

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

ISLES OF PAHOKEE II, LLC

Petitioner,

FHFC Case No. 2018- 046  
FHFC Application No. 2016-281C

v.

FLORIDA HOUSING FINANCE  
CORPORATION

Respondent.

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**PETITION FOR WAIVER OF THE QUALIFIED ALLOCATION  
PLANS REQUIREMENT FOR RETURNING HOUSING CREDIT  
ALLOCATIONS AND RULE 67-48.002(95)**

Petitioner, Isles of Pahokee II, LLC, a Florida Limited Liability Company (“Isles of Pahokee” or “Petitioner”) pursuant to Section 120.542, Fla. Stat. submits its Petition to Respondent, Florida Housing Finance Corporation (the “Corporation” or “Respondent”) for a waiver of the 2015 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 Isles of Pahokee requests be allocated immediately. See Rule 67-48.002(95), Florida Administration Code (2015) (the “Rules”), and Qualified Allocation Plan Section II.K.

**THE PETITIONER**

1. The name, address, telephone and facsimile numbers for Isles of Pahokee and its qualified representatives are:

Isles of Pahokee II, LLC  
3225 Aviation Avenue, Suite 602  
Coconut Grove, FL 33133  
(305)860-8188

2. The name, address, telephone and facsimile numbers of Isles of Pahokee’s counsel is:

Maureen M. Daughton  
Maureen McCarthy Daughton, LLC  
1725 Capital Circle N.E., Ste. 304  
Tallahassee, Florida 32308  
(850) 345-8251  
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3. Petitioner successfully applied for financing in *Request for Applications 2015-111 Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments*. The Petitioners Application Number is 2016-281C. Petitioner applied for an allocation of Housing Credits to preserve a 129 unit Public Housing quadraplex to be known as Isles of Pahokee Phase II, (the “Development”). The Development will primarily serve low-income elderly residents in Palm Beach County.

4. On June 8, 2016, Petitioner’s application was preliminarily selected for funding by the review committee, and the award was finalized by action of the Corporation Board on June 24, 2016.

5. As explained below, numerous factors outside of Petitioner’s control have delayed the development process and the closing for this Development. As a result of these delays, Petitioner anticipates that it will be unable to meet the 10% test before June 30, 2018 and complete the Development before December 31, 2018, the current respective deadlines.

THE RULE FROM WHICH A WAIVER IS SOUGHT

6. Rule 67-48.002(95) (2015) defines the “Qualified Allocation Plan” (“QAP”) as follows:

“QAP” or “Qualified Allocation Plan” means, with respect to the HC Program, the 2015 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.

7. The 2015 QAP 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:

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 Applicants 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...

2015 QAP at Section II.K.

8. Petitioner seeks to return its 2016 Housing Credit allocation now rather than wait till the last quarter of 2018, as required under the QAP, and to immediately receive a 2018 Carryover Allocation of Housing Credits from the Corporation.

9. The requested waiver will ensure the availability of Housing Credits for the Development which might otherwise be lost as a consequence of delays caused by factors outside of Petitioner’s control.

10. The following facts demonstrate the economic hardship and other circumstances which justify Petitioner’s request for a Rule Waiver.

11. On December 21, 2016, Isles of Pahoee and the Corporation entered into the Carryover Allocation Agreement for the Development. The Carryover Allocation Agreement

mandated that the Development be placed in service by December 31, 2018. The Carryover Allocation Agreement required that Isles of Pahokee satisfy the “10% test” by June 19, 2017.

12. Required approvals from the United States Department of Housing and Urban Development (“HUD”) for both the Disposition and Mixed Finance processes have been delayed.

13. On April 11, 2017 Isles of Pahokee submitted a Disposition Application to HUD seeking HUD’s approval for the proposed development to be transferred from the Pahokee Housing Authority to the Partnership. This approval is necessary for the Partnership to close and for the development to move forward. Disposition approval was finally provided April 5, 2018.<sup>1</sup>

14. Petitioner is still waiting for HUD to fund the Tenant Protection Vouchers to begin the offsite relocation of residents. This was part of the original Disposition Application submitted to HUD in April of 2017. However, the process requires that after the Disposition Application is approved a separate application HUD 52515 must also be submitted. This application was submitted on or about April 9, 2018.<sup>2</sup>

15. On June 15, 2017, and again on November 9, 2017 in accordance with IRS Revenue Procedure 2014-49, the Corporation granted the request by Petitioner to extend the deadline for satisfaction of the 10% test until June 30, 2018. The extension did not affect the required place in service deadline which remained December 31, 2018. Pursuant to Internal Revenue Code Section 42, the “10% Test” must be met no later than one year after the date of the Carryover Allocation (December 21, 2017), unless otherwise extended under a permitted exception.

16. The Development process was significantly impacted by the far-reaching effects of Hurricane Irma which impacted the Development and surrounding areas in Palm Beach County

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<sup>1</sup> There was a two- month delay of the processing of the Disposition Application because the original scope of work came in over budget. A new scope of work was agreed to by the Housing Authority which then in turn issued a notice to proceed to HUD for finalization of the Disposition Application.

<sup>2</sup> Due to a deficiency in the initial request submitted by the Pahokee Housing Authority a revised request had to be submitted on May 18, 2018.

on September 10, 2017. On September 13, 2017, Palm Beach County was included in a FEMA Major Disaster Declaration.

17. Impacts to surrounding housing stocks as a result of Irma, resulted in a delay to the off-site relocation process which has in turn delayed rehabilitation efforts.

18. Additionally, required approvals from HUD for both the Disposition and Mixed Finance processes were undoubtedly delayed due to the prioritization of overall emergency management obligations throughout the State of Florida and Puerto Rico. This has resulted in delays to the meeting of the 10% test.

19. Lastly the Petitioner must still satisfy the HUD evidence process which takes a minimum of sixty (60) days.

20. Because 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 and rehabilitate the Development.

21. The Petitioner seeks to return its 2016 Housing Credit allocation now, rather than wait for the last calendar quarter of 2018 as required by the QAP and obtain from the Corporation an immediate allocation of Housing Credits (2018) with a later 10% test and placed in service deadline.

22. The requested waiver will not adversely impact the Development or the Corporation. A denial, however, would (a) result in a substantial economic hardship to the Petitioner, (b) deprive Palm Beach County of rehabilitated affordable rental units for low-income elderly tenants, and (c) violate principles of fairness.

23. The requested waiver serves the purposes and goals of Section 420.5099 by facilitating the availability of decent, safe, and sanitary housing in the State of Florida to low-income persons,

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 credit is sought.

420.5099(2), Fla. Stat. (2017)

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

25. Further, by granting the waiver, the Corporation 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.

26. The waiver being requested are permanent in nature.

27. Should the Corporation require additional information, Petitioner 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:

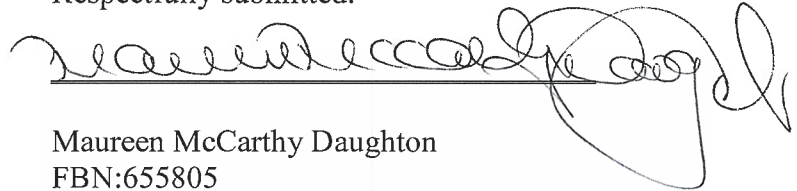
- A. Grant the Petition and all the relief requested therein;
- B. Waive the 2015 Qualified Allocation Plan's prohibition from returning Housing Credit Allocations prior to the last quarter of 2018;
- C. Allow the immediate return of Petitioner's 2016 Housing Credit Allocation;

D. Immediately allocate new Housing Credits to Petitioner with a later placed in service date, in an amount equal to the amount of its 2016 Housing Credit

Allocation; and

E. Award further relief as may be deemed appropriate.

Respectfully submitted.

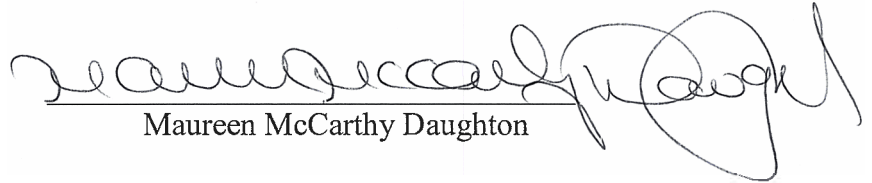


Maureen McCarthy Daughton  
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1725 Capital Circle NE, Ste 304  
Tallahassee, Florida 32308

ATTORNEY FOR PETITIONER

**CERTIFICATE OF SERVICE**

The original Petition is being served via email and U.S. Mail to the Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32399 with copies served on the Joint Administrative Procedures Committee, Room 680, Pepper Bldg, 111 W. Madison Street, Tallahassee, Florida 32399-1400 this 29<sup>th</sup> day of May, 2018.



Maureen McCarthy Daughton