

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2017-005VW

FRENCHTOWN SQUARE
PARTNERS, LLC

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION

Respondent.

**PETITION FOR WAIVER OF THE QUALIFIED ALLOCATION PLAN'S
REQUIREMENT FOR RETURNING HOUSING CREDIT ALLOCATIONS**

Petitioner Frenchtown Square Partners, LLC, a Florida limited liability company (“Frenchtown”) submits its Petition to Respondent Florida Housing Finance Corporation (the “Corporation”) for a waiver of the 2016 Qualified Allocation Plan’s prohibition from returning its 2016 Housing Credit Allocation prior to the last quarter of 2017. The return of these Housing Credits is required before the Corporation may reserve an allocation of Housing Credits that Frenchtown 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. (2015) and Rules 28-104.001 through 28-104.006, F.A.C., Frenchtown 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 (2016 or later) with a required placement in service date of July 1, 2018.

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

Frenchtown Square Partners, LLC
9400 South Dadeland Boulevard
Suite 100
Miami, Florida 33156
Attention: David O. Deutch
Telephone 305-854-7100
Telecopier 305-859-9858
E-Mail: david@pinnaclehousing.com

3. The name, address, telephone and facsimile numbers of Frenchtown'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)

4. Pursuant to RFA 2015-103, Frenchtown timely submitted (on April 30, 2015) its application for competitive Housing Credits under the Low Income Housing Tax Credit program ("LIHTC Program" or "HC Program") and for State Apartment Incentive Loan ("SAIL") funds. *See* Application Number 2015-231CS.

5. Equity raised from Housing Credits will be used for new construction of 88 residential units (80 of which will be low-income housing tax credit units) to be known as Casanas Village at Frenchtown Square (the "Development"). The Development will primarily serve low-income tenants in Tallahassee, Leon County, Florida. The Development entails the new construction of one residential building and one non-residential building.

6. On June 19, 2015, Frenchtown's application was preliminarily selected for funding by FHFC, and the award to Frenchtown was finalized at the June 19, 2015 Corporation Board of Directors meeting. On June 24, 2016, the Corporation approved an extension of the

SAIL loan closing deadline from July 1, 2016 to July 1, 2017. On September 16, 2016, the Corporation approved the final credit underwriting report for the Development, and on November 10, 2016 the debt and equity (tax credit) financing for the Development closed, and construction commenced shortly thereafter. The reasons for the delay between the initial award (June 19, 2015) and the closing of the financing (November 10, 2016) are explained more fully below.

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 February 26, 2016, Frenchtown and the Corporation entered into the carryover allocation agreement for the Development. The carryover allocation may (under Section 42 of the Internal Revenue Code) allow the applicant until the end of the second year following the year in which the carryover allocation is issued to place the development in service; however, in the instant case the Corporation mandated in the carryover allocation agreement that the development be placed in service by December 31, 2017 rather than December 31, 2018. The carryover allocation agreement required that Frenchtown satisfy the “10% test” by June 30, 2016, and place the Development in service by December 31, 2017.

8. Pursuant to request submitted by Frenchtown on June 2, 2016, the Corporation extended the date for satisfying the “10% test” until February 26, 2017. This extension did not affect the required placed in service deadline, which continued to be December 31, 2017. As explained more fully below, there is reasonable uncertainty as to whether or not the Development will be able to meet the above placed in service deadline, and as such is requesting an exchange of Housing Credits in order to effectuate an extension of the placed in service deadline to July 1, 2018.

9. The Amended and Restated Operating Agreement entered into with the tax credit investor provides that if completion of 50% of the construction has not occurred by July 1, 2017, then no further installments of equity shall be made unless and until either (a) Frenchtown can present a plan demonstrating its ability to overcome existing delays and place in service by December 31, 2017, or (b) Frenchtown obtains a new allocation of low-income housing credits from the Corporation allowing for placement in service in 2018 rather than December 31, 2017. For the reasons set forth herein, Frenchtown does not anticipate that the Development will be placed in service by December 31, 2017 or achieve 50% construction completion by July 1, 2017. Rather than waiting until the fourth quarter of 2017 (as is required by Section II (K) of the QAP) to find out whether or not the 2016 Housing Credits can be exchanged for new housing credits (with an extended date for placement in service), Frenchtown is requesting an immediate exchange of 2016 housing credits previously awarded for new housing credits with an extended placed in service date of July 1, 2018. It is likely that 50% completion of construction will not be achieved by July 1, 2017 (given the current status of construction progress), and the continued financial viability of the Development would be jeopardized by waiting until the fourth quarter of 2017 to make this request, since the investor member would not (as of July 1, 2017) be required to fund any additional equity installments to the Development, unless a new (later) placed in service deadline was obtained by virtue of an exchange of Housing Credits.

10. The reason for the delay in closing the tax credit financing and commencement of construction is as follows. In March 2016, Frenchtown entered into discussions with a qualified and licensed firm with the requisite experience to act as general contractor after first conducting a thorough background vetting, due to the fact that Pinnacle Housing Group, LLC (the "Developer") had not previously worked with such general contractor. Negotiation of the construction contract proceeded in good faith from April through July 2016. Immediately before

the deadline for submission of documentation for the August 5, 2016 Corporation Board meeting and at such time as the construction contract was fully negotiated and finally completed and ready for execution, the general contractor advised Frenchtown that it had issues with its ability to provide a payment and performance bond for the Development. At that point, Frenchtown commenced a search for a new general contractor, selected Brooks & Freund, LLC and immediately entered into negotiations and finalized a construction contract in time for the final credit underwriting report to be approved at the September 16, 2016 Corporation Board meeting.

11. The Development's design was predicated upon the grant of an easement for an adjoining road right-of-way controlled by the City of Tallahassee. Frenchtown advised the City regarding the necessity of such easement from the inception of the design process for the Development. Notwithstanding usual administrative procedure, the City administration determined that approval of the easement would require full consideration and a vote of the City Commission, rather than grant through an administrative action. The foregoing easement was presented to the Tallahassee City Commission for a vote on July 13, 2016 and was passed; however, this led to a delay of in the final site plan approval and permitting approval process (as such process was dependent upon the approval of the foregoing easement) and also to a delay in the commencement of selection of a general contractor and negotiation of the construction contract.

12. All of the above items were and are outside of Frenchtown's control.

13. As set forth more fully below, Frenchtown seeks to return its 2016 Housing Credit allocation now, rather than wait for the last calendar quarter of 2017 as required under the QAP, and obtain from the Corporation an immediate allocation of new Housing Credits with a required placed in service date of July 1, 2018.

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 Frenchtown, (b) deprive Tallahassee and Leon 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"),¹ the statute that created the Housing Credits Program. *See* § 420.5099, Fla. Stat. (2014). 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

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes, (the "Act").

authorized to establish procedures for the allocation and distribution of low-income housing tax credits (“Allocation Procedures”). §§ 420.5099(1) and (2), Fla. Stat. (2016). Accordingly, the Rules subject to Frenchtown’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. (2014).

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 11 of this Petition demonstrate the hardship and other circumstances which justify Frenchtown’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. (2014).

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, such as Pinnacle Housing Group, LLC, in meeting the purposes of the Act, regardless of the possible delays from factors outside of its control.

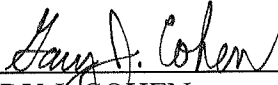
22. The requested waivers will not adversely impact the Development or the Corporation.

23. The waivers being sought are permanent in nature.

Should the Corporation require additional information, Frenchtown is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of the Qualified Allocation Plan's Requirement for Returning Housing Credit Allocations.

WHEREFORE, Petitioner Frenchtown Square Partners, LLC, respectfully requests that the Corporation:

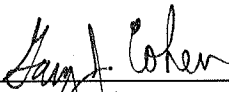
- A. Grant the Petition and all the relief requested therein;
- B. Waive the 2016 Qualified Allocation Plan's prohibition from returning Housing Credit Allocations prior to the last quarter of 2017;
- C. Allow the immediate return of the Frenchtown 2016 Housing Credit Allocation;
- D. Immediately allocate new Housing Credits to Frenchtown with a placed-in-service date of July 1, 2018, 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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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 13th day of January, 2017.



GARY J. COHEN

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