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FLORIDA HOUSING FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In re: Beacon at Creative Village Partners, Ltd.

FHFC Case # 2022-050VW
FHFC File No: 2022-122C

Petitioner.
_____/

PETITION FOR VARIANCE FROM RULE 67-48.004(3) TO ALLOW A DECREASE IN THE TOTAL SET-ASIDE PERCENTAGE, AND REQUEST FOR APPROVAL OF INCREASE IN TOTAL NUMBER OF UNITS

Petitioner, BEACON AT CREATIVE VILLAGE PARTNERS, LTD. ("Petitioner" or "Beacon"), a Florida limited partnership, hereby submits this Petition to the Florida Housing Finance Corporation ("FHFC") for a variance from FHFC Rule 67-48.004(3)(j), Fla. Admin. Code in order to allow Beacon to decrease the Total Set-Aside Percentage from the percentage stated in the original application, while the number of Set-Aside Units would increase. Petitioner seeks this waiver and variance in order to add additional units to the development (one additional Extremely Low Income unit, and five additional market rate units) that would have the result of decreasing the Total Set-Aside Percentage stated in Beacon's Application. Petitioner also requests that the increase in the Total Number of Units and the decrease in the Total Set-Aside Percentage be approved.

A. NATURE OF REQUEST

1. Pursuant to Section 120.542, Fla. Stat. (2017), and Rules 28-104.001 through 28-104.006, Fla. Admin. Code, Petitioner requests a waiver of a provision of Rule 67-48.004(3)(j), Fla. Admin. Code. Rule 67-48.004(3)(j) prohibits an Applicant from changing the Total Set-Aside Percentage of affordable housing units in its proposed Development after submission of its Application. The rule allows an applicant to request approval for an increase in its Total Set-Aside Percentage, but does not extend that same opportunity to Applicants whose Total Set-Aside

Percentage would decrease, even where the actual number of Set-Aside Units would increase. Petitioner proposes to add both affordable and market rate units to the proposed development, which will lower the percentage of units that are affordable from 94.94% to 89.41% of the total number of units in the development. This change will increase the number of affordable units.

B. THE PETITIONER

2. As explained in this Petition, Petitioner was the recipient of $2.375 million in Housing Credits from FHFC for a new construction development in Orange County in RFA 2021-202. Petitioner is seeking an additional $500,000 in Housing Credits through the Construction Housing Inflation Response Program ("CHIRP"). For purposes of this petition, Petitioner's address is that of its undersigned attorney, M. Christopher Bryant, Oertel, Fernandez, Bryant & Atkinson, P.A., 2060 Delta Way, Tallahassee, Florida 32303 (telephone (850) 521-0700, fax (850) 521-0720, E-mail:cbryant@ohfc.com)

C. RFA 2021-202 PROCESS AND BEACON'S APPLICATION

3. Through Request for Applications (RFA) number 2021-202, FHFC sought to allocate federal low income housing tax credits ("Housing Credits") for affordable multifamily rental housing developments in the "Large Six" Counties, including Orange County. The award of Housing Credit financing is subject to FHFC Rule Chapter 67-48, Fla. Admin. Code.

4. Beacon applied in RFA 2021-202 for an award of Housing Credits for the construction of a 79 unit in Orange County with a Family Demographic Commitment, with 75 of those units to be affordable rental housing, and the remaining four to be unrestricted market rate housing. Beacon sought Housing Credits in the annual amount of $2,375,000.

5. The Applicant Entity for Beacon is Beacon at Creative Village Partners, Ltd. The General Partner is SAS Beacon at Creative Village Managers, LLC, and the Investor Limited

Partner is Southern Affordable Services, Inc., a Non-Profit Corporation. Southern Affordable Services, Inc. is also the Member and Manager of SAS Beacon at Creative Village Managers, LLC. The natural person Principals of Southern Affordable Services, Inc., are Scott D. Clark, Thomas C. Shaw, David J. Ross, and Jay P. Brock.

6. The Developer Entity for Beacon is Atlantic Housing Partners, II, LLC, ("AHP II") a Florida limited liability company. The Members and Managers of AHP II are two LLC's, and the Managers and Members of those LLC's are W. Scott Culp, Paul Missigman, and a Trust established by Mr. Missigman. The natural person Principal of AHP II whose development experience was relied upon in the application process to establish General Development Experience for AHP was W. Scott Culp.

7. Beacon initially proposed to construct a 79 unit development. The development would include 12 units set aside for Extremely Low Income ("ELI") households earning 30% or less of Area Median Income ("AMI"); 45 units for Low Income households earning 60% or less AMI; 18 units for households earning 80% or less of AMI; and four market rate units. As required by RFA 2021-202, the 12 ELI units represented at least 15% of the total number of units in the development. The Total Set-Aside Breakdown Chart from Beacon's application in RFA 2021-202, showing the original proposed Total Set-Aside Percentage as 94.94%, is attached to this Petition as Exhibit A.

8. In its application in RFA 2021-202, Beacon selected the Average Income Test approach to satisfy the affordability requirements of the LIHTC program. The Average Income Test allows an applicant to include units at AMI levels of up to 80%, as long as the weighted Average Income level for the units that are designated for households at 80% AMI and below does not exceed 60%. The weighted Average Income level for the 75 affordable units for Beacon as

initially proposed was 60%. The Income Averaging Worksheet from Beacon's application in RFA 2021-202 is attached hereto as Exhibit B

9. Beacon now proposes to add six (6) more units to the development: one (1) ELI unit at 30% AMI, and five (5) market rate units, for a total of 85 units. The 13 ELI units would still account for over 15% of the total number of units in the Development, as required by the RFA. The number of 60% AMI units and 80% AMI units would remain unchanged, at 45 units and 18 units respectively. A revised Total Set-Aside Breakdown Chart, showing the resulting Total Set-Aside Percentage of 89.41%, is attached as Exhibit C.

10. Beacon will still rely on the Average Income Test, and the average income level for the 76 affordable units would not exceed 60% AMI; it would equal 59.6% AMI for the 76 affordable units. A revised Income Averaging Worksheet is attached as Exhibit D.

RULE PROVISIONS

11. The Housing Credit program is governed in part by portions of Rule Chapter 67-48, Fla. Admin. Code. Of relevance to this request is Rules 67-48.004(3), Fla. Admin. Code, which reads, in pertinent part:

> (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:
>
> (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 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. 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…

12. Rule 67-48.004(3)(i) allows an increase in the total number of units, subject to written request. Such a request does not require a waiver or variance of the rule. Further, as written, the rule appears to allow Florida Housing staff to approve such a request. However, in order to present all proposed changes to the Beacon development size and unit mix in a single request, Beacon is requesting in this Petition the approval of the increase in the total number of units.

13. Rule 67-48.004(3)(j) permits an Applicant to submit a written request to the Corporation to increase the Total Set-Aside Percentage, but does not allow an Applicant to decrease the Total Set-Aside Percentage. Beacon seeks to add both affordable and market rate units to the Development, which has the result of decreasing the Total Set-Aside Percentage, even though it increases the actual number of affordable units, and in fact increases the number of ELI units. Therefore, Beacon requests a variance from the rule to allow it to request a change in the number of affordable and market rate units that will have the effect of lowering the Total Set-Aside Percentage of affordable units.

D. JUSTIFICATION FOR REQUESTED VARIANCE

14. RFA 2021-202 sought applications that could consist of both affordable and market rate housing units. Beacon will be part of a 68 acre planned development, the Creative Village Planned Development, in downtown Orlando. The Creative Village Planned Development is a

mixed use development that on completion will include offices and creative studios, higher education, preschool through grade 12 education, mixed-income residential, retail and commercial uses, and a hotel.

15. The addition of market rate units and an additional ELI unit will continue to serve the purpose of the Creative Village Planned Development, as well as the Corporation's purpose in providing ELI units and mixed rate developments. Adding additional market rate units will also enhance the financial viability of the Beacon development going forward, in terms of providing additional revenue for debt service and operational costs.

16. Notably, if Beacon had proposed this complement of affordable and market rate units when it applied for funding in RFA 2021-202, it still would have been selected for funding. Beacon was the only Local Government Area of Opportunity applicant from Orange County in RFA 2021-202, and was entitled to that decisive preference in the RFA 2021-202 selection process.

RELIEF REQUESTED

17. Beacon seeks to have a variance from Rule 67-48.004(3)(j) to allow it to decrease the Total Set-Aside Percentage, while it increases the actual number of Set-Aside Units and market rate units. As explained above, the Total Set-Aside Percentage (rounded down to whole numbers) will decrease from 94% to 89%, but the number of affordable units will increase from 75 to 76, and that one additional affordable unit is an ELI unit. Beacon seeks both the variance from the rule and the approval of the new proposed unit mix. Further, as noted in paragraph 12 above, Beacon seeks approval of an increase in the total number of units from 79 to 85, which does not require a rule waiver or variance but does require express approval of the Corporation.

18. Granting the requested variance would not adversely affect any required set-asides,

preferences, or points considered by Florida Housing in the scoring of the Beacon application, and would not alter the scoring by Florida Housing that qualified Beacon for Housing Credits funding. The change would also not provide Beacon with an unfair competitive advantage over other applicants. All scoring, preferences, and selection decisions would have been the same.

19. The requested Rule variance will not adversely impact the Beacon development or the Florida Housing funding processes, and will serve the statutory purposes of the Florida Housing process. A denial of this Petition, however, would result in substantial economic hardship to Beacon.

STATUTORY PURPOSE SERVED

20. Section 420.5099, Fla. Stat., designates Florida Housing as the housing credit agency, pursuant to the Internal Revenue Code, and assigns Florida Housing the responsibility to allocate and distribute low-income housing tax credits. The statute also instructs Florida Housing to adopt procedures to ensure the maximum use of housing credits to encourage the development of low-income housing.

21. In furtherance of these statutory purposes, Florida Housing established the competitive Request for Application process to allocate various forms of funding to satisfy various geographic and demographic affordable housing goals, and to achieve programmatic goals including housing for ELI households.

22. Florida Housing has a compelling interest in ensuring that an Applicant does not reduce the number of affordable housing units (and especially ELI units) after it has been selected for funding. If an Applicant were to request a decrease in its Total Set-Aside Percentage while keeping the Total Number of units the same, the number of affordable units would decrease. Here, Beacon is requesting an increase in the numbers of both affordable and market rate units, which

decreases the Total Set-Aside Percentage, but actually increases the number of affordable units. As noted above, the increase in affordable units is in the ELI units. So, Florida Housing's statutory purpose, and particularly its policy goal of providing ELI units, is still served.

23. Recently, Florida Housing approved a rule waiver for Pinnacle 441, LLC, in FHFC Case No. 2022-008VW. The waiver request was for the same rule Beacon seeks a waiver of, Rule 67-48.004(3)(j). Pinnacle 441 requested an increase from 110 units, of which 100 percent were affordable, to 113 units, with 97% affordable. One of the affordable units in Pinnacle 441 would shift from a 60% ELI unit to an ELI unit at 25% ELI. The waiver was approved by the Board at its March 4, 2022 meeting. See, FHFC Case No. 2022-008VW. A denial of Beacon's variance request, when a similar request was just granted to another applicant, would violate principles of fairness.

SUBSTANTIAL HARDSHIP

24. Beacon would suffer substantial economic hardship if it could not add additional market rate units to the Development. Beacon has expended substantial sums of money in the development of this project, and, like all Applicants "in the pipeline," is experiencing significantly higher construction and development costs than were originally anticipated.

25. The waiver and variance being sought are permanent in nature, in that the Total Set-Aside Percentage of affordable units in the completed Development will be less than the Percentage that was reflected in the Beacon application.

26. If Florida Housing has questions or requires additional information, Petitioner is available to provide any information necessary for consideration of this Petition.

WHEREFORE, Petitioner Beacon at Creative Village Partners, Ltd., respectfully requests that the Florida Housing Finance Corporation provide the following relief:

A. Grant the Petition for Variance and all the relief requested herein;

B. Enter an order granting a variance of Rule 67-48.004(3)(j), to allow Beacon to decrease the Total Set-Aside Percentage in the Beacon development;

C. Approve the decrease in the Total Set-Aside Percentage, subject to the addition of an ELI unit, having at least 15% of the affordable units being ELI units, and the weighted Average Income Level of the affordable units not exceeding 60% AMI; and.

D. Approve the increase in the total number of units from 79 units to 85 units, consisting of 13 Extremely Low Income units at 30% or less Area Median Income; 45 units at 60% or less AMI; 18 units at 80% or less AMI; and 9 market rate units.

RESPECTFULLY SUBMITTED this 26th day of August, 2022.

/s/ M. Christopher Bryant

M. Christopher Bryant
Fla. Bar Number 434450
OERTEL, FERNANDEZ, BRYANT
& ATKINSON, P.A.
P.O. Box 1110
Tallahassee, Florida 32302
Telephone: (850) 521-0700
Facsimile: (850) 521-0720
cbryant@ohfc.com
Secondary: bpetty@ohfc.com

Counsel for Beacon at Creative Village, Ltd.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition for Variance is being filed by electronic filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301, CorporationClerk@floridahousing.org, and the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, Joint.admin.procedures@leg.state.fl.us, and by electronic transmission to Hugh Brown, General Counsel, and Betty Zachem, Assistant General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301, hugh.brown@floridahousing.org, and Betty.Zachem@floridahousing.org, this 26th day of August, 2022.

/s/ M. Christopher Bryant
Attorney

If there are existing occupied units and if the Development is funded, a plan for relocation of existing tenants will be required to be provided to the Credit Underwriter, as outlined in Exhibit D.

d. Set-Aside Commitments

(1) Select one of the following minimum set-aside commitments:

Average Income Test

(2) Total Set-Aside Breakdown Chart

(a) Applicants committing to the minimum set-aside commitment of 20 percent of the total units at 50 percent of the Area Median Income or less or 40 percent of the total units at 60 percent of the Area Median Income or less must complete the following chart:

Total Set-Aside Breakdown Chart	
Percentage of Residential Units	AMI Level
Enter Number %	At or Below 25%
Enter Number %	At or Below 28%
Enter Number %	At or Below 30%
Enter Number %	At or Below 33%
Enter Number %	At or Below 35%
Enter Number %	At or Below 40%
Enter Number %	At or Below 45%
Enter Number %	At or Below 50%
Enter Number %	At or Below 60%
Enter Number %	**Total Set-Aside Percentage**

(b) Applicants committing to the Average Income Test must complete this chart:

Total Set-Aside Breakdown Chart	
Number of Residential Units	AMI Level
Enter Number	At or Below 20%
12	At or Below 30%
Enter Number	At or Below 40%
Enter Number	At or Below 50%
45	At or Below 60%
Enter Number	At or Below 70%
18	At or Below 80%

4	Market Rate Units
94.94 % **(Total Set-Aside Percentage)**	

Note: The Development Cost Pro Forma includes an Average Income Test worksheet to assist Applicants in this calculation. If the Total Set-Aside Breakdown Chart reflects that the Average AMI of all Qualifying Housing Credit Units exceeds 60 percent, and/or if the number of Set-Aside Units set aside at 30 percent AMI or less, is not equal to or greater than the required ELI commitment, and/or the overall Set-Aside Commitment requirement is not met, the Application will not be eligible for funding.

e. Unit Mix Chart

(1) Complete the chart below:

Number of Bedrooms/Bathrooms per Unit	Number of Units per Bedroom Type	Number of Units that are ELI Set-Aside Units
1 Bedroom/1 Bathroom	38	6
2 Bedrooms/2 Bathrooms	41	6
Choose an item.	Enter Number	Enter Number
Choose an item.	Enter Number	Enter Number
Choose an item.	Enter Number	Enter Number
Choose an item.	Enter Number	Enter Number

(2) Answer the following questions:

(a) How many Zero Bedroom Units are described in the unit mix chart?

0

(b) How many one-bedroom units are described in the unit mix chart?

38

(c) How many two-bedroom units are described in the unit mix chart?

41

(d) How many three-bedroom units are described in the unit mix chart?

RFA 2021-202 DEVELOPMENT COST PRO FORMA

The intent of this page is to assist the Applicant in determining the overall Average Median Income for the proposed Development when the Development This portion of the Development Cost Pro Forma is to assist the Applicant in understanding some of the variables involved when selecting Average Income test as the minimum housing credit set-aside offered in the RFA. The data entered below will not be used to score the Application. The entries below will not be used to establish the Applicant's set-aside commitment for Application purposes. This is to be used as a tool to assist the Applicant in selecting appropriate set-aside commitments in the Application. The accuracy of the table is dependent upon the accuracy of the inputs and Florida Housing takes no responsibility in any programming errors. This table is optional and its use is at the sole discretion of the Applicant. Applicant is responsible to verify and be in compliance with all aspects of the Application to meet RFA criteria.

INCOME AVERAGING WORKSHEET

	AMI Set-Aside	# of Units	% of Units	
	20%		0.00%	
(ELI Designation)	30%	12	15.19%	
	40%		0.00%	
	50%		0.00%	
	60%	45	56.96%	
	70%		0.00%	
	80%	18	22.78%	
Total Qualifying Housing Credit Units		75	94.94%	(This should match the HC Set-Aside Commitment in the Application)
Market Rate Units		4	5.06%	
Total Units		79	100.00%	(Total Units here matches the Total Units entered on row 33 above)
Average AMI of the Qualifying Housing Credit Units		60.00%	*(equal to 60% maximum)*	

ORIGINAL

If there are existing occupied units and if the Development is funded, a plan for relocation of existing tenants will be required to be provided to the Credit Underwriter, as outlined in Exhibit D.

d. Set-Aside Commitments

(1) Select one of the following minimum set-aside commitments:

Choose an item.

(2) Total Set-Aside Breakdown Chart

(a) Applicants committing to the minimum set-aside commitment of 20 percent of the total units at 50 percent of the Area Median Income or less or 40 percent of the total units at 60 percent of the Area Median Income or less must complete the following chart:

Total Set-Aside Breakdown Chart	
Percentage of Residential Units	AMI Level
Enter Number %	At or Below 25%
Enter Number %	At or Below 28%
Enter Number %	At or Below 30%
Enter Number %	At or Below 33%
Enter Number %	At or Below 35%
Enter Number %	At or Below 40%
Enter Number %	At or Below 45%
Enter Number %	At or Below 50%
Enter Number %	At or Below 60%
Enter Number %	**Total Set-Aside Percentage**

(b) Applicants committing to the Average Income Test must complete this chart:

Total Set-Aside Breakdown Chart	
Number of Residential Units	AMI Level
Enter Number	At or Below 20%
13	At or Below 30%
Enter Number	At or Below 40%
Enter Number	At or Below 50%
45	At or Below 60%
Enter Number	At or Below 70%
18	At or Below 80%

9	Market Rate Units
89.41 % **(Total Set-Aside Percentage)**	

Note: The Development Cost Pro Forma includes an Average Income Test worksheet to assist Applicants in this calculation. If the Total Set-Aside Breakdown Chart reflects that the Average AMI of all Qualifying Housing Credit Units exceeds 60 percent, and/or if the number of Set-Aside Units set aside at 30 percent AMI or less, is not equal to or greater than the required ELI commitment, and/or the overall Set-Aside Commitment requirement is not met, the Application will not be eligible for funding.

e. Unit Mix Chart

(1) Complete the chart below:

Number of Bedrooms/Bathrooms per Unit	Number of Units per Bedroom Type	Number of Units that are ELI Set-Aside Units
Choose an item.	Enter Number	Enter Number
Choose an item.	Enter Number	Enter Number
Choose an item.	Enter Number	Enter Number
Choose an item.	Enter Number	Enter Number
Choose an item.	Enter Number	Enter Number
Choose an item.	Enter Number	Enter Number

(2) Answer the following questions:

(a) How many Zero Bedroom Units are described in the unit mix chart?

Enter Number

(b) How many one-bedroom units are described in the unit mix chart?

Enter Number

(c) How many two-bedroom units are described in the unit mix chart?

Enter Number

(d) How many three-bedroom units are described in the unit mix chart?

RFA 2021-202 DEVELOPMENT COST PRO FORMA

The intent of this page is to assist the Applicant in determining the overall Average Median Income for the proposed Development when the Development This portion of the Development Cost Pro Forma is to assist the Applicant in understanding some of the variables involved when selecting Average Income test as the minimum housing credit set-aside offered in the RFA. The data entered below will not be used to score the Application. The entries below will not be used to establish the Applicant's set-aside commitment for Application purposes. This is to be used as a tool to assist the Applicant in selecting appropriate set-aside commitments in the Application. The accuracy of the table is dependent upon the accuracy of the inputs and Florida Housing takes no responsibility in any programming errors. This table is optional and its use is at the sole discretion of the Applicant. Applicant is responsible to verify and be in compliance with all aspects of the Application to meet RFA criteria.

INCOME AVERAGING WORKSHEET

	AMI Set-Aside	# of Units	% of Units	
	20%		0.00%	
(ELI Designation)	30%	13	15.29%	
	40%		0.00%	
	50%		0.00%	
	60%	45	52.94%	
	70%		0.00%	
	80%	18	21.18%	
Total Qualifying Housing Credit Units		76	89.41%	(This should match the HC Set-Aside Commitment in the Application)
Market Rate Units		9	10.59%	
Total Units		85	100.00%	(Total Units here matches the Total Units entered on row 33 above)
Average AMI of the Qualifying Housing Credit Units		59.61%	*(less than 60% maximum)*	