STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

RECEIVED
MAY 17 2021 4:12 PM
FLORIDA HOUSING FINANCE CORPORATION

CATHEDRAL TOWNHOUSE, LTD,

Petitioner,

vs.

Case No. 2021-026VW
Application Nos. 2018-071C & 2019-426C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

AMENDED PETITION FOR WAIVER OF RULE 67-48.004(3)(j) (2019)
FOR A CHANGE IN THE TOTAL SET-ASIDE PERCENTAGE

Cathedral Townhouse, Ltd., a Florida limited partnership (the "Petitioner") hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver or variance of the Corporation's prohibition on changes in the "Total Set-Aside Percentage" designated by an Applicant as set forth in Rule 67-48.004(3)(j). Florida Administrative Code ("F.A.C.") (2017).

In support of this Petition, Petitioner states as follows:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for the Petitioner and its operational contact person are as follows:

Cathedral Townhouse, Ltd.
Shawn Wilson
5300 W. Cypress Street, Suite 200
Tampa, FL 33607
Telephone: (813) 384-4825
Email: swilson@blueskycommunities.com

2. For purposes of this Petition, the address, telephone number and facsimile number of the Petitioner's attorney are:

Michael P. Donaldson
Carlton Fields
Post Office Drawer 190
Tallahassee, FL 32302-0190
Telephone: 850-224-1585
Facsimile: 850-222-0398
Email: mdonaldson@carltonfields.com

B. **THE DEVELOPMENT**

3. Petitioner timely submitted its Application No. 2018-071C in response to RFA 2017-114 Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments (the "RFA") for the development named "Cathedral Townhouse" (the "Development"). The following information is provided to aid staff:

Development Name: Cathedral Townhouse
Developers: Cathedral Townhouse Redevelopment Associates, LLC
County of Development: Duval
Number of Units: 177
Type: High Rise
Demographics: Elderly, Non-ALF
Funding Amounts (annual amount): $1,660,000 competitive housing credits

4. Petitioner's Application identified a total set aside of 96% including 20% at or below 33% AMI or 36 units and 76% at or below 60% AMI or 134 units. The Development involves the rehabilitation of units that are currently occupied. Of the existing residents, 14 units exceed 60% AMI and those residents have the right to remain. As reflected in the attached Memo from the U.S. Department of Housing and Urban Development ("HUD")the tenancy of the current tenants can be terminated only in limited circumstances that none of which apply here. (See Attachment A, Memo subject Occupancy Protections for HUD – Assisted Households in Properties with Low Income Housing Tax Credits) Accordingly, Petitioner must change the identified set aside in the RFA to 92% (i.e., 163 units) to reflect these additional 7 households. The change is better reflected as follows:

In Application 2018-071C	Current
36 33% AMI	36 33% AMI
134 60% AMI	127 60% AMI
7 Market Rate	14 Market Rate
177 total units	**177 total units**
0.96 Set Aside	0.92 Set Aside

C. RULE FROM WHICH WAIVER IS SOUGHT

5. Petitioner requests a waiver from Rule 67-48.004(3)(j), F.A.C. in effect as of the submission of the Application (the" Rule") which in relevant part provides:

> (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....

D. STATUTES IMPLEMENTED BY THE RULE

6. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, Section 420.5099 Florida Statutes ("F.S.") (Allocation of the low-income housing tax credit).

E. JUSTIFICATION FOR THE WAIVER

7. Under Section 120.542(1), F.S. 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. See § 120.542(2), F.S..

8. Here, Petitioner agreed in its Application to set aside 96% of the total units. Petitioner wanted and intended to set aside 96% of the units below AMI as outlined above. Petitioner did not learn until a recent income certification that an additional 7 units exceed the 60%AMI. Petitioner cannot make these residents leave nor does it wish to force these families from their homes. Additionally to do so would be inconsistent to HUD guidance as provided in Attachment A to this Petition. Petitioner has no control over the circumstances necessitating this

Petition. Moreover, even if Petitioner could remove the over income tenants, permanent relocation would impose a hardship upon each elderly tenant. The purpose of the underlying statute will still be achieved, even if the set aside is reduced.

9. A waiver of the Rule's restriction against 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.

10. The requested waiver will not prejudice the Development, Corporation, or any other applicant. The scoring would not have changed as a result of the set-aside selection and Petitioner gains no competitive advantage by granting this Petition.

11. 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

12. The waiver being sought is temporary in nature until the tenants at issue vacate the premises.

G. ACTION REQUESTED

Petitioner requests the following:

a. That the Corporation grant Petitioner a waiver from Rule 67-48.004(3)(j), F.A.C., allowing it to decrease the Total Set-Aside Percentage from 96% to 92%;

b. Grant the Petition and all the relief requested therein; and

c. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

/s/ Michael P. Donaldson
Michael P. Donaldson
Florida Bar No. 0802761
CARLTON FIELDS, P.A.
Post Office Drawer 190
Tallahassee, Florida 32302
Email: mdonaldson@carltonfields.com
Add'l: rcbrown@carltonfields.com
Telephone: 850/224-1585
Facsimile: 850/222-0398

Counsel for Cathedral Townhouse, Ltd.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Petition for Waiver is being served by electronic transmission for filing with Ana McGlamory, Agency Clerk (CorporationClerk@floridahousing.org) and Hugh Brown, General Counsel (Hugh.Brown@floridahousing.org) for the Florida Housing Finance Corporation, at 227 North Bronough Street, Tallahassee, Florida 32301, with a copy served via electronic transmission on the Joint Administrative Procedures Committee, at (JAPC@leg.state.fl.us), at 680 Pepper Building, 111 W. Madison Street, Tallahassee, FL 32399, this 17th day of May 2021.

/s/ Michael P. Donaldson
Michael P. Donaldson

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

JAN 12 2015

MEMORANDUM FOR: All Multifamily Regional Center Directors
All Multifamily Hub Directors
All Multifamily Program Center Directors
All Contract Administrators

FROM: Benjamin T. Metcalf, Deputy Assistant Secretary for Multifamily Housing Programs, HT

SUBJECT: Occupancy Protections for HUD-Assisted Households in Properties with Low-Income Housing Tax Credits

This memorandum provides guidance on tenancy protections for households when owners participate in both a HUD-assisted program (e.g., Project-Based Section 8, Section 236, Section 202) and Low-Income Housing Tax Credits (LIHTCs). This communication expands upon guidance currently published in regulations, HUD Handbook 4350.3, REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, and the lease agreement signed by the owner and tenant.

This clarifying guidance is provided in response to reports that some owners may be attempting to terminate the tenancy of current HUD-assisted tenants (usually project-based Section 8) who do not meet LIHTC eligibility guidelines. For example, this may be the result of the HUD-assisted tenant having income in excess of the LIHTC eligibility level. An owner may only terminate tenancy in limited circumstances as prescribed by HUD regulations and by the lease, and must follow HUD and state/local procedures. Terminations for reasons other than those permitted by HUD are prohibited. The lease agreement details the grounds for termination of tenancy, which do not include failure to meet LIHTC requirements, including LIHTC-specific income and student eligibility rules.

This restriction also covers any proposed termination for criminal activity, which generally is limited to specified activity during the term of the lease or where an owner discovers there was fraud in the application process. Owners may conduct criminal background checks on existing tenants at recertification for lease enforcement or eviction, if permitted by house rules or any legally adopted changes to them, pursuant to HUD Handbook 4350.3, Ch. 8. However, if this practice constitutes a change to the existing house rules, owners must first notify tenants who have completed their initial lease terms, 30 days prior to implementation, of the modifications to the house rules. Notification is accomplished by forwarding a copy of the revised house rules to existing tenants. For those tenants who have not yet completed their initial lease terms, the owner must provide 60 days notice, prior to the end of their lease terms, of the change in the house rules.

Should an assisted household become over-income and no longer eligible to receive a HUD subsidy, i.e., the owner determines through the annual or an interim recertification that the tenant now has the ability to pay the full contract rent or market rent, the owner will terminate the

ATTACHMENT A

assistance to the tenant. However, in accordance with the lease agreement, the tenant retains all other rights under the lease, including the right to occupy the unit.

In many cases, owners of LIHTC properties have offered incentives to HUD-eligible households who become over-income for LIHTC or do not meet another LIHTC requirement, to move voluntarily. Owners may do so as long as the incentives are not paid from Section 8 or FHA project funds. In such cases, owners should first inform tenants in writing that they have the option of remaining in occupancy as HUD-assisted tenants under the terms of their lease, in order to ensure that the choice of moving with incentives is truly voluntary.

If you have any questions regarding this memorandum, please contact Kate Brennan at Catherine.M.Brennan@hud.gov.