

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**In re: Amelia Court at Creative  
Village Partners, Ltd.**

**FHFC File No: 2016-305CS  
FHFC Case No. 2017-054VW**

**Petitioner.**

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FLORIDA HOUSING  
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**PETITION FOR WAIVER OF PROVISION OF RULE-ADOPTED 2015 HOUSING  
CREDIT QUALIFIED ALLOCATION PLAN TO ALLOW EXCHANGE OF  
2016 HOUSING CREDITS FOR 2017 HOUSING CREDITS**

Petitioner, AMELIA COURT AT CREATIVE VILLAGE PARTNERS, LTD. (“Petitioner” or “Amelia Court”), a Florida limited partnership, hereby submits this Petition to the Florida Housing Finance Corporation (“FHFC”) for a waiver of the restriction in the 2015 Housing Credit Qualified Allocation Plan, incorporated by reference in FHFC Rule 67-48.002(95), Fla. Admin. Code on when a recipient of housing credits can exchange previously issued housing credits for current year housing credits. Amelia Court seeks this waiver in order to immediately exchange 2016 Housing Credits for 2017 Housing Credits and extend its “placed in service” deadline (and other associated development deadlines). In support of this petition, Petitioner states as follows:

**A. NATURE OF REQUEST**

1. Pursuant to Section 120.542, Fla. Stat. (2017), and Rules 28-104.001 through 28-104.006, Fla. Admin. Code, Petitioner requests a waiver of a provision of the Qualified Allocation Plan (“QAP”), incorporated by reference in Rule 67-48.002(95), Fla. Admin. Code, to allow Petitioner to immediately exchange housing credits from Florida Housing’s 2016 allocation for 2017 housing credits. The rule-adopted QAP as written would require Amelia Court to wait until the fourth quarter of calendar year 2018 to request an exchange of housing credits.

**B. THE PETITIONER**

2. As explained in this Petition, Petitioner was the recipient of Housing Credits and a SAIL loan from FHFC for a revitalization initiatives development in Orange County. For purposes of this petition, Petitioner's address is that of its undersigned attorney, M. Christopher Bryant, Oertel, Fernandez, Bryant & Atkinson, P.A., 2060 Delta Way, Tallahassee, Florida 32303 (telephone (850) 521-0700, fax (850) 521-0720, E-mail:[cbryant@ohfc.com](mailto:cbryant@ohfc.com))

**C. RFA 2015-113 PROCESS AND AMELIA COURT'S APPLICATION**

3. Through Request for Applications (RFA) number 2015-113, FHFC sought to allocate federal low income housing tax credits ("Housing Credits") and State Apartment Incentive Loan ("SAIL") financing for affordable multifamily rental housing that is part of local revitalization initiatives. The awards of SAIL and Housing Credit financing are subject to FHFC Rule Chapter 67-48, Fla. Admin. Code.

4. Amelia Court applied in RFA 2015-113 for an award of Housing Credits and a SAIL loan for the construction of a 116 unit mid-rise development in Orange County with a Family Demographic Commitment, with 93 of those units to be affordable rental housing. Amelia Court sought Housing Credits in the annual amount of \$2,185,789 and a SAIL loan of \$2.0 million.

5. The Co-Developer Entities for Amelia Court are Atlantic Housing Partners, LLLP, ("AHP," a Florida limited partnership) and Bank of America Community Development Corporation ("BOA CDC," a North Carolina corporation authorized to do business in Florida). The General Partner of AHP is Atlantic Housing Partners Managers, LLC, and the two Limited Partners of AHP are Florida CIS Housing Advisors, LLC, and Atlantic Housing Group Partners, Ltd.

6. The natural person Principal of AHP whose development experience was relied

upon in the application process to establish General Development Experience for AHP was W. Scott Culp. In its application, Amelia Court identified over thirty (30) affordable housing developments in Florida completed by AHP since 2005, all involving either 9% (competitive) housing credits or 4% (noncompetitive) housing credits, while Mr. Culp was a Principal of AHP. Mr. Culp was (and is) a manager and member of the General Partner of AHP.

7. The Amelia Court application identified Nancy Crown as the natural person Principal of BOA CDC whose development experience was relied upon to establish General Development Experience for BOA CDC. Six affordable housing developments were identified to establish Ms. Crown's development experience, all involving 9% housing credits, all but one completed after 2005, and one of which was in the state of Florida. Ms. Crown was identified as a Senior Vice President and Assistant Secretary at BOA CDC.

8. For purposes of Section 42 of the Internal Revenue Code, Amelia Court proposed to set aside 40% of the units for residents earning 60% or less of Area Median Income ("AMI"). In the Total Set-Aside Breakdown Chart included in the Amelia Court application, Amelia Court committed to set aside 10% of the 116 units (12 units) for tenants at or below 40% of AMI (the Extremely Low Income level for Orange County in RFA 2015-113); 70% of the units (81 units) for tenants at or below 60% of AMI; and 20% of the units (23 units) as Market Rate Units.

9. RFA 2015-113 encouraged applicants to include Market-Rate Units in their proposed developments. Applicants could be awarded 5 points (towards the total 105 points available) for including Market-Rate Units. Applicants from Large Counties proposing Family Demographic Developments (like Amelia Court) could set aside no more than 80% of their units as affordable to qualify for the 5 Market-Rate Commitment points. Based on information and belief, all thirteen (13) applicants in RFA 2015-113 included market rate units in their proposals.

## **FUNDING AWARD AND POST-AWARD DEADLINES**

10. FHFC's Board of Directors approved the selection of Amelia Court to receive funding under RFA 2015-113 on March 16, 2016. Notices of protest of the proposed award were filed but did not ultimately result in litigation. On April 12, 2016, Florida Housing invited Amelia Court to enter credit underwriting. The April 12, 2016 letter required that the SAIL loan close within 12 months (by April 12, 2017), consistent with the terms of the RFA 2015-113 at Exhibit C, Section 11.f of the RFA.

11. On October 25, 2016 Amelia Court submitted a letter requesting extension of the deadline to complete credit underwriting for its SAIL loan to align with credit underwriting for the Housing Credit award to Amelia Court. Florida Housing approved the extension request by e-mail dated November 22, 2016.

12. On February 27, 2017, Amelia Court submitted a letter to Florida Housing requesting extension of the SAIL loan closing deadline by one year, to April 12, 2018. Florida Housing's Board of Directors approved the SAIL loan closing extension at its March 24, 2017 Board meeting (as Item VII.C. on the Board's Consent Agenda). Amelia Court was notified of this by letter dated March 27, 2017. The March 27 letter advised Amelia Court of the requirement to pay a \$20,000 extension fee by April 3, 2017, and Amelia Court timely paid the fee.

13. On November 10, 2016, Florida Housing and Amelia Court entered into a Carryover Allocation Agreement, allocating 2016 Housing Credits in an annual amount not to exceed \$2,185,789.00. The Carryover Allocation Agreement entered into by Florida Housing and Amelia Court required Amelia Court to meet the following project deadlines:

- a. Demonstrate site control by May 31, 2017.
- b. Incur at least 10 percent of the reasonably expected basis in the

Development (the “10% test”) by May 31, 2017.

- c. Commence construction on or before August 31, 2017.
- d. Complete Credit Underwriting by August 31, 2017.
- e. Close the tax credit partnership by August 31, 2017.
- f. Execute a Memorandum of Understanding with at least one designated Special Needs Referral Agency by August 31, 2017.
- g. Place all qualified buildings within the Development in service on or before November 30, 2018.

14. On May 11, 2017, Amelia Court requested an extension of the May 31, 2017 deadlines for demonstrating site control and meeting the 10% test. By letter dated May 16, 2017, Florida Housing approved such extensions until November 10, 2017, and acknowledged receipt of payment of extension fees of \$10,000 for such extensions.

15. For reasons explained more fully in this Petition, Amelia Court seeks to exchange its 2016 Housing Credits for 2017 Housing Credits, and to thus extend its “placed-in-service” date to twenty-four (24) months after the end of the month in which an amended or revise carryover allocation agreement is entered into, reflecting the return of 2016 credits and award of 2017 credits. Amelia Court also seeks to extend accordingly those deadlines associated with the Housing Credit award and Carryover Allocation Agreement, measured from the end of the month in which the Carryover Allocation Agreement is amended or revised: specifically, to demonstrate site control and satisfy the 10% test six (6) months later; to commence construction nine (9) months later; to complete credit underwriting nine (9) months later, to close the tax credit partnership nine (9) months later; and to execute an MOU with a designated Special Needs Referral Agency nine (9) months later .

**D. QAP PROVISIONS**

16. 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), Fla. Admin. Code. The QAP in effect for RFA 2015-113 was the 2015 QAP.

17. 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.i. of Exhibit C to RFA 2015-113, found on page 93 of the RFA, the approval of a request for a return of HC allocation and receipt of a new HC allocation requires payment of a \$15,000 fee. Florida Housing may then grant a new Housing Credits allocation to the Applicant.

18. However, Paragraph II.K. of the QAP 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." As noted, since Amelia Court's Carryover Allocation Agreement was entered into late in calendar year 2016, its currently required "placed in service" date is November 30, 2018. Due to delays in the entire revitalization effort of which Amelia Court is a part, it will not be desirable from the Owner's or the tenants' perspective for Amelia Court to place its development in service by November 30, 2018.

19. Having to wait until the final quarter of 2018 to request an exchange of credits when Amelia Court is aware now that it cannot meet the November 30, 2018 "placed in service" deadline

will create uncertainty in the investors involved in the Amelia Court financing structure. That uncertainty was exacerbated by the change in administration in Washington, with a likely push to lower corporate federal income tax rates, which will in turn substantially impact the price investors will be willing to pay for housing credits. Amelia Court's investors are hesitant without significant price reduction to close the tax credit partnership with that uncertainty lingering at this time.

20. Amelia Court seeks a waiver of Paragraph II.K. of the QAP in order to return its 2016 Housing Credits now (instead of in late 2018) and receive an allocation of 2017 Housing Credits. Especially given the instability in the market for housing credits, driven by likely changes in corporate income tax rates, tax credit investors generally, and Amelia Court's equity investor specifically, are unwilling to commit to purchasing tax credits (by entering into the tax credit partnership) without a significant price reduction. Further, with the delay in the construction of the entire revitalization effort of which Amelia Court is a part, discussed below, it will not be possible to complete this development by the end of the November, 2018.

#### **E. JUSTIFICATION FOR REQUESTED WAIVER**

21. As noted above, RFA 2015-113 sought applications for mixed affordable and market rate housing developments which are part of a local revitalization initiative. Amelia Court will be part of a 68 acre planned development, the Creative Village Planned Development, in downtown Orlando. The Creative Village Planned Development is a mixed use development that on completion will include offices and creative studios, higher education, preschool through grade 12 education, mixed-income residential, retail and commercial uses, and a hotel.

22. A major component of the Creative Village Planned Development is the construction of a downtown campus of the University of Central Florida. Development of that downtown University of Central Florida campus was delayed by the Florida Legislature's failure

to appropriate funding for the planning, design, and commencement of the development, forcing the University of Central Florida to raise funds from other sources. This resulted in the University of Central Florida campus being delayed at least a year.

23. If Amelia Court is placed in service by the end of November, 2018, it will be the first component of the multi-use Creative Village planned development to be completed and occupied. The remaining components- retail, commercial, office, educational, and institutional- will still be under construction. Placing the tenants of Amelia Court in the middle of such a congested, active heavy construction zone would present an unsafe environment, particularly for a family development where many tenant households will include children.

24. Creative Village is precisely the kind of revitalization project in which Florida Housing seeks to locate affordable housing units. Upon completion, Creative Village will provide educational, employment, and shopping opportunities literally within a short walking distance of Amelia Court. Amelia Court has the potential to be a showpiece for Florida Housing's active participation in local revitalization efforts.

25. Further, although the primary equity investor in this development, FL Tax Holdings 2010, Ltd., and its affiliates, are experienced equity investors whom Atlantic Housing frequently works with, it is anticipated that FL Tax Holdings or its affiliates may involve other investors to participate in the equity funding. Both FL Tax Holdings and its affiliates, as well as the other investors, are faced with uncertainty over the extent and pricing of their participation due to unsettled tax law changes from the federal government. As a result, investors in the Amelia Court development would be unwilling to proceed at this time without a significant reduction in the price they would pay for housing credits. The combination of the financial impact on the development and the safety concerns associated with the delayed construction schedule for other major



components of the overall Creative Village planned development support the need for an exchange of tax credits and a modified development schedule for Amelia Court.

**Relief Requested**

26. Amelia Court seeks to exchange its previously awarded 2016 Housing Credits for 2017 Housing Credits, which Amelia Court understands would extend the placed-in-service date to November 30, 2019, and would provide certainty to Amelia Court's investors that the project will remain in compliance with the "placed in service" date required for Housing Credit developments. Investor uncertainty regarding Amelia Court's ability to obtain a later placed in service date, and the unwillingness of investors to close the tax credit partnership in the face of such uncertainty, would impose a substantial economic hardship on Amelia Court; essentially, the project could not move forward, tax credits would be returned, and the large expenditures Amelia Court has already expended would be lost.

27. Granting the requested waiver would not adversely affect any required set-asides or points considered by Florida Housing in the scoring of the Amelia Court, and would not alter the scoring by Florida Housing that qualified Amelia Court for Housing Credits and SAIL funding. The change would also not provide Amelia Court with an unfair competitive advantage over other applicants. All scoring would have been the same.

28. The requested Rule waiver or variance will not adversely impact the Amelia Court development or the Florida Housing funding processes, and will serve the statutory purposes of the Florida Housing process. A denial of this Petition, however, would result in substantial economic hardship to Amelia Court.

### **Statutory Purpose Served**

29. Section 420.5087, Fla. Stat., created the State Apartment Incentive Loan program to provide loans to provide affordable housing to low income persons.

30. Section 420.5099, Fla. Stat., 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.

31. In furtherance of these statutory purposes, Florida Housing established the competitive Request for Application process to allocate various forms of funding to satisfy various geographic and demographic affordable housing goals. The RFA in which Amelia Court applied was specifically for revitalization initiatives, whose benefits extend beyond just providing affordable housing but also stimulate investment in educational facilities and commercial and retail operations that promote job growth and enhance the local tax base.

32. 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.

33. 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 Amelia Court to exchange the 2016 credits for 2017 credits. The purpose for the request is to address investor

certainty regarding compliance with the placed-in-service date and equity pricing, and to accommodate coordination of the development with other components of the local revitalization effort which Amelia Court will be a part of.

### **Substantial Hardship**

34. Amelia Court would suffer substantial economic hardship if the QAP provision allowing a housing credit exchange only in the last quarter of the original “placed in service” year was strictly applied. Amelia Court has expended substantial sums of money in the development of this project, including the Housing Credit administrative fee of \$196,721.00; approximately \$50,000 in credit underwriting, preliminary recommendation letter, and extension fees; and substantial architectural engineering, permitting, and other fees.

35. The waiver being sought is temporary in nature, to the extent that, once an exchange of 2016 housing credits for 2017 housing credits occurs, the relevant placed-in-service date would be controlled by the 2017 housing credit issuance year.

36. If Florida Housing has questions or requires additional information, Petitioner is available to provide any information necessary for consideration of this Petition.

### **Precedent for Variance**

37. On several occasions over the past year, 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.

Just a few examples of the recent credit exchange QAP waivers include::

*In Re: Arbours of Tumblin Creek, LLC*, FHFC Case No. 2015-034VW (Board approval obtained October 30, 2015);

*In Re: Oakland Preserve, LLC*, FHFC Case No. 2015-035VW (Board approval obtained October 30, 2015);

*In Re: Heritage at Pompano Station Housing Partners, LP*, FHFC Case No. 2017-004VW (Board approval obtained February 3, 2017);

*In Re: Frenchtown Square Partners, LLC*, FHFC Case No. 2017-005VW (Board approval obtained February 3, 2017);

*In Re: West Lakes Phase I, LP*, FHFC Case No. 2017-007VW (Board approval obtained February 3, 2017);

*In Re: Landings at Port Richey Senior Housing Limited Partnership*, FHFC Case No. 2017-008VW (Board approval obtained February 3, 2017).

In each of these cases the Petitioners cited as one reason for the requested early credit exchange the investor partner's concern over 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.

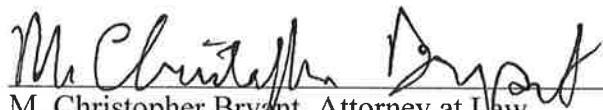
**WHEREFORE**, Petitioner Amelia Court at Creative Village Partners, Ltd., respectfully requests that the Florida Housing Finance Corporation provide the following relief:

- A. Grant the Petition for Waiver and all the relief requested herein;
- B. Enter an order granting a waiver of the requirements of the 2015 Qualified Allocation Plan, incorporated by reference in Rule 48.002(95), Fla. Admin. Code, so as to allow Amelia Court to exchange previously allocated Housing Credits for 2017 Housing Credits now instead of in the last quarter of 2018, the current "placed in service" year, and extend the date for Amelia Court being placed in service by twelve months, from the current November 30, 2018 date to November 30, 2019; and
- C. Extend other Housing Credit deadlines as follows, relative to the end of the month in which an Amended Carryover Allocation Agreement is entered into:
  - \* demonstrate site control within six (6) months;
  - \* demonstrate satisfaction of the 10% test within six (6) months;

- \* commence construction within nine (9) months;
- \* complete credit underwriting within nine (9) months;
- \* close the tax credit partnership within nine (9) months; and
- \* execute an MOU with at least one Special Needs Referral Agency within nine (9) months; and

D. Grant such further relief as may be deemed appropriate.

**RESPECTFULLY SUBMITTED** this 6<sup>th</sup> day of July, 2017



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Petition for Waiver is being filed by electronic filing (with a copy by U.S. Mail) with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301, [CorporationClerk@floridahousing.org](mailto:CorporationClerk@floridahousing.org), with copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, and by electronic transmission to Hugh Brown, General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301, [hugh.brown@floridahousing.org](mailto:hugh.brown@floridahousing.org), this 6<sup>th</sup> day of July, 2017.

  
M. Christopher Bryant