STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

IN RE: SP VILLAGE LLC **FHFC CASE NO.: 2021-33VW**

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FLORIDA HOUSING
FINANCE CORPORATION

PETITION FOR WAIVER OF
RULES 67-21.003(8)(J) AND 67-48.004(3)(J)
TO DECREASE THE TOTAL SET-ASIDE PERCENTAGE

Petitioner, SP Village LLC., a Florida limited liability company ("Petitioner"), pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, hereby petitions Respondent, FLORIDA HOUSING FINANCE CORPORATION (the "Corporation") for a waiver of Rules 67-21.003(8)(j) and 67-48.004(3)(j), Florida Administrative Code, to decrease the total set-aside percentage from 100 percent to 95 percent (46 out of 48 units).

In support of this petition, the Petitioner states:

1. The name of the Petitioner is SP Village LLC. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address are that of Petitioner's undersigned counsel.

The Development

2. Requested background information:

Application Number:	2018-019BS/2016-567C
RFA Number:	2017-108
Development name:	Choctaw Village
Applicant/Borrower	SP Village LLC/SP Village Manager LLC
Developer/Principal:	Southport Development, Inc. a WA corporation doing business in FL as Southport Development Services, Inc./ J. David Page
Number of units:	48
County of development:	Okaloosa County
Development/Type:	Acquisition/Rehabilitation/Garden Apartments
Set Asides:	90% @ 60% AMI, 10% @ 33% AMI
Demographic:	Family
Funding:	• SAIL - $2,500,000 • ELI - $396,300 • MMRB - $5,000,000 • Annual 4% HC - $239,039

Background

3. The Choctaw Village development in Okaloosa County consists of 48 total units and was originally developed and continues to operate as an affordable housing community administered by HUD. The development serves low income individuals and families.

4. Petitioner submitted an application in 2017 pursuant to RFA 2017-108 for SAIL Financing to be used in conjunction with Corporation issued tax-exempt bonds and non-competitive housing credits in order to finance the acquisition and rehabilitation of the development. In its application, Petitioner committed to set aside 90 percent of the 48 units (43 units) at 60 percent of AMI or less and the remaining 10 percent of the units (5 units) at 33 percent of AMI or less. However, two families presently reside in the development with incomes greater than 60 percent of AMI. These families initially qualified to reside in the development and still currently meet the

income requirements imposed by HUD pursuant to the restrictions set forth in the project-based HAP Contract. HUD guidelines have the effect of preventing Petitioner from terminating the tenancies of these HUD-assisted tenants, and specifically from non-renewing the leases of tenants who exceed the income requirements imposed by LIHTC deed restrictions. See HUD Memorandum re Occupancy Protections for HUD-Assisted Households in Properties with Low-Income Housing Tax Credits (January 12, 2015) (copy attached). The Petitioner could not change its minimum set aside election to Average Income to maintain the set aside commitment in the application to accommodate the over-income residents as the Development is a rehabilitation and the residents were living in the units prior to closing and initial tenant income certification. Initial tenant income Certifications are completed within 120 days of LIHTC closing. These residents were not officially deemed over income until after buildings in the Development had been placed in service.

The Rules For Which The Waiver Is Sought

5. Petitioner requests a waiver of (or variance from) Rules 67-21.003(8)(j) and 67-48.004(3)(j), Florida Administrative Code (the "Rules").

6. Rule 67-21.003(8)(j), Florida Administrative Code, provides, in relevant part, as follows:

> (8) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application is deemed complete. Those items are as follows: …
>
> (j) The Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment Section of the Application; … .

Likewise, Rule 67-48.004(3)(j) provides in relevant part, as follows:

> (3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:…

(j) For the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application. …

Statutes Implemented By The Rules

7. The Rules implement, among other sections of the Florida Housing Finance Corporation Act, the statutes that created the State Apartment Incentive Loan (SAIL) Program, the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. *See* Sections 420.5087, 420.509, 420.5099, Florida Statutes (the "Statutes").

Petitioner Requests A Waiver of The Rules For The Following Reasons

8. Petitioner requests a waiver of the Rules to decrease the total set-aside percentage from 100 percent to 95 percent (46 out of 48 units), to allow the two families to continue to reside in the development. As noted, these two families initially qualified to reside in the development and would be allowed to continue to reside in the development pursuant to the income restrictions imposed by HUD. Indeed, as noted above, the HUD guidelines have the effect of prohibiting Petitioner from terminating the tenancies of these tenants. As such, unless the waiver is granted, Petitioner will be out of compliance with the Total Set-Aside Percentage, yet it will be prohibited from coming into compliance.

9. Allowing this change does not allow the Petitioner to gain any possible advantage over competitors. In addition, Petitioner could have submitted its application with the requested Total Set-Aside Percentage of 95 percent (or an even lower number) without consequences as to the evaluation of the application.

10. The requested rule waiver will not adversely affect the development. However, a strict application of the Rules would cause a substantial hardship to Petitioner and violate the principles of fairness; it also could unnecessarily subject these two families that are current tenants

to the hardship of relocation. *See* Section 120.542(2), F.S.

The Requested Waiver Will Serve The Underlying Purpose of The Statutes

11. A waiver of the Rules will serve the purpose of the Statutes which are implemented by the Rules. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was enacted in order to encourage private and public investment in facilities for persons of low-income. The purpose of the creation of the Housing Tax Credit Program, the State Apartment Incentive Loan Program and the Multifamily Mortgage Revenue Bonds Program is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver as requested in this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in facilities for persons of low-income, while allowing the development to adapt to market conditions and furthering the Corporation's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.[1]

Type of Waiver

12. The waiver being sought is permanent in nature.

Action Requested

WHEREFORE, Petitioner respectfully requests that the Corporation:

A. Grant the Petition and all relief requested herein;

B. Grant a waiver of Rule 67-21.003(8)(j) and Rule 67-48.004(3)(j), Florida Administrative Code, to decrease the total set-aside percentage from 100 percent to 95 percent (46 out of 48 units).

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

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[1] The Board previously granted similar requests in In Re: SP HK Apartments LLC, FHFC Case No. 2018-074VW (December 17, 2019); in In Re: Peterborough, FHFC Case No. 2016-011VW (May 12, 2016); and In Re: SP Crossings LLC, FHFC Case No. 2015-020VW (June 19, 2015);

Respectfully submitted,

/s/Lawrence E. Sellers, Jr.
Lawrence E. Sellers, Jr.,
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Attorneys for SP Village LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing " Petition for Waiver of Rule 67-21.003(8)(j) and 67-48.004(3)(j) to Decrease the Total Set-Aside Percentage" was filed by electronic mail with Ana McGlamory, Agency Clerk, CorporationClerk@floridahousing.org; and that a true and correct copy was provided by electronic mail to Hugh Brown, hugh.brown@floridahousing.org, General Counsel both at Florida Housing Finance Corporation 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, and that a true and correct copy was provided by electronic mail japc@leg.state.fl.us to the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, all on this 27th day of May, 2021

/s/Lawrence E. Sellers, Jr.
Lawrence E. Sellers, Jr.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

JAN 12 2015

MEMORANDUM FOR: All Multifamily Regional Center Directors
All Multifamily Hub Directors
All Multifamily Program Center Directors
All Contract Administrators

FROM: Benjamin T. Metcalf, Deputy Assistant Secretary for Multifamily Housing Programs, HT

SUBJECT: Occupancy Protections for HUD-Assisted Households in Properties with Low-Income Housing Tax Credits

This memorandum provides guidance on tenancy protections for households when owners participate in both a HUD-assisted program (e.g., Project-Based Section 8, Section 236, Section 202) and Low-Income Housing Tax Credits (LIHTCs). This communication expands upon guidance currently published in regulations, HUD Handbook 4350.3, REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, and the lease agreement signed by the owner and tenant.

This clarifying guidance is provided in response to reports that some owners may be attempting to terminate the tenancy of current HUD-assisted tenants (usually project-based Section 8) who do not meet LIHTC eligibility guidelines. For example, this may be the result of the HUD-assisted tenant having income in excess of the LIHTC eligibility level. An owner may only terminate tenancy in limited circumstances as prescribed by HUD regulations and by the lease, and must follow HUD and state/local procedures. Terminations for reasons other than those permitted by HUD are prohibited. The lease agreement details the grounds for termination of tenancy, which do not include failure to meet LIHTC requirements, including LIHTC-specific income and student eligibility rules.

This restriction also covers any proposed termination for criminal activity, which generally is limited to specified activity during the term of the lease or where an owner discovers there was fraud in the application process. Owners may conduct criminal background checks on existing tenants at recertification for lease enforcement or eviction, if permitted by house rules or any legally adopted changes to them, pursuant to HUD Handbook 4350.3, Ch. 8. However, if this practice constitutes a change to the existing house rules, owners must first notify tenants who have completed their initial lease terms, 30 days prior to implementation, of the modifications to the house rules. Notification is accomplished by forwarding a copy of the revised house rules to existing tenants. For those tenants who have not yet completed their initial lease terms, the owner must provide 60 days notice, prior to the end of their lease terms, of the change in the house rules.

Should an assisted household become over-income and no longer eligible to receive a HUD subsidy, i.e., the owner determines through the annual or an interim recertification that the tenant now has the ability to pay the full contract rent or market rent, the owner will terminate the

ATTACHMENT A

assistance to the tenant. However, in accordance with the lease agreement, the tenant retains all other rights under the lease, including the right to occupy the unit.

In many cases, owners of LIHTC properties have offered incentives to HUD-eligible households who become over-income for LIHTC or do not meet another LIHTC requirement, to move voluntarily. Owners may do so as long as the incentives are not paid from Section 8 or FHA project funds. In such cases, owners should first inform tenants in writing that they have the option of remaining in occupancy as HUD-assisted tenants under the terms of their lease, in order to ensure that the choice of moving with incentives is truly voluntary.

If you have any questions regarding this memorandum, please contact Kate Brennan at Catherine.M.Brennan@hud.gov.