

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: 2026-040VW
APPLICATION NO.: 2025-365CG

THE RESIDENCES FORT MYERS, LTD.

Petitioner

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

RECEIVED

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FLORIDA HOUSING
FINANCE CORPORATION

**PETITION FOR WAIVER OF FLORIDA ADMINISTRATIVE CODE RULE 67-
48.002(96), F.A.C. (07/07/2024) AND THE 2024 QAP**

The Residences Fort Myers, Ltd. (the “Petitioner”) by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation (“Florida Housing”), for a waiver of the provisions of the 2024 Qualified Allocation Plan (“2024 QAP”) as incorporated and adopted by Rule 67-48.002(96), Florida Administrative Code (“F.A.C.”) (07/07/2024) (the “Rule”), such that Petitioner may return its 2025 Housing Credit Allocation now as opposed to waiting until after the end of the second calendar quarter of 2027. Due to forces outside of Petitioner’s control, Petitioner believes it will be unable to incur the costs necessary to meet the 10% Test by the September 19, 2026, deadline, as well as the Placed-in-Service deadline on December 31, 2027. Thus, in an abundance of caution, and in an effort to remain at all times in compliance with Florida Housing’s requirements, Petitioner respectfully requests a Rule waiver. In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone number, and e-mail address for Petitioner and its qualified representative are:

Stephanie Berman
Carrfour Supportive Housing, Inc.
1398 SW 1st Street, 12th Floor
Miami, FL 33135
Telephone: (305) 371-8300
Email: sberman@carrfour.org

2. The address, telephone and facsimile numbers, and e-mail address of Petitioner's counsel is:

Nicholas W. Heckman, Esq.
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Telephone: (407) 669-4241
Email: nick.heckman@nelsonmullins.com

B. DEVELOPMENT BACKGROUND

3. The following information pertains to the development underlying Petitioner's application:

- Development Name: The Residences (the "Development")
- Development Address: Watts Road and Dividend Drive, Fort Myers, Florida 33905
- County: Lee
- Developers: Carrfour Supportive Housing, Inc.; and Revital Development Group, LLC
- Number of Units: 60 units
- Type: Mid-Rise (4 Stories)

- Set-Asides: 12 units at or below 30%; 6 units at or below 40% AMI and 42 units at or below 70% AMI.
- Demographics: Persons with Developmental Disabilities
- Funding: \$2,286,370 Competitive Housing Credit allocation (annual amount) and up to \$2,800,000 in Florida Housing Grant program funding

C. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

D. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver of Rule 67-48.002(96), F.A.C. effective July 7, 2024, which provides in pertinent part:

““QAP” or “Qualified Allocation Plan” means, with respect to the HC Program, the 2024 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the State of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits. The QAP is available on the Corporation’s website under the Multifamily Programs link or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-16735>.”

6. Subsection II.J. of the 2024 QAP provides, in pertinent part, as follows:

“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 after the end of the second 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 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:

- (i) The Applicant 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 Development is at least fifty (50) percent complete; and
- (iii) 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.

A Development located in a HUD-designated DDA or QCT at the time of original allocation may retain its basis boost as authorized by Section 42(d)(5)(B)(v) of the IRC.”

E. STATUTES IMPLEMENTED BY THE RULE AND THE 2024 QAP

7. The Rule implements Chapter 420, Part V, Fla. Stat., of the Florida Housing Finance Corporation Act, as amended (the “Act”).¹ The Act designates Florida Housing 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, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits (“Allocation Procedures”). See § 420.5099(1) and (2), Fla. Stat. Accordingly, the Rule implements, among other sections of the Act, the statutory authorization for Florida Housing’s establishment of Allocation Procedures for the HC Program. *Id.*

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE

8. Petitioner timely submitted Application No. 2025-365CG (the “Application”) on February 4, 2025, in response to Request for Applications 2025-106 Financing for the

¹The Act is set forth in Sections 420.50 through 420.55 Fla. Stat.

Development of Housing for Persons with Disabling Condition or Developmental Disabilities (the “RFA”).

9. Florida Housing subsequently invited the Petitioner to enter into credit underwriting in which Petitioner accepted soon thereafter.

10. The Development received an allocation of 2025 Housing Credits (“Tax Credits”) in the annual amount meeting the requirements of Section 42(h)(1)(E) and (F) of the Internal Revenue Code of 1986, as amended (the “Code”).

11. Florida Housing’s staff and Petitioner executed a 2025 Carryover Allocation Agreement (“CAA”) on or about September 19, 2025, for the allocation of its Tax Credits. The CAA required Petitioner to incur at least ten percent of the reasonably expected basis of the Development (the “10% Test”) on or before July 31, 2026 (the “Initial Test Deadline”). On June 2, 2026, Petitioner submitted that certain letter to Florida Housing requesting an extension of the Initial Test Deadline to September 19, 2026. On July 7, 2026, Florida Housing granted the request and agreed to extend the Initial Test Deadline to September 19, 2026 (the “10% Test Deadline”). The CAA further requires Petitioner to be placed-in-service on or before December 31, 2027.

12. Failure to comply with the 10% Test Deadline will cause the Housing Credits allocated within the CAA to be deemed returned to Florida Housing under 26 U.S.C. § 42(h)(3)(C).

13. Pursuant to 26 U.S.C. § 42(h)(1)(E)(i), the Development must be placed in service no later than the close of the second calendar year following the calendar year in which the allocation is made; in this case, the federally mandated placed-in-service date is December 31, 2027.

14. After being selected for funding and invited to credit underwriting, Petitioner took all steps within its power to move the Development forward toward a successful closing and groundbreaking. Petitioner began predevelopment activities immediately upon accepting its invitation to enter credit underwriting. Since that time, Petitioner has been engaged in the pursuit of all necessary development approvals; specifically:

- Petitioner completed all diligence items necessary to finalize its credit underwriting and has submitted its draft credit underwriting report for Florida Housing's Board of Directors (the "Board") approval.
- Petitioner has completed its Phase I Environmental Site Assessment and the Environmental Site Assessment update.
- Petitioner completed and secured the Development's survey, soil reports, its wetland determination, mitigation and protected species reports, its utility allowance study, the property condition report and appraisal, and its interior design drawings.
- Petitioner completed its building design and secured permit ready letters from the City of Fort Myers.

15. The single most significant factor preventing Petitioner from meeting the 10% Test is that Petitioner hasn't closed on its land and construction financing which isn't possible until Petitioner receives approval of the site plan approval from the city and the water management district. While Petitioner expects to receive approval of its site plan within the next few months and is diligently working with the city and water management district to receive such approval, the Petitioner simply cannot close on the Development's land, which in turn has prevented the Petitioner from being able to comply with its CAA deadlines.

16. Currently, the Petitioner's general contractor's schedule for the construction of the Development reflects an aggressive 14-month construction duration, which is incompatible with the existing December 31, 2027 federal placed-in-service deadline if Petitioner's equity and construction/permanent financing closing slips past the notice of commencement deadline of October 9, 2026. A credit swap to a 2026 or 2027 Housing Credit allocation, with corresponding reset of the carryover and placed-in-service deadlines, is therefore necessary to deliver the Development.

17. Lastly, the Petitioner has employed every possible strategy available to Petitioner in order for it to satisfy the 10% Test by the 10% Test Deadline. As required by the CAA, Petitioner must incur a minimum of \$1,997,770 in qualifying costs by the 10% Test Deadline. To date, Petitioner has incurred approximately \$1,100,000 in qualifying predevelopment costs (which such costs include the maximum acceptable amount of developer fee that may reasonably be brought into basis at this stage of the Development) toward this threshold, leaving a remaining shortfall of approximately \$897,770.

18. The customary strategies for closing a shortfall of this magnitude include paying out an acceptable amount of developer fee, closing on the underlying land, and pre-purchasing construction materials, all of which are either unavailable to the Development or insufficient to cover the gap. First, the Petitioner has already included the maximum acceptable amount of developer fee that may reasonably be brought into basis at this stage of the Development (approximately twenty percent (20%) of the budgeted developer fee) to the total \$1,100,000 qualifying costs amount provided above. Second, because of the delay to the site approval, the Petitioner will not be able to close on the underlying land until likely after the 10% Test Deadline. As such, the Petitioner cannot close on the underlying land and therefore cannot include the

Development's land costs in its basis to satisfy the 10% Test threshold. Third, after exhausting the developer fee strategy and being unable to close on the land, the only remaining theoretical option would be to pre-order and store construction materials in an amount sufficient to satisfy the gap. Prudently, Petitioner would need to order materials in excess of the gap to provide a cushion sufficient to satisfy the 10% Test with confidence. Pre-purchasing construction materials in this amount, however, is not practical or feasible for several converging reasons. Petitioner's financing partners generally cap the amount of construction materials that may be pre-ordered and stored at any one time. Pre-purchasing materials in the amount required to satisfy the 10% Test gap would likely exceed those limits. Moreover, the cost to store and insure the construction materials over the months between pre-order and construction commencement is cost-prohibitive to the Development and was not contemplated in the underwritten budget. Providing such insurance would strain the Petitioner's financial resources and put the Development at risk of not being financially feasible. Lastly, Petitioner is still working through its final site plan; material specifications could change depending on the final approval, creating risk that pre-ordered materials could become obsolete and unusable.

19. Having exhausted all possible strategies of accounting for earned developer fee, closing on the underlying land, and pre-purchase of construction materials, Petitioner has no remaining path to satisfy the 10% Test by the 10% Test Deadline. A credit swap is therefore not one alternative among several; it is the only available path to deliver this Development and the 60 units to be made available for persons with developmental disabilities.

20. While Petitioner believes it has a path forward to breaking ground on the Development within a reasonable timeframe, Petitioner seeks this waiver in an abundance of caution because it

will be unable to incur the costs necessary to meet the 10% Test by the 10% Test Deadline, and a credit swap is the only viable path to deliver this Development.

21. Petitioner therefore respectfully requests a waiver of the 2024 QAP to permit Florida Housing to approve the tax credit exchange now, as opposed to waiting until after the end of the second calendar quarter of 2027.

22. As set forth above, this request was not necessitated through any fault of Petitioner. Rather, Petitioner has exercised due diligence in attempting to move the Development toward closing and construction. The delay in receiving its final site approval directly affects the timing of the Petitioner's land purchase and, in turn, effects the timing of its closing of its construction and equity financing and the ultimate the construction of the Development.

23. If the Petition is denied, and Petitioner loses its allocated Housing Credits as a result of insufficient time to satisfy the 10% Test, Petitioner will be forced to abandon the Development. Stated differently, losing this funding source will cause Lee County to lose 60 affordable rental units for persons with developmental disabilities.

24. Under Section 120.542(1), *Fla. Stat.*, and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the 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 principles of fairness,² and (2) the purpose of

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 significantly different from the way it affects other similarly situated persons who are subject to the rule. See § 120.542(2), *Fla. Stat.*

the underlying statute has been or will be achieved by other means by the person. See § 120.542(2), Fla. Stat.

25. Strict adherence to Subsection II.J. of the 2024 QAP would violate principles of fairness, as Florida Housing has granted waivers to other developments similarly facing unforeseen delays beyond their control (*e.g.*, Cardinal Oaks — granted credit swap in October 2025; Legacy Village – granted credit swap in December 2025; Lofts at Southbank – granted credit swap in January 2026).

26. In this instance, Petitioner meets the standards for a waiver of the Rule and the 2024 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 60 affordable rental units will be available for persons with Developmental Disabilities in Lee County, Florida. Strict application of the 2024 QAP would prevent Petitioner from completing the swap now and will create a substantial hardship for Petitioner because it cannot meet the CAA Test deadlines and the 10% Test Deadline. Further, the waiver will serve the purposes of the Rule and the Act, because one of the Act’s primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State. Moreover, the Act was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, Florida Housing would ensure the development of 60 affordable rental units in Lee County, Florida, and would further recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable housing. See § 420.5099(2), Fla. Stat.

27. The foregoing demonstrates the hardship and other circumstances justifying this Petition.

28. The requested waiver should be granted because, as demonstrated above, the delay was caused by circumstances beyond Petitioner's control, due diligence was employed in an attempt to resolve those circumstances, the Development in all respects, except timing, still meets the conditions upon which the Housing Credits were originally allocated, and the Development is still desirable in terms of meeting affordable housing needs.

G. ACTION REQUESTED

29. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested waiver to permit the requested credit exchange, immediate return of Petitioner's 2025 Housing Credit Allocation, and an immediate allocation of new Housing Credits; (ii) grant a corresponding extension of deadlines relative to those credits, including, but not limited to, the Site Control, 10% Test, Credit Underwriting Report, Construction Commencement, Tax Credit Partnership Close, and Placed-in-Service deadlines; (iii) grant this Petition and all of the relief requested herein; and (iv) grant such further relief as it may deem appropriate.

Respectfully submitted on the 22nd day of July 2026.

Respectfully submitted,



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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed 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

The 22nd day of July 2026.

By: 

Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356