

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

In re: HERITAGE AT POMPANO  
STATION HOUSING PARTNERS, LP

FHFC File No.: 2017-004VW  
FHFC Application No: 2015-111C

Petitioner,  
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FLORIDA HOUSING FINANCE CORPORATION

**PETITION FOR WAIVER OF PROVISION OF RULE 67-48.002(95),  
FLORIDA ADMINISTRATIVE CODE**

Petitioner, HERITAGE AT POMPANO STATION HOUSING PARTNERS, LP, a Florida limited partnership, hereby submits this Petition to the Florida Housing Finance Corporation ("FHFC") for a waiver of Rule 67-48.002(95), Florida Administrative Code, and the restriction in the 2015 Housing Credit Qualified Allocation Plan, which is incorporated by reference in Rule 67-48.002(95), restricting when a recipient of federal low income housing for credits ("housing credits") can exchange previously issued housing credits for current year housing credits, in order to exchange 2015 Housing Credits for 2016 Housing Credits and extend its "placed in service" deadline (and other development deadlines). In support of this petition, Petitioner states as follows:

1. Pursuant to Section 120.542, Florida Statutes (2016), and Rule 28-104.002, Florida Administrative Code, Petitioner requests a waiver of a provision of the 2015 Qualified Allocation Plan, incorporated by reference in Rule 67-48.002(95), Florida Administrative Code, to allow Petitioner to immediately return its 2015 Housing Credits in exchange for an immediate allocation of 2016 housing credits.

**A. THE PETITIONER**

2. Petitioner, Heritage at Pompano Station Housing Partners, LP, received competitive low income Housing Credits pursuant to a SAIL loan from the FHFC for a 116 unit

high-rise development in Broward County. For purposes of this petition, Petitioner's mailing address, email address and telephone number is that of its undersigned attorneys.

3. The Developer of Heritage at Pompano Station is NuRock Development Partners, Inc., a Georgia Corporation ("NuRock"). The Principal of NuRock with the required developer experience is Robert G. Hoskins.

**B. THE DEVELOPMENT AND FUNDING**

4. Through Request for Applications (RFA) number 2014-115, Housing Credit Financing for Affordable Housing Developments located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties, FHFC sought to allocate federal low income housing tax credits ("Housing Credits") to applicants for the development of affordable housing in the named six large counties, with the stated intention of funding one development in each such county with potentially a second application funded in Broward. The award of Housing Credit funding is subject to FHFC Rule Chapter 67-48, Florida Administrative Code.

5. Petitioner applied to Florida Housing for funding in RFA 2014-115, and was assigned Application Number 2015-111C. Petitioner's proposed development will be a 116 unit high-rise development to be located in Pompano Beach, Broward County. In Application 2015-111C, Petitioner committed to set aside 10% of the units for tenants earning at or below 30% of Area Median Income, and the remaining 90% of the units for tenants earning at or below 60% of Area Median Income.

6. The Application sought (and was awarded) an annual allocation of Housing Credits in the amount of \$2,561,000. The total projected development costs in the Application were \$29,125,960, of which \$25,095,290 was projected to be provided by Housing Credit Equity Proceeds. The other proposed sources of permanent financing were a \$3.4 million loan from JP

Morgan Chase Bank, secured by a first mortgage; a \$100,000 grant from the Broward County Housing Finance Authority; and \$530,670 in deferred developer fee.

7. The FHFC Board approved final eligibility and funding determinations for RFA 2014-115 at its meeting in May, 2015. Petitioner was selected for funding. Administrative litigation commenced over some of the other awards of funding in RFA 2014-115 (not involving Broward County applicants) which was not all finally resolved until December 2015.

8. To accommodate the lengthy development approval schedule in Broward County, Petitioner entered “at risk” credit underwriting in early November, 2015. At that time, Petitioner also formally engaged its architect to begin drafting architectural plans to submit to the City of Pompano Beach’s Development Review Committee (DRC). Project development proceeded on the following schedule:

- Late 2015/early 2016: civil engineering for the site plan; Phase I Environmental Report; ALTA survey; environmental subsurface, soils and soil boring report; solicitation and negotiation of debt providers and permanent debt; solicitation and negotiation of equity providers for LIHTC syndication.
- February 2016: initial draft conceptual drawings required for DRC approval submitted to the City.
- April and May 2016: meetings with City by project architect and civil engineer to discuss DRC submissions.
- July 2016: final development design plans approved by City DRC.
- Third quarter 2016: project appraisal commissioned in anticipation of fourth quarter 2016 tax credit partnership closing with selected equity provider (Boston Capital).

- September 2016: building permit approved by City, conditional upon final review and approval of site plan, revised architectural plan (to address City's comments), and landscape plan approval.

9. On or about December 15, 2015, Petitioner submitted the 2015 Carryover Allocation Agreement for the 2015 Housing Credit Allocation not to exceed \$2,561,000.

10. The Carryover Allocation Agreement entered into by Florida Housing and Petitioner required Petitioner to meet the following project deadlines:

- a. Demonstration of site control by June 30, 2016.
- b. Incurring at least 10% of the reasonably expected basis of the Development by June 30, 2016.
- c. Commencement of construction by September 30, 2016.
- d. Finalize credit underwriting by September 30, 2016.
- e. Close the tax credit partnership by September 30, 2016.
- f. Place all qualified buildings in service by December 31, 2017.

11. On September 28, 2016, Hurricane Matthew developed in the Atlantic Ocean. Hurricane Matthew, the first category 5 hurricane since 2007, approached the eastern seaboard and specifically the east coast of Florida in early October, 2016. On October 8, 2016, the federal government declared the east coast of Florida, including Broward County, a Designated Disaster Area.

12. The impact of Hurricane Matthew and its aftermath caused many local governments, including the City of Pompano Beach, to redirect its staffing and resources towards essential repairs and oversight. New construction review and submissions would be delayed until essential repairs are adequately addressed.

13. The Carryover Allocation Agreement entered into by Petitioner and Florida Housing allowed for extension of the deadlines listed above. Petitioner has requested and obtained extensions of the deadlines for commencement of construction and closing the tax credit partnership until January 31, 2017. However, the placed-in-service deadline remains December 31, 2017.

14. Due to the above-listed circumstances which were beyond the Petitioner's control, the projected construction loan closing date for Heritage at Pompano is now late January or early February 2017. For the instant 7 story high-rise, it is anticipated that 21 to 22 months will be required before the final Certificate of Occupancy can issue. It is apparent that construction of this high-rise development by the placed-in-service deadline of December 2017 is not possible.

**C. THE RULES FROM WHICH RELIEF IS REQUESTED**

15. The Housing Credit program is governed in part by a Qualified Allocation Plan (QAP), required by federal law, which sets forth the selection criteria and preferences of Florida Housing for Developments which will receive Housing Credits. The QAP also contains certain provisions governing the distribution and return of Housing Credits. Florida Housing creates a QAP annually, and incorporates it by reference in Florida Housing Rule 67-48.002(95), Florida Administrative Code. The QAP in effect for RFA 2014-115 was the 2015 QAP.

16. Paragraph II.K. of the 2015 QAP allows an applicant to return its allocation of Housing Credits if it is apparent that the Development will not be placed in service by the date required, and such failure is due to circumstances beyond the Applicant's control. According to Paragraph 11.j. of Exhibit C to RFA 2014-115, found on page 117 of the RFA, the approval of a request for a return of Housing Credit allocation and receipt of a new Housing Credit allocation requires payment of a \$15,000 fee. Florida Housing may then allocate Housing Credits to the

Applicant for the year after the year in which the Development was otherwise required to be placed in service, if Florida Housing agrees that the delay was caused by circumstances beyond the Applicant's control, and certain other factors.

17. Paragraph II.K. of the 2015 QAP also specifies that a return of Housing Credit Allocation, and receipt of allocation from the next year, can only occur "in the last calendar quarter of the year in which [the Development] was otherwise required to be placed in service."

18. Section 420.5099, Florida Statutes, designates Florida Housing as the housing credit agency, pursuant to the Internal Revenue Code, and assigns Florida Housing the responsibility to allocate and distribute low-income housing tax credits. The statute also instructs Florida Housing to adopt procedures to ensure the maximum use of housing credits to encourage the development of low-income housing. In furtherance of this statutory purpose, Florida Housing established the competitive Request for Application process to allocate various forms of funding to satisfy various geographic and demographic affordable housing goals. Rule 67-48.002(95), Florida Administrative Code, and the 2015 QAP incorporated therein, implement Section 420.5099, Florida Statutes.

#### **D. JUSTIFICATION FOR REQUESTED WAIVER**

19. Pursuant to Section 120.542(1), Florida Statutes, and Rule 28-104.002, Florida Administrative Code, Florida Housing has the authority to grant waivers to its rule requirements when strict applications of these 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 the principles of fairness, 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.

20. In this instance, as is outlined in more detail below, Petitioner meets the standards for Rule waivers.

**Substantial Hardship**

21. Because Petitioner's Carryover Allocation Agreement was entered into near the end of calendar year 2015, and it was awarded 2015 housing credits, its currently required "placed in service" date is December 31, 2017. Having to wait until the final quarter of 2017 to request an exchange of credits when Petitioner is aware now that it cannot meet the December 31, 2017 "placed in service" deadline, will create uncertainty in the investors involved in the Heritage at Pompano financing structure. Petitioner's investors are unwilling to close the tax credit partnership with that uncertainty lingering at this time.

22. Petitioner would suffer substantial economic hardship if the 2015 QAP provision allowing a housing credit exchange only in the last quarter of the original "placed in service" year was strictly applied. Petitioner has expended substantial sums of money in the development of this project, including over \$1,000,000 towards the site purchase contract, third party professional fees, local government fees, and Florida Housing fees, in order to obtain a building permit, credit underwriting approval, construction loan closing, and commencement of construction.

23. Thus, Petitioner seeks a waiver of this provision of the 2015 QAP in order to immediately return its 2015 Housing Credits (instead of in late 2017) in exchange for an immediate allocation of 2016 Housing Credits. It is apparent that, with the current status of only conditional approval of building permit issuance, and further approvals needed of site plan, revised architectural plan and landscape plan, construction of this high-rise development by the placed-in-service deadline of December 2017 is not possible. Seeking the necessary extension of each of the deadlines imposed by the 2015 Housing Credit Allocation, and the eventual extension request

for the “placed-in-service” deadline and exchange of credits at the end of 2017, will place an undue financial burden on Petitioner, who has already expended in excess of \$1 million on the development.

24. Florida Housing recognizes that on occasion the original development schedule proves to be unattainable, and allows for deadline extensions under certain circumstances. As discussed previously in this Petition, for Housing Credit financing those circumstances may necessitate the exchange of previously allocated credits for an award of current year credits, in order to comply with federal requirements for placing a development in service within a certain calendar year relative to the year of housing credit allocation to that development.

25. The waiver being sought is permanent in nature. Once an exchange of 2015 Housing Credits for 2016 Housing Credits occurs, the relevant deadlines and placed in service date will be controlled by the 2016 housing credit issuance year.

#### **Statutory Purpose Served**

26. Section 420.5099(2), requires the adoption of allocation procedures that “will ensure the maximum use of available tax credits in order to encourage development of low-income housing in the state.” Florida Housing’s statutory purpose of financing the development of affordable housing for low income and very low income persons will still be served by allowing Petitioner to exchange the 2015 Housing Credits for 2016 Housing Credits.

27. The purpose for the request is to accommodate a revised construction schedule. The construction scheduled was delayed due to circumstances beyond Petitioner’s control including delay caused by local government responses to the impacts of Hurricane Matthew. The requested waiver is necessary to ensure that the development can proceed and thereby provide essential affordable housing to the citizens of Broward County.



**Precedent for Waiver**

28. On at least two prior occasions, Florida Housing has waived the QAP provision limiting exchanges of Housing Credits to occur only in the fourth quarter of the “placed in service” year, and to allow the exchange of credits to occur earlier in the development process. See In Re: Arbours of Tumblin Creek, LLC, FHFC Case No. 2015-034VW (Board approval obtained October 30, 2015) and In Re: Oakland Preserve, LLC, FHFC Case No. 2015-035VW (Board approval obtained October 30, 2015). Similar to the circumstances presented here, in both cases the petitioners asserted delays resulting from litigation in RFA process, local development approval delays, and investor partner’s concern over uncertainty of waiting until the last quarter of the “placed in service” year to obtain approval for an exchange of prior issued credits for current year credits.

**E. CONCLUSION**

29. Controlling statutes and Florida Housing’s Rules are designed to allow flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair or unintended results. Waivers should be granted when the applicant subject to the rule demonstrates that strict application would: (a) create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. See §120.542(2), Fla. Stat.

30. The requested waiver here will not adversely affect the development or Florida Housing. The waiver will benefit the citizens of Broward County and further the statutory intent of providing safe, sanitary, and affordable housing units to those in need of low-income housing. Denial of the requested waiver would result in a substantial hardship for the Petitioner.

31. If Florida Housing has questions or requires additional information, Petitioner is

available to provide any information necessary for consideration of this Petition.

**WHEREFORE**, Petitioner, Heritage at Pompano Housing Partners, LP, respectfully requests that the Florida Housing Finance Corporation provide the following relief:

- A. Grant the Petition for Waiver and all the relief requested herein;
- B. Enter an order waiving of the requirements of Rule 67-48.002(95), Florida Administrative Code, and the 2015 Qualified Allocation Plan incorporated by reference therein, to allow Petitioner to return its previously allocated 2015 Housing Credits in exchange for an immediate allocation of 2016 Housing Credits now instead of waiting until the last quarter of 2017, the current "placed in service" year;
- C. Grant such further relief as may be deemed appropriate.

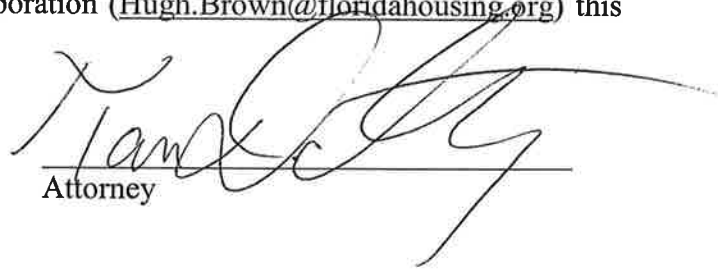
Respectfully submitted this 12th day of January, 2017.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that this original of this Petition has been filed with Kate Flemming, Agency Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000 Tallahassee, Florida 32301 and that a true and correct copy has been provided, via hand delivery, to the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, and an electronic copy provided, via email, to Hugh Brown, General Counsel, Florida Housing Finance Corporation ([Hugh.Brown@floridahousing.org](mailto:Hugh.Brown@floridahousing.org)) this 12th day of January, 2017.

  
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Attorney