

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: CYPRESS SENIOR VILLAGE, LLC

FHFC Case No. : 2009-002VW

**ORDER GRANTING PETITION FOR WAIVER FROM RULE 67-48.004(14)(a), FLORIDA ADMINISTRATIVE CODE (2006)
And Part II A.2.a.(2) of the Universal Application Instructions (2006)**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on March 13, 2009, pursuant to a "Petition for Waiver or Variance from Rule 67-48.020(2)(b) or in the Alternative, for Waiver or Variance from Rule 67-48.004(14)(a) & Corresponding Application Instructions," (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on February 9, 2009, from Cypress Senior Village, LLC ("Petitioner"). On February 20, 2009, the Notice of the Petition was published in Volume 35, Number 07, of the Florida Administrative Weekly. 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:

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

2. During the 2006 Universal Application Cycle Petitioner was awarded HOME Investment Partnership Rental Program ("HOME") funds for the

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Della Ann Harcourt DATE: 3/13/09

construction of Cypress Senior Village, a 50-unit garden apartment development intended to serve the Elderly demographic to be located in De Soto County, Florida (the “Development”).

3. The rules from which Petitioner seeks a waiver provide as follows:

Rule 67-48.004(14)(a) provides:

(14) 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 Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

(a) Name of Applicant;

4. The Specific Instructions of the Universal Application Instructions provides under Part II A.2.a.(2):

(2) If applying for MMRB, SAIL or HOME, the Applicant entity shall be the borrowing entity and cannot be changed until after loan closing. Replacement of the Applicant or a material change (33.33% or more of the Applicant, a General Partner of the Applicant, or a member of the Applicant) in the ownership structure of the named Applicant prior to this time shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes after loan closing require Board approval.

Petitioner requests a waiver from Rules 67-48.004(14)(a), restricting the ability of Petitioner to change the name of the Applicant prior to loan closing. The Applicant Entity is Cypress Senior Village, LLC. The Petitioner desires this Waiver to change the Applicant Entity to Arcadia Housing Development Corporation, with an ownership structure identical to what Petitioner stated in its Application. Petitioner applied for funding as a for-profit entity and contends that the Development will not be financially viable unless it receives the HOME loan with a zero percent interest rate, the rate for a non-profit Applicant. The interest rate for for-profit Applicant is one and one half percent.

5. 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.

6. The granting of this request for waiver to change the applicant entity will serve the purpose of the underlying statute. Denial of the Petition will result in substantial hardship to the applicant in that strict application of the rules in this case will lead to an unreasonable and unintended result. The intent of the rules is to prevent third parties entering into the transaction after the application process. In this case, no third parties are entering into the transaction; only an internal restructuring will occur. Petitioner demonstrated that without the waiver, it will

not be able to proceed with construction of the Development, thus will suffer a loss of substantial funds already invested in the Development. Petitioner further demonstrated that it did not gain a competitive advantage in the 2006 Universal Cycle by applying as a for-profit entity.


IT IS THEREFORE ORDERED:

The Petition for Waiver from Rule 67-48.004(14) (a) Florida Administrative Code (2006), and Part II A.2.a.(2) of the Instructions of the Universal Cycle Instructions (2006), is hereby **GRANTED** to allow a change in the applicant from Cypress Senior Village LLC, to Arcadia Housing Development Corporation, contingent upon Petitioner providing an updated Exhibit 4, attorney opinion letter; Exhibit 5, IRS determination letter; Exhibit 6, description/explanation of role of non-profit entity; Exhibit 7, name and addresses of governing board; Exhibit 8, articles of incorporation demonstrating purpose of entity is to provide affordable housing, from the 2006 Universal Cycle Application by October 1, 2009.

DONE and ORDERED this 13th day of March, 2009.



Florida Housing Finance Corporation

By: 
Chairperson

Copies furnished to:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Debbie Blinderman
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Warren Husband
Metz, Husband & Daughton, PA
PO Box 10909
Tallahassee, Fl 32302-2909

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
120 Holland Building
Tallahassee, Florida 32399-1300

NOTICE OF RIGHTS

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL 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.