STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CHERRY VILLAGE, L.P.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC Case No. 2023-097VW
FHFC RFA 2020-204
Application No. 2021-045C

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF THE QUALIFIED ALLOCATION PLAN'S REQUIREMENT FOR RETURNING HOUSING CREDIT ALLOCATIONS AND RULE 67-48.002(96), FLORIDA ADMINISTRATIVE CODE (2020)

Pursuant to section 120.542, Florida Statutes, and rule 28-104.002, Florida Administrative Code, Petitioner, CHERRY VILLAGE, L.P., ("Cherry Village" or "Petitioner") submits this Petition to Respondent Florida Housing Finance Corporation ("Florida Housing") for a waiver of Subsection II K of the 2020 Qualified Allocation Plan ("2020 QAP"), which was incorporated by reference in rule 67-48.002 (96) (eff. 6/23/2020). Subsection II.K of the QAP prohibits the return of Cherry Villages' 2020 Housing Credits before the last quarter of 2023. Cherry Village seeks to return the 2021 credits now in exchange for an immediate allocation of 2023 Housing Credits. This would result in an extension to the placed-in-service date from December 31, 2023, to December 31, 2024. In support of this Petition, Cherry Village states as follows:

PETITIONER AND ATTORNEY

1. The name, address, telephone number and email address of the Petitioner is.

Cherry Village, L.P., (Attn Robert K. Trent, 1011 Cherry Ave, Nashville, Tennessee, 37203, 615-370-5721, rtrent@fcpnet.com). For purposes of this proceeding, the contact information for Petitioner is that of the undersigned counsel.

2. The name, address, telephone number, and email address for Petitioner's attorney is Maureen McCarthy Daughton, Maureen McCarthy Daughton, LLC, 1400 Village Square Blvd., Ste 3-231, Tallahassee, Florida 32312, 850-345-8251: mdaughton@mmd-lawfirm.com.

BACKGROUND

3. Cherry Village applied for funding seeking $1,719,208.00 in Housing Credit Funding in response to, *RFA 2020-204 Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments* (the "RFA"). Cherry Village proposed to rehabilitate 147 existing garden apartments housed in three separate buildings, known as Cherry Village Apartments, in Miami-Dade County to serve an Elderly demographic.

4. On December 4, 2020, Cherry Village was preliminarily selected for funding by Florida Housing's Board of Directors. Cherry Village was invited into credit underwriting on February 3, 2021. The property was acquired in August of 2021 and after a change in HUD financing products, the loan closing and Notice of Commencement were completed and provided in December of 2022.

5. The proposed development when originally constructed received funding from the United States, Department of Housing and Urban Development. ("HUD").

6. The Placed In-Service deadline is December 31, 2023, which due to numerous issues is not currently achievable.

7. Initially, the work is being performed on a fully occupied residential complex which requires residents to be relocated while work is being performed on the units. The coordination involved resulted in a slow start.

8. The Development has experienced and continues to experience supply chain issues, which has required materials to be ordered months in advance of when they are needed. Currently this is impacting elevator modernization and emergency generators, which are required in the scope of work. Current estimates place the elevator equipment onsite in November with work completed in February or March. The delays for items such as kitchen cabinets and shower panels have been months while items such as the elevators have been purchased but are on a wait list for delivery.

9. Additionally, there are skilled labor shortages and consistency of work issues which has resulted in slow progress at times. By way of example, there have been delays due to unacceptable work having to be redone until it meets the necessary or required standard of care.

10. The City of Homestead initially requested the necessary work for the 40-year building re-certification be completed at the same time. However, the City has recently requested the building recertification be performed independent of the primary contract resulting in issues with sequencing of work leading to delays. We are working closely with the city to coordinate efforts to avoid unnecessary delays.

11. Lastly, there have been changes to the scope of work because of the discovery of more extensive water damage than originally expected. This has increased the framing, drywall, insulation, and plumbing scopes of work. The City Inspector has also requested changes to the roof exhaust system for the bathrooms that were not initially anticipated.

12. The November 3, 2023, construction monitoring report prepared by ICG estimates the work in place at 41.54%.[1]

13. If an Applicant cannot complete its development by the end of the year in which the preliminary allocation of Housing Credits is issued, the applicant must enter a "Carryover Allocation Agreement" ("Carryover Agreement") with Florida Housing by December 31st of the year in which the preliminary allocation is issued. Cherry Village and Florida Housing entered into the Carryover Agreement June 8, 2021. The Carryover Agreement allows (pursuant to Section 42 of the Internal Revenue Code) the applicant until the end of the second year in which the carryover allocation is issued to place the development in service. Cherry Village's Carryover Agreement required that the Development be placed in service by December 31, 2023.

14. Cherry Village proposes to exchange its 2021 Housing Credits for an allocation of 2023 Housing Credits, which would effectively extend the placed-in-service deadline of the Development to December 31, 2024. This exchange will require a waiver of Subsection II.K of the QAP, which provides:

> Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required pursuant to Section 42 of the IRC, or it is apparent that a Development will not be placed in service by the date required pursuant to Section 42 of the IRC, 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 pursuant to Section 42 of the IRC, the Corporation will reserve allocation in an amount not to exceed the amount of Housing Credits returned, and will issue a Carryover Allocation Agreement allocating such Housing Credits returned, and may issue a Carryover Allocation Agreement allocating such Housing Credits to the Applicant for either the current year or the year after the year in which the Development was otherwise required to be placed in service pursuant to Section 42 of the IRC provided the following conditions have been met:

[1] The estimate including stored materials is 53.93%

(i) The sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and

(ii) A site inspection reflecting the percentage of Development completion must be completed. If the Development is at least fifty (50) percent completed, as reflected in the site inspection, the approval may be made by Corporation staff. If the Development is less than fifty (50) percent completed, as reflected in the site inspection, the approval must be made by the Board. In making such determination, the Board must find and determine that the delay was caused by circumstances beyond the Applicant's control, and that the sponsor exercised due diligence in seeking to resolve the circumstances causing the delay; and

(iii) The Corporation or Board, as applicable, must find that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally, allocated, and that the Development is still desirable in terms of meeting affordable housing needs.

15. The requested waiver is permanent in nature.

RULE FOR WHICH WAIVER IS SOUGHT

16. Cherry Village seeks a waiver from Subsection II.K of the 2020 QAP, which was incorporated by reference into Rule 67-48.0002(96) (2020).

STATUTES IMPLEMENTED BY RULE

17. Pursuant to section 420.5099(1), Florida Statutes, Florida Housing is designated as the "housing credit agency" for Florida within the meaning of section 42 of the Internal Revenue Code. Florida Housing is responsible for the allocation plan that includes priorities and selection criteria. Section 420.5099(2), F.S. also requires Florida Housing to "adopt allocation procedures that will ensure the maximum use of available tax credits in order to encourage development of lo the a of the applicant to proceed to competition of the project in the calendar year for which the credit is sought." Thus, the rules subject to this waiver request

implement sections 420.5099(1) and (2), F.S., as well as other provisions of Part V of chapter 420, Florida Statutes, the Florida Housing Finance Corporation Act.

JUSTIFICATION FOR REQUESTED WAIVER

18. Section 120.542(1), Florida Statutes, provides that "[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation." That procedure requires those seeking a variance of, or waiver from, a rule to demonstrate that application of the rule would create a substantial hardship or would violate principles of fairness. §120.542(2), Fla. Stat.[2] Petitions for variances and waivers are also required to demonstrate the purposes of the underlying statute will be achieved.

19. Strict adherence to Subsection II.K. of the QAP would create a substantial hardship for Cherry Village. Without the requested credit swap, the previously awarded Housing Credits will be unavailable, which means the Development cannot be completed. That would deprive low-income elderly residents of Miami-Dade County of much needed affordable housing. As illustrated above, issues relating to the development of the site of the proposed Development are beyond the Applicant's control. Cherry Village exercised due diligence in seeking to resolve the circumstances causing the delay. Other than the delay's described above the Development in all respects still meets the conditions upon which the Housing Credits were originally allocated, and the Development is still desirable in terms of meeting the affordable housing needs in Miami-Dade County.

[2] "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver for purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner not significantly different from the way it affects other similarly situated persons who are subject to rule..

20. Strict adherence to Subsection 11.K. of the QAP also would violate principles of fairness, as Florida Housing has granted similar waivers to other Developments facing similar circumstances.

21. The requested waiver will not adversely affect any party, including any other party that applied to receive an allocation of Housing Credits in RFA 2020-204, or Florida Housing. A denial of the requested waiver, however, would result in substantial economic hardship to Cherry Village as it will be unable to complete the Development, which will only contribute further to the shortage of affordable housing in Miami-Dade County. Additionally, denial of the waiver request would violate principles of fairness, as other similarly situated Developments have been granted waivers to Subsection IIK of the QAP and the rule that incorporates it by reference.

22. The statutes underlying the QAP, and the rule will be served by the approval of Cherry Village' waiver request. Section 420.504(4), Florida Statutes, states that Florida faces "a serious shortage of decent, safe, and sanitary housing in the state available to persons and families of low, moderate, and middle income..." One of the primary purposes of the Act is to facilitate the availability of affordable housing. Granting the waiver request will further these goals, as Cherry Village will not be able to complete the preservation of the proposed development if the waiver is not granted.

ACTION REQUESTED

23. For the above stated reasons, Cherry Village respectfully requests that the Florida Housing Board of Directors:

- Grant the requested waiver of Subsection II.K of the 2020 QAP and rule 67-48.002(96);
- Allow the immediate return of Cherry Village's 2021 Housing Credit Allocation; and

- Immediately allocate 2023 Housing Credits to with a later placed in service date of December 31, 2024.

Dated this 17th day of November 2023.

Respectfully submitted,

Maureen McCarthy Daughton,
Maureen McCarthy Daughton, LLC
FBN: 655805
1400 Village Square Blvd., Ste 3-231
Tallahassee, Florida 32312
Mdaughton@mmd-lawfirm.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was filed this 17th day of November 2023, by electronic delivery to:

Florida Housing Finance Corporation
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
Corporationclerk@floridahousing.org

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

Maureen M. Daughton