

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2017-065VW

WOODLAND PARK  
REDEVELOPMENT I, LLC

Petitioner,

v.

FLORIDA HOUSING FINANCE  
CORPORATION

Respondent.

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**AMENDED AND RESTATED PETITION FOR WAIVER OF THE QUALIFIED  
ALLOCATION PLAN'S  
REQUIREMENT FOR RETURNING HOUSING CREDIT ALLOCATIONS AND RULE  
67-48.002(95)**

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 the 2016 Qualified Allocation Plan’s prohibition from returning its 2016 Housing Credit Allocation prior to the last quarter of 2018. 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 (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 2016 Housing Credit Allocation, and an immediate allocation of new Housing Credits (2017 or later).

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

Woodland Park Redevelopment I, LLC  
9400 South Dadeland Boulevard  
Suite 100  
Miami, Florida 33156  
Attn: David Deutch  
(305) 854-7100 (telephone)  
(305) 859-9858 (telecopier)  
[David@pinnaclehousing.com](mailto:David@pinnaclehousing.com) (e-mail)

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

Gary J. Cohen, Esq.  
Shutts & Bowen LLP  
200 S. Biscayne Blvd., Ste. 4100  
Miami, Florida 33131  
305-347-7308 (telephone)  
305-347-7808 (telecopier)  
[gcohen@shutts.com](mailto:gcohen@shutts.com) (e-mail)

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.

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 December 20, 2016, 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 December 31, 2018. The carryover allocation agreement required that Woodland satisfy the “10% test” by June 30, 2017.

8. Pursuant to request submitted by Woodland on June 22, 2017, the Corporation extended the date for satisfying the “10% test” until December 20, 2017. This extension did not affect the required placed in service deadline, which continued to be December 31, 2018. 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 (December 20, 2017). 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 December 31, 2018 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. Woodland has encountered delays in the development process resulting from the Administrative Complaint filed against certain of Woodland’s principals and affiliates on May 1, 2017, and the Temporary Order of Suspension subsequently entered by Respondent against those same principals and affiliates. Both the Administrative Complaint and the Temporary Order of Suspension pertained to alleged actions unrelated to Woodland’s application. Notwithstanding the foregoing, such actions created uncertainty as to the validity of the SAIL and Housing Credit commitments, and slowed the pre-development portion of the development process. Uncertainty

was also created as to whether certain of Woodland's principals and affiliates (affiliated with Pinnacle Housing Group, LLC) would remain as part of Woodland's ownership and developer structure.

10. On September 22, 2017, a Settlement Agreement between Respondent and the above-referenced principals and affiliates was approved by Respondent. The effect of the Settlement Agreement was to withdraw the Administrative Complaint and the Temporary Order of Suspension *nunc pro tunc*; as a result, Woodland is now prepared to move forward with the development, with affiliates of Pinnacle Housing Group, LLC continuing as part of the ownership and development structure together with an affiliate of Gainesville Housing Authority.

11. Given that it is now known that the Development will not meet the 10% Test deadline or the placed in service deadline, the requested exchange of tax credits is necessary. Without the waiver request and current approval of the credit swap, the Petitioner will not be able to construct the Development.

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

13. As set forth more fully below, Woodland seeks to return its 2016 Housing Credit allocation now, rather than wait for the last calendar quarter of 2018 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.

14. 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.

15. 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.

16. The 2016 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..."

2016 QAP at Section II.K (emphasis added).

17. The applicable Rules for which waivers are requested are implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"),<sup>1</sup> the statute that created the Housing Credits Program. *See* § 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,

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

18. The requested waivers will ensure the availability of Housing Credits which might otherwise be lost as a consequence of development delays described herein.

19. The facts set forth in Sections 9 through 10 of this Petition demonstrate the hardship and other circumstances which justify Woodland's request for Rule waiver.

20. As demonstrated above, the requested waivers serve the purposes of Section 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 by ensuring:

The maximum use of available tax credits in order to encourage development of low-income housing in the state, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.

§ 420.5099(2), Fla. Stat. (2017).

21. 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.

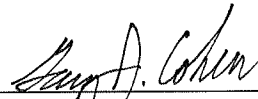
22. The requested waivers will not adversely impact the Development or the Corporation.

23. 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 2016 Qualified Allocation Plan's prohibition from returning Housing Credit Allocations prior to the last quarter of 2018;
- C. Allow the immediate return of Woodland's 2016 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 2016 Housing Credit Allocation; and
- E. Award such further relief as may be deemed appropriate.



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GARY J. COHEN  
Shutts & Bowen LLP  
200 S. Biscayne Blvd., Suite 4100  
Miami, Florida 33131  
(305) 347-7308  
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 <sup>9<sup>th</sup></sup> day of October, 2017.

  
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GARY J. COHEN

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