

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**FHFC CASE NO. 2017-067VW
APPLICATION NO.: 2017-156C**

GM SILVER CREEK, LTD.

Petitioner

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.004(3)(j) F.A.C.

GM SILVER CREEK, LTD., a Florida limited partnership (“Petitioner”), by and through its undersigned counsel, hereby petitions Florida Housing Finance Corporation (the “Corporation”) for a waiver of Rule 67-48.004(3)(j), Florida Administrative Code (2016) to decrease the Total Set-Aside Percentage reflected in the Application (defined below). This Petition is filed pursuant to Section 120.542, Florida Statutes (2016), and Chapter 28-104, Florida Administrative Code. In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone number and facsimile number of the Petitioner are:

GM Silver Creek, Ltd.
Attn: Mitchell Rosenstein
100 SE 3rd Ave, FL 10
Ft. Lauderdale, Florida 33394
Telephone: (954) 507-6220
Facsimile: N/A
Email: mrosenstein@greenmillsgroup.com

2. The address, telephone number and facsimile number of Petitioner’s counsel are:

Hollie A. Croft, P.A.
Broad and Cassel LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4200
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3. On December 13, 2016, Petitioner timely submitted its application in response to RFA 2016-114 - Housing Credit Financing for Affordable Housing Developments located in Miami-Dade County (the "RFA") requesting \$2,050,000 in low-income housing tax credits ("Housing Credits") to assist in financing the construction of an 80-unit development to be known as Silver Creek Apartments (the "Development"). Petitioner's Application Number was: 2017-156C (the "Application"). Subsequently, Petitioner received an allocation of Housing Credits in the requested amount and was invited to enter credit underwriting.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rule 67-48.004(3)(j), Fla. Admin. Code (the "Rule"), which provides:

67-48.004 – Selection Procedures for Developments.

(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. 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.

Emphasis supplied.

C. STATUTES IMPLEMENTED BY THE RULES

5. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statute that designated the Corporation as the housing credit agency and created the Housing Tax Credit Program. *See* § 420.5099, *Fla. Stat.*

D. WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

6. Petitioner hereby requests a waiver of the Rule to decrease the Total Set-Aside Percentage from 100% to 90%. In its Application, Petitioner stated that the total number of units in the Development would be 80, with 10% of the units in the Development (*i.e.*, 8 out of 80 units) set aside for ELI Households at or below 30% AMI (“ELI Units”) and 90% of the units (*i.e.*, 72 out of 80) set aside at or below 60% AMI (“60% AMI Units”). Petitioner seeks to increase the total number of units in the Development from 80 to 90 and has submitted a separate request to the Corporation in this regard.

7. As a result of the increase in units from 80 to 90, Petitioner will increase the number of ELI Units at the Development from eight (8) to nine (9) such that 10% of the new unit total is set-aside for ELI Households, as required by the RFA. The number of 60% AMI Units set-aside will remain as selected in the RFA at 72 units. Accordingly, the remaining nine (9) new units will not be set-aside for any particular AMI level, but Petitioner intends to provide these units as workforce housing at or below 140% AMI. The increase in units to 90 of which 81 will be set-aside under the RFA results in a reduced Total Set-Aside Percentage of 90%.

8. Petitioner hereby requests the Corporation waive the Rule and approve a decrease in the Total Set-Aside Percentage for the reasons set forth herein. Most notable is the creation of

additional affordable housing units in Miami-Dade County without increasing the tax credit allocation. Specifically, Petitioner will construct an additional ELI Unit without increasing the \$2,050,000 Housing Credit allocation. Along the same lines, Petitioner will build nine (9) additional workforce housing units (at or below 140% AMI) without increasing the Housing Credits. The nine (9) workforce housing units will help fill in the large need for workforce housing in Miami-Dade County.

9. The additional units will also permit Petitioner to maximize the available density at the property where the Development will be located. These units will also create an economic and social benefit to the Development and the residents of Miami-Dade County. The Development's operations will improve by creating economies of scale—same operational resources serving more units (*e.g.*, copier machine, elevator maintenance, etc.). Further, the Petitioner will be able to better leverage its conventional financing/permanent debt by increasing the Development's net operating income from the non-set-aside/workforce units. The cost of the land, which will not increase, will now be spread over more units, thereby reducing the Development's per unit land cost while potentially increasing the appraised value of the land. Socially, the addition of workforce housing units (at or below 140% AMI) increases the Development income diversity, which creates social benefits for residents and the Miami-Dade community while furthering the Corporation's and the Act's goals of fostering mixed-income communities.

10. Furthermore, the requested changes will not impact the Application or the other applicants under the RFA. Because Petitioner is requesting to: (i) construct one additional ELI Unit, (ii) keep the same number of 60% AMI Units as selected in the Application, and (iii) add nine (9) workforce housing units **without** increasing the Housing Credits, the leveraging

calculation and the points allocated in the Application's scoring will not be negatively impacted. In fact, the new set-asides would improve the Application's leveraging calculation.

11. In conclusion, the pertinent statute regarding granting of waivers provides: "[W]aivers shall be granted ... when application of a rule would create a substantial hardship or would violate principles of fairness." Section 120.542(2), *Fla. Stat.* "Substantial Hardship" is defined as a demonstrated economic, technological, legal or other type of hardship to the person requesting the waiver. *See* §120.542(2), *Fla. Stat.* As demonstrated in this Petition, the strict application of Rule 67-48.004(3)(j), Fla. Admin. Code, would constitute a substantial hardship and violate the principles of fairness. Further, a waiver of this Rule will serve the purposes of Section 420.5099 and the Act that are implemented by Chapter 67-48 of the Florida Administrative Code, because one of the goals of the Corporation is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. By granting this waiver, the Corporation would realize this goal by increasing the number of units available to ELI Households and creating much-needed workforce housing units in Miami-Dade County. Lastly, the requested waiver will not adversely impact the Development or the Corporation.

E. TYPE OF WAIVER

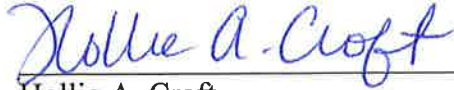
12. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

13. For the reasons set forth herein, Petitioner respectfully requests the Corporation (i) grant the requested waiver of Rule 67-48.004(3)(j), Fla. Admin. Code, allowing Petitioner to decrease the Total Set-Aside Percentage from 100% to 90%; (ii) grant the Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted this 3rd day of October, 2017.

Respectfully submitted,



Hollie A. Croft

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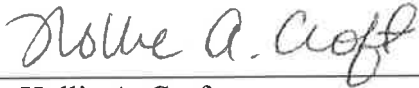
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Email: hcroft@broadandcassel.com

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 3rd day of October, 2017.

By: 
Hollie A. Croft
Fla. Bar No. 886181