

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2014-091VW
Non-Competitive HC Application No.2013-533C

THE VILLAGE MIAMI PHASE I, LTD.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-21.003(1) (a) AND APPLICATION
INSTRUCTIONS, FOR A CHANGE IN APPLICANT STRUCTURE**

Petitioner, The Village Miami Phase I, Ltd., a Florida limited partnership (“Village”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver or variance of the Respondent’s prohibition on changes in the Applicant’s ownership structure prior to Florida Housing’s approval of the Final Housing Credit Allocation Agreement and the issuance of IRS Form 8609, which is set forth in the Instructions to the Application for Non-Competitive Housing Credits submitted by Petitioner. *See* Non-Competitive Application Instructions Revised 3-13 (the “Instructions”). The Instructions are included in the Non-Competitive Application Package (Rev-3-13) which is incorporated by reference into Florida Administrative Code Section 67-21.003(1) (a) (the “Rule”).

Village requests a waiver of the Instructions, as incorporated into the Rule, in order to allow for (i) the replacement of the Applicant’s current non-managing general partner with a wholly-owned affiliate of such non-managing general partner, and (ii) the transfer of twenty one

percent (21%) of the membership interests in the substituted non-managing general partner, to another entity.

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for Village and its qualified representative for Village's Non-Competitive Application in the 2013 Housing Credit Program (the "Application") are:

The Village Miami Phase I, Ltd.
Attention: Mara S. Makes
2100 Hollywood Boulevard
Hollywood, FL 33020
Telephone: 305-443-8288
Facsimile: 305-443-9339
E-mail: mara.makes@cornerstonegrp.com

2. The name, address, telephone and facsimile numbers, and e-mail address of Village's attorney, for purposes of this Petition, are:

Brian J. McDonough, Esquire
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street
Miami, Florida 33130
Telephone: 305-789-3350
Facsimile: 305-789-3395
E-mail: bmcDonough@stearnsweaver.com

B. THE DEVELOPMENT

3. Village timely submitted its Application for 2013 Housing Credits. *See* Application No. 2013-533C for the development named "Villages Apartments, Phase I". Village received an invitation into credit underwriting from Florida Housing on October 27, 2014, which was accepted by Village on October 27, 2014.

4. The Housing Credits to be awarded to Village, together with other loan sources, will provide funds for the construction of one hundred fifty affordable residential units in two buildings intended to serve low-income persons in Miami-Dade County, Florida, together with a clubhouse and related amenities (collectively, the “Development”).

5. The requested waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in a substantial economic hardship to Village; (b) could result in delay in completing, or possibly a complete failure to construct, the Development; (c) could deprive Miami-Dade County, Florida of essential affordable housing units in a timely manner and (d) would violate principles of fairness¹. § 120.542(2), Fla. Stat. (2013).

7. The waiver being sought is permanent in nature.

C. Rule from Which Relief is Requested and Statute Implemented by the Rule

8. Village realleges and incorporates Paragraphs 1 through 7 as though fully set forth herein.

9. Village requests a waiver of the Instructions, which are incorporated by reference into the Rule, and provide, in relevant part, as follows:

Applicants must use the Non-Competitive Application Form to apply for...Non-Competitive Housing Credits (4 Percent HC) only, to be used for a Tax-Exempt Bond-Financed Development where the bonds are issued by a County Housing Finance Authority (HFA) pursuant to Section 159.604, F.S.....

2. Applicant:

a. State the name of the Applicant.

(1) If applying for Housing Credits, the Applicant must be a limited partnership (including a limited liability limited partnership) or a limited liability company. The Applicant entity

¹“Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. “Principles of Fairness” are violated when 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. Section 120.542(2), Florida Statutes.

shall be the recipient of the Non-Competitive Housing Credits and may not change until after the Final Housing Credit Allocation Agreement has been approved and the IRS Forms 8609 have been issued. The Applicant entity may be changed after a Final Housing Credit Allocation Agreement has been approved and the IRS Forms 8609 have been issued; however, the Corporation must be notified in writing of the change. Changes to the Applicant entity prior to approval of the Final Housing Credit Allocation Agreement and issuance of the IRS Forms 8609 will result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes to the limited partner of a limited partnership or member of a limited liability company owning the syndicating interest therein will not result in disqualification.

10. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that designates Florida Housing as the agency responsible for the allocation and distribution of low-income housing tax credits. *See* Section 420.5099, F.S. (the “Statute”).

D. Justification for Petitioner’s Requested Waiver

11. Village realleges and incorporates Paragraphs 1 through 10 as though fully set forth herein.

12. 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 these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat. (2011).

13. In this instance, Village meets the standards for a waiver.

14. Village requests a waiver from the Instructions, as incorporated into the Rule, in order to allow for (i) the replacement of the Applicant's non-managing general partner with a wholly-owned affiliate of such non-managing general partner, and (ii) the transfer of twenty one percent (21%) of the membership interests in the substituted non-managing general partner, to another entity.

15. Village is comprised of two general partners and a limited partner. The two general partners are (a) Cornerstone Village I, LLC, a Florida limited liability company (the "Managing GP") and (b) The Urban League of Greater Miami, Inc., a Florida not-for-profit corporation ("Urban League"). Village desires to have Urban League withdraw as a general partner and assign all of its general partner interests in Village to its wholly-owned affiliated entity, which is ULGM Village I, LLC, a Florida limited liability company ("ULGM"). Urban League will, immediately after such transfer, own all of the member interests in ULGM subject to the transfer by it of 21% of such member interests as more particularly described in Paragraph 18 below.

16. If Urban League (which is a not-for-profit entity) remains as a general partner in Village, a significant portion of the assets of the Development will be considered "tax exempt use property" and will not be eligible for the most favorable form of depreciation deduction (i.e., such portion of the assets will be required to be depreciated over a forty-year recovery period instead of the more favorable twenty seven and a half-year period). In order to avoid this result which has significant negative tax consequences to Village's investor limited partner (the "Investor Limited Partner"), Village's ownership needs to be structured so that Urban League is the 100% owner of a taxable entity that serves as the non-managing co-general partner of Village instead of The Urban League owning such interest directly. The co-general partner may be a

corporation, or it may be a limited liability company that makes an election to be taxed as a corporation. In this instance, Urban League has elected to form a limited liability company in which it is the sole member, so as to preserve the ability of the Development to claim the most favorable available depreciation deductions.

17. If ULGM had been included as the non-managing general partner of Village at the time the Application was submitted, Florida Housing's evaluation of the Application and its decision to extend an invitation to underwriting to Village would not have been adversely impacted.

18. Following admission of ULGM into Village as the non-managing general partner, by assignment from Urban League, Village is also seeking approval of a transfer, by Urban League, of twenty one percent (21%) of its membership interest in ULGM to Genesis Ventures International, Inc., a Florida not-for-profit corporation. This transfer is necessary to create a "tax disaffiliation" required by the Investor Limited Partner. Without the disaffiliation, significant negative tax consequences would ensue which would result in a reduction in the equity payable by the Investor Limited Partner, and a resulting likely inability to proceed with the Development.

19. If the relief sought pursuant to this Petition is not granted, Village will suffer substantial hardship. The tax consequences resulting from Village's inability to make the changes described herein to its ownership structure will cause the inability of the Investor Limited Partner to invest in the Development or, at a minimum, cause a substantial decrease in the amount of its investment, thereby causing the Development to fail for lack of sufficient construction funding sources.

E. Conclusion

20. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be granted when (a) the applicant subject to the rule demonstrates that strict application would create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. §120.542(2), Fla. Stat. (2011).

21. The requested waiver will not adversely impact Village, the Development, the Managing GP, any other party that received an allocation of non-competitive 2013 Housing Credits or Florida Housing.

22. A denial of the requested waiver could result in a substantial hardship for Village which would lose the opportunity to obtain favorable tax treatment and will cause the loss of a substantial portion of the equity contributions committed to be made to the Development by the Investor Limited Partner. The feasibility of the Development will be jeopardized.

23. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing. The goal of providing one hundred fifty units of affordable housing in Miami-Dade County, Florida will be achieved through the approval of the transfers of general partner and member interests requested in this Petition, with no detriment to any party. Granting of the requested waiver will serve the underlying purpose of Chapter 420, Part V, Florida Statutes by facilitating the development of multifamily housing that is affordable to households of limited means.

24. Should Florida Housing require additional information, Village is available to answer questions and to provide all information necessary for consideration of this Petition.

WHEREFORE, Petitioner, The Village Miami Phase I, Ltd., respectfully requests that the Florida Housing Finance Corporation provide the following relief:

- A. Grant the Petition and all relief requested herein;
- B. Approve the transfer of the current non-managing general partner interests in Village from The Urban League of Greater Miami, Inc., to ULGM Village I, LLC;
- C. Approve the transfer of twenty one percent (21%) of the membership interest in ULGM Village I, LLC from The Urban League of Greater Miami, Inc to Genesis Ventures International, Inc; and
- D. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Counsel for The Village Miami Phase I, Ltd.
150 West Flagler Street, Suite 150
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@swmwas.com

By: 
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 30 day of December, 2014.

By: 
Brian J. McDonough, Esq.

STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.

Patricia K. Green
150 West Flagler Street, Suite 2200
Miami, FL 33130
Direct: (305) 789-3345
Fax: (305) 789-2621
Email: pgreen@stearnsweaver.com

December 30, 2014

Via FedEx

Ms. Ashley Black
Corporation Clerk
Florida Housing Finance Corporation
227 N. Bronough St.
Suite 5000
Tallahassee, Florida 32301

RE: Petition for Rule Waiver

Dear Ms. Black:

Enclosed is a Petition for Rule Waiver, submitted on behalf of The Village Miami Phase I, Ltd., for consideration by the Board at its next meeting. I have sent a duplicate copy to the Joint Administrative Procedures Committee. Should you have any questions, please do not hesitate to contact me. Heartfelt wishes for a happy new year.

Sincerely,



Patricia K. Green

PKG/zs
Enclosures

cc: Joint Administrative Procedures Committee (with Enclosures)