

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Cocoa Housing Preservation II, LLC

FHFC Case No. 2017-062VW

ORDER GRANTING WAIVER OF RULE 67-48.004(3)(i)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 22, 2017, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on August 21, 2017, from Cocoa Housing Preservation II, LLC ("the Petitioner"). Notice of the Petition was published on August 22, 2017, in Volume 43, Number 163, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner was selected to receive financing from the Housing Tax Credit Program under RFA 2015-111 to assist in financing the rehabilitation of duplexes serving low-income tenants in Brevard County, Florida. Petitioner's Application Number was: 2064-293C (the "Application").

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

J. Marshall /DATE: 9/22/2017

3. Rules 67-48.004(3)(i) and (j), Fla. Admin. Code, prohibit an Applicant from changing certain items identified in the Application. They provide, in relevant part:

(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:

(i) Total number of units; notwithstanding the foregoing, for the SAIL and HC Programs the total number of units may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation.;

(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. Notwithstanding the foregoing, the Total Set-Aside Percentage may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation.

4. Petitioner requests a waiver from the above Rules to increase the total number of units from 137 to 144 and decrease the Total Set-Aside Percentage from 100% to 95%. Petitioner will maintain the total number of “low-income units” committed to in its Application at the minimum of 137, and add seven units which will be available as non-Housing Credit units. Petitioner initially committed to set aside 20% (28 units) of the units at or below 35% of Area Median Income (“AMI”) and 80% (109 units) of the units at or below 60% AMI. Petitioner requests to

remain committed to provide 20% of the total units (now 29 units) at or below 35% AMI and 75% of the total units (now 108 units) at or below 60% AMI.

5. Petitioner asserts that after a change in its development team, which was approved by Florida Housing's Board of Directors on June 16, 2017, a review was conducted of the current waiting list, necessitating a change in the configuration of units. Additionally, the reduction of tax credit pricing since November of 2016, makes the unit configuration unfeasible due to cost. By changing the configuration of the unit sizes, the number of units will increase from 137 to 144, thereby making the deal feasible. The additional seven units will receive Section 8 subsidy under HUD's Rental Assistance Demonstration Program.

6. The Board finds that granting the requested waiver would not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development. Petitioner has demonstrated that strict application of the above Rules under these circumstances would constitute a substantial hardship and violate the principles of fairness. Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

7. Section 120.542(2), Florida Statutes provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

8. Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver is not granted. Petitioner has also demonstrated that the purpose of the underlying statute, which is to “encourage development of low-income housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

9. The Board finds that strict application of the above Rules under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

Petitioner's request for a waiver of Rule 67-48.004(3)(j), Fla. Admin. Code is hereby **GRANTED** to permit Petitioner to add seven additional units to the development and decrease Petitioner's Total Set-Aside Percentage from 100% to 95% so that the following requirements will apply:

1. Petitioner will set aside 137 units (95% of total units) for low income residents;

2. Petitioner will set aside at least 29 of those 137 units (20% of total units) for residents at or below 35% AMI;

3. Petitioner will set aside 108 units (75% of total units) for residents at or below 60% AMI.

DONE and ORDERED this 22nd day of September, 2017.

Florida Housing Finance Corporation

By:

Chair



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by electronic mail this 22nd day of September, 2017 to the following:

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Tallahassee, Florida 32399-1300


Corporation Clerk

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.