

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

IN RE: SP HK APARTMENTS LLC

2018-074VW
FHFC CASE NO.: ~~2018-XXXX~~

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**PETITION FOR WAIVER OF RULE 67-21.003(8)
TO DECREASE THE TOTAL SET-ASIDE PERCENTAGE**

Petitioner, SP HK Apartments LLC., a Florida limited liability company ("Petitioner"), pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, hereby petitions Respondent, FLORIDA HOUSING FINANCE CORPORATION (the "Corporation") for a waiver of (or variance from) Rule 67-21.003(8)(j), Florida Administrative Code, to decrease the total set-aside percentage from 100 percent to 97 percent (94 out of 96 units).

In support of this petition, the Petitioner states:

1. The name of the Petitioner is SP HK Apartments LLC. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address are that of Petitioner's undersigned counsel.

The Development

2. Requested background information:

Application Number: 2016-185BS
RFA Number: 2015-112
Development name: Hickory Knoll
Applicant/Borrower: SP HK Apartments LLC/SP HK Manager LLC

Developer/Principal: Southport Development, Inc. a WA corporation doing business in FL as Southport Development Services, Inc./ J. David Page

Number of units: 96
County of development: Marion County
Development/Type: Acquisition/Rehabilitation/Garden Apartments
Set Asides: 90% @ 60% AMI, 10% @ 45% AMI
Demographic: Family
Funding:

- SAIL - \$3,150,000
- ELI - \$304,800
- MMRB - \$7,000,000
- Annual 4% HC - \$482,642

Background

3. The Hickory Knoll development in Marion County consists of 96 total units and was originally developed and continues to operate as an affordable housing community. The development serves low income individuals and families.

4. Petitioner submitted an application in 2015 pursuant to RFA 2015-112 for SAIL Financing to be used in conjunction with Corporation issued tax-exempt bonds and non-competitive housing credits in order to finance the acquisition and rehabilitation of the development. In its application, Petitioner committed to set aside 90 percent of the 96 units (86 units) at 60 percent of AMI or less and the remaining 10 percent of the units (10 units) at 45 percent of AMI or less. However, two families presently reside in the development with incomes greater than 60 percent of AMI. These families initially qualified to reside in the development and still currently meet the

income requirements imposed by HUD pursuant to the restrictions set forth in the project based HAP Contract.

The Rule For Which the Waiver/Variance Is Sought

5. Petitioner requests a waiver of (or variance from) Rule 67-21.003(8)(j), Florida Administrative Code (the "Rule").

6. Rule 67-21.003(8)(j), Florida Administrative Code, provides, in relevant part, as follows:

(8) 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 is deemed complete. Those items are as follows: ...

(j) 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;

Statutes Implemented By The Rule

7. The Rule implements, among other sections of the Florida Housing Finance Corporation Act, the statutes that created the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. *See* Sections 420.509, 420.5099, F.S. (the "Statutes").

Petitioner Requests A Waiver of (or Variance from) The Rule For The Following Reasons

8. Petitioner requests a waiver of (or variance from) Rule 67-21.003(8)(j), Florida Administrative Code, to decrease the total set-aside percentage from 100 percent to 97 percent (94 out of 96 units), to allow the two families to continue to reside in the development. As noted, these two families initially qualified to reside in the development and would be allowed to continue to reside in the development pursuant to the income restrictions imposed by HUD.

9. Allowing this change does not allow the Petitioner to gain any possible advantage over competitors. In addition, Petitioner could have submitted its application with the requested Total Set-Aside Percentage of 97 percent (or an even lower number) without consequences as to the evaluation of the application.

10. The requested rule waiver will not adversely affect the development. However, a strict application of the Rule would cause a substantial hardship to Petitioner and violate the principles of fairness, by unnecessarily subjecting these two families that are current tenants to the hardship of relocation. *See* Section 120.542(2), F.S.

The Requested Waiver Will Serve The Underlying Purpose of The Statutes

11. A waiver of the Rule will serve the purpose of the Statutes which are implemented by the Rule. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was enacted in order to encourage private and public investment in facilities for persons of low-income. The purpose of the creation of the Housing Tax Credit Program, the State Apartment Incentive Loan Program and the Multifamily Mortgage Revenue Bonds Program is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver/variance as requested in this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in facilities for persons of low-income, while allowing the development to adapt to market conditions and furthering the Corporation's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.¹

Type of Waiver

12. The waiver being sought is permanent in nature.

¹ The Board previously granted a similar request in In Re: SP Crossings LLC, FHFC Case No. 2015-020VW (June 19, 2015).

Action Requested

WHEREFORE, Petitioner respectfully requests that the Corporation:

- A. Grant the Petition and all relief requested herein;
- B. Grant a waiver of (or variance from) Rule 67-21.003(8)(j), Florida Administrative Code, to decrease the total set-aside percentage from 100 percent to 97 percent (94 out of 96 units).
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

/s/Lawrence E. Sellers, Jr.
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Attorneys for SP HK Apartments LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing "Petition for Waiver of Rule 67-21.003(8)(f) to Decrease the Total Set-Aside Percentage" was filed by electronic mail with Ana McGlamory, Agency Clerk, ana.mcglamory@floridahousing.org; that a true and correct copy was provided by electronic mail to Hugh Brown, hugh.brown@floridahousing.org, General Counsel, Florida Housing Finance Corporation 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, and that a true and correct copy was provided to the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, all on this 1st day of October, 2018.

/s/Lawrence E. Sellers, Jr. _____

Lawrence E. Sellers, Jr.