. of the 2016 QAP, which provides as follows:

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).

6. 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 Board of Florida Housing. 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.

**E. STATUTES IMPLEMENTED BY THE RULE AND THE 2016 QAP**

7. 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. *See* § 420.5099, Fla. Stat. (the “Statute”).

**F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND SUBSECTION II.K OF THE 2016 QAP**

8. As mentioned above, Petitioner requests a waiver of the timing requirements found in the 2016 QAP to permit Florida Housing to approve the tax credit exchange prior to the last quarter of 2020. Petitioner cannot satisfy the requirement in the Carryover Allocation Agreement to spend 10% of the Reasonably Expected Basis by December 10, 2019. This date is unachievable due to a number of delays relating to City of Tampa (“City”) HOME funds that have delayed the HUD approval process. Specifically, Petitioner has been faced with the following challenges and delays that have forced it to delay closing and start of construction:

- The City allocated \$1,000,000 (“\$1MM”) of HOME funds to the Development so that it could apply for 9% Housing Credits under the Local Government Area of Opportunity Funding goal.<sup>1</sup> This allocation was awarded in 2017 prior to the application being submitted for funding. Ultimately, the Development was awarded funding under the RFA in light of the \$1MM allocation from the City.

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<sup>1</sup> The City identified the Development as the project that would be supported for the Local Government Area of Opportunity goal. The project was ultimately awarded 9% tax credits through the LGAO funding goal.

- In August 2017, the City began the process of obtaining Part 58 Environmental Clearance<sup>2</sup> for the \$1MM HOME funds that were allocated to the Development.
- Also in August 2017, the City disbursed funding to the Tampa Housing Authority (“THA”) prior to completing the necessary steps required for disbursement.
- After communicating back and forth with HUD, the City, and THA, it was determined in 2018 that an error had been made by the City. Discussions commenced with HUD regarding the best way to solve this error.
- Immediately upon learning of the improper disbursement, THA returned the funding (\$856,350) to the City on February 6, 2019.
- Numerous documents were provided by the City, THA, and Petitioner, to HUD in an effort to solve the problem caused by the City’s premature disbursement.
- HUD ultimately determined in May 2019 that the City committed a violation and, therefore, HOME funds could not be utilized for the Development.
- Because the Development was approved under the Local Government Area of Opportunity Funding goal, the project was required to obtain a \$1MM contribution from the City in order to proceed with Credit Underwriting and receive a positive recommendation allowing the Development to move forward.
- On June 5, 2019, HUD agreed to allow the City to proceed with requesting a waiver that allowed the City to allocate \$1MM of CDBG funds to the project. This waiver was approved on August 16, 2019.

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<sup>2</sup> Since HOME funds were allocated to the Development, Petitioner was required to go through the Part 58 Environmental Review process. In 2017, the Part 58 was finalized and submitted to HUD.

- Petitioner is currently in the final steps of the Part 58 approval process for the CDBG Funds, which will be finalized in October 2019.
- The Part 58 Environmental Clearance is a critical path item that must be obtained before the Development can move forward with the HUD RAD Conversion.
- The public notices required for the use of CDBG funding has commenced and were completed on October 1, 2019; HUD is expected to issue an Authorization to Use Grant Funds (“AUGF”) in October.
- Upon receipt of the AUGF from HUD, the financing plan can be immediately submitted to HUD. Upon receipt of the financing plan, Petitioner anticipates receiving the Rental Conversion Commitment (“RCC”) within 60-90 days. Once the RCC issues, Petitioner can begin the RAD Closing process. The closing process typically takes an additional 60-90 days.
- Once HUD approves the loan documents, the Declaration of Trust may be released, allowing the transaction to close and the Development to commence.
- Because the Development will be constructed on land that is currently owned by Tampa Housing Authority, a Declaration of Trust (“DOT”) is recorded on the land and the property cannot be disposed of until this DOT is released through the RAD conversion process.

Due to the foregoing circumstances that were outside of Petitioner’s control, Petitioner is unable to meet the 10% test and expend 10% of the Reasonably Expected Basis by December 6, 2019. Petitioner is thus requesting a credit swap to extend this 10% deadline.

9. Petitioner is working with all parties to expedite the closing. Petitioner has also tried to mitigate the time lost due to the foregoing delays. The Petitioner has submitted 100%

Construction Drawings for permitting with the City and expects to obtain a building permit within the next 60 days. Petitioner expects to have all necessary Development approvals by November 15, 2019. The RCC is expected by December 1, 2019, and full HUD approval and closing is projected for February 1, 2020.

10. 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,<sup>3</sup> 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.*

11. In this instance, Petitioner meets the standards for a waiver of the Rule and timing limitations in the 2016 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 118 affordable housing units will be preserved and made available for the target population in Hillsborough County, Florida. The strict application of the 2016 QAP and the timing limitation on the credit swap will create substantial hardship for Petitioner because it will not be able to satisfy the 10% test if the 10% deadline is not extended through the credit swap. 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.

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<sup>3</sup> “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.*

12. As mentioned above, 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. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, 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.

**G. ACTION REQUESTED**

13. For the reasons set forth herein, Petitioner respectfully requests Florida Housing (i) grant the requested waiver of the timing requirements found in the 2016 QAP and allow the requested credit exchange to be approved before the last calendar quarter of 2020; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER  
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*Counsel for Petitioner*

By: *Brian J. McDonough*  
BRIAN J. MCDONOUGH, ESQ.



**CERTIFICATE OF SERVICE**

The Petition For Rule Waiver is being served by electronic transmission for filing with the Florida Housing Clerk for the Florida Housing Finance Corporation at [Corporation.Clerk@FloridaHousing.org](mailto:Corporation.Clerk@FloridaHousing.org) and a hard copy is being hand-delivered to the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 8th day of October, 2019.

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