

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**LOFTS AT LAVILLA 2, LTD,  
a Florida limited partnership**

Petitioner,

CASE NO. 2018-061VW

vs.

Application No. 2018-293C

**FLORIDA HOUSING FINANCE  
CORPORATION,**

Respondent.

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FINANCE CORPORATION

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**PETITION FOR WAIVER OF RULE 67-48.004(3)(i) and (j)  
FOR A CHANGE IN NUMBER OF UNITS AND IN TOTAL SET-ASIDE PERCENTAGE**

Lofts at LaVilla 2, Ltd., a Florida limited partnership (the “Petitioner”) hereby petitions Florida Housing Finance Corporation (the “Corporation”) for (i) a waiver or variance of the Corporation’s prohibition on changes in “Total Number of Units” designated by an applicant, (ii) a waiver or variance of the Corporation’s prohibition on changes in the “Total Set-Aside Percentage” designated by an applicant, and (iii) a waiver or variance to reduce the minimum Total Set-Aside Requirement set forth in RFA 2017-113 – Housing Credit Financing for Affordable Housing Developments in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties. *See* Rule 67-48.004(3)(i) and (j), F.A.C. (2017).

In support of its petition, the Petitioner states:

**A. THE PETITIONER**

1. The name, address, telephone and facsimile numbers, and email address for the Petitioner and its qualified representative for Petitioner’s application:

Lofts at LaVilla 2, Ltd.  
3030 Hartley Road

Suite 310  
Jacksonville, FL 32257  
Attn: James R. Hoover  
Telephone: 904-288-7784  
Facsimile: 904-260-9031  
E-Mail: RHoover@Vestcor.com

2. For purposes of this Petition, the address, telephone number and facsimile number of the Petitioner's attorney 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](mailto:bmcdonough@stearnsweaver.com)

## **B. THE DEVELOPMENT**

3. The Petitioner timely submitted its Application in response to the RFA for the development named "Lofts at Jefferson Station" (the "Development"). *See* Application No. 2018-293C. The Application proposed 98 mid-rise units to serve families in Duval County. TVC Development, Inc. serves as the Developer.

4. The Development will be constructed using housing credit funding of \$1,660,000.

5. Currently, the total set-aside breakdown is: 10.2% at or below 33%; 71.4% at or below 60%; and 18.4% market-rate units.

6. Petitioner is seeking to increase the total number of units in the Development from 98 to 133, and to decrease the Total Set-Aside Percentage from 81.6% to 60.1%. Applicant intends that the additional units will be available for work-force residents at or below 140% AMI.

7. Petitioner seeks to modify the Unit Mix Chart, and update the Total Set-Aside Breakdown Chart as follows:

**Unit Mix Chart**

# of Bedrooms per Unit	# of Baths per Unit	# of Units per Bedroom Type per the Application	Proposed # of Units per Bedroom Type	# of Units that are ELI Set-Aside Units per the Application	Proposed # of Units that are ELI Set Aside Units
0	1	12	<b>12</b>	2	<b>2</b>
1	1	19	<b>28</b>	2	<b>3</b>
2	2	63	<b>81</b>	6	<b>8</b>
3	2	4	<b>12</b>		<b>1</b>
Total		98	<b>133</b>	10	<b>14</b>

**Total Set-Aside Breakdown Chart Per Application**

Percentage of Residential Units	AMI Level	# of Units & Type*
10.2%	At or Below 33%	10 SAU
71.4%	At or Below 60%	70 SAU
18.4%	Market-Rate Units	18 MRU
<b>81.6%</b>	Total Set-Aside Percentage	80 SAU

**Revised Total Set-Aside Breakdown Chart**

Percentage of Residential Units	AMI Level	# of Units & Type*
10.5%	At or Below 33%	14 SAU
49.6%	At or Below 60%	66 SAU
39.9%	Market-Rate Units	53 MRU
<b>60.1%</b>	Total Set-Aside Percentage	80 SAU

**C. RULES FROM WHICH WAIVER IS SOUGHT**

8. Petitioner requests a waiver from Rule 67-48.004(3)(i) and (j), Florida Administrative Code in effect as of the submission of Petitioner’s Application (the “Rule”):

The Rule provides, in relevant part, as follows:

(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:

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(i) Total number of units; notwithstanding the foregoing, 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. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant’s request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development . . . .

(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. . . .

9. Additionally, Petitioner requests a waiver of Section 6(d)(2)(a)(i) of the RFA, which states: “If the proposed Development has a Demographic Commitment of Family or Elderly Non-ALF, the Applicant must set aside a total of at least 80 percent of the Development’s total units at 60 percent AMI or less.”

**D. STATUTES IMPLEMENTED BY THE RULE**

10. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, Section 420.5087 (State Apartment Incentive Loan Program), and Section 420.5099 (Allocation of the low-income housing tax credit).

**E. PETITIONER REQUESTS A WAIVER FROM THE RULE FOR THE FOLLOWING REASONS**

11. Petitioner requests a waiver from Rule 67-48.004(3)(i) and (j), Florida Administrative Code and from Section 6(d)(2)(a)(i) of the RFA.

12. It is not uncommon for development changes to occur after submission of an application to the Corporation. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation 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.

13. The following facts demonstrate the economic hardship and other circumstances which justify Petitioner’s request for waiver:

- a. Petitioner timely submitted its Application to the Corporation in response to the RFA, for 98 mid-rise units, with the Total Set-Aside Percentage of 81.6%.
- b. Pursuant to the Development's zoning, an additional 35 units may be added for a total of 133 units.
- c. However, by increasing the number of units, the Total Set-Aside Percentage will decrease.
- d. Granting the requested waiver will not change the number or quality of affordable housing units identified in the Application.
- e. Denying this Petition would cause substantial economic hardship for Petitioner in the form of lower Development rental revenues and decreased economies of scale; the Development's feasibility is enhanced by spreading fixed costs, such as recreational amenities, over 35 additional units. Underwriting of the Development is facilitated by the inclusion of the extra units, which should enhance Petitioner's ability to receive loan and investment approvals in a timely manner. The additional rental revenue from the 35 units will correspondingly increase the Development's debt service coverage ratio, mitigating any operational risks of the Development and further ensuring long-term viability.
- f. Structuring the Development as a condominium form of ownership whereby the workforce housing units would be separately owned by another owner adds significant cost to the project and is not the preferred route of Petitioner's financial partners. These financial partners have advised

Petitioner that if they can finance such a structure that it would be more costly to the overall project and would delay closing.

- g. Developing the project as, in many respects, two developments (which would be the effect if this waiver request is not granted) would require a duplication of several costs (permits, plans, contracts with professionals, etc.) as well as entering into separate construction contracts for each project cross easement agreement, shared use agreement, and the like. All of these things add to the financial burden of constructing the proposed Development.
- h. In light of rising construction costs and lower equity pricing, increased costs have a significant negative impact and add unnecessary costs to the overall development of the project.

14. A waiver of the Rule's restriction against increasing the total number of units and changing the Total Set-Aside Percentage from Petitioner's Application would serve the purposes of Section 420.5099, F.S., and the Act as a whole, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to households of limited means, and would provide the additional benefit of meeting the critical need for mixed-income developments with Market Rate Housing units.

15. By granting the waiver and permitting Petitioner to decrease the total Set-Aside Percentage, the Corporation would recognize the economic realities and principles of fundamental fairness in developing affordable rental housing by encouraging the development of mixed-income housing projects, particularly in urban areas well-suited to a mixed-income housing project, and enabling developers to meet the needs of both low-income families and families in need of moderately-priced Market Rate Housing. This recognition would promote participation by owners

such as Petitioner in meeting the Act's purpose of providing affordable housing in an economical and efficient manner.

16. The requested rule waiver will not adversely affect the Development or FHFC. The lender has agreed to allow the Land Use Restrictive Agreement or Extended Use Agreement to survive in the event of a foreclosure. However, a denial of this Petition (a) will result in substantial economic hardship to Petitioner; (b) could deprive Duval County of essential, affordable housing units in a timely manner, and (c) would violate principles of fairness<sup>1</sup>. Section 120.542(2), Fla. Stat.

17. Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

**F. PERMANENCY**

18. The waiver being sought is permanent in nature.

**G. ACTION REQUESTED**

Petitioner requests the following:

- a. That the Corporation grant Petitioner a waiver from Rule 67-48.004(3)(i) and (j), Florida Administrative Code, allowing it to decrease the Total Set-Aside Percentage from 81.6% to approximately 60.1% and to increase the total number of units in the Development from 98 to 133;
- b. Grant the Petition and all the relief requested therein; and
- c. Grant such further relief as may be deemed appropriate.

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<sup>1</sup>“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.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
Counsel for Petitioner  
150 West Flagler Street, Suite 150  
Miami, Florida 33131  
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By: s/Brian J. McDonough  
BRIAN J. MCDONOUGH, ESQ.

**CERTIFICATE OF SERVICE**

The Petition is being served by electronic mail and hand-delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served by hand-delivery on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 10th day of August, 2018.

By: s/Brian J. McDonough  
BRIAN J. MCDONOUGH, ESQ.