STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

RECEIVED
AUG 30 2022 10:27 AM
FLORIDA HOUSING FINANCE CORPORATION

CITY PLACE APARTMENTS, LTD.,
a Florida limited partnership,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

CASE NO. 2022-051VW

Application No. 2022-124C
RFA No. 2021-202

PETITION FOR (1) WAIVER OF RULE 67-48.004(3)(i) (5.18.21) FOR A CHANGE IN THE TOTAL NUMBER OF UNITS AND (2) APPROVAL PURSUANT TO RULE 67-48.004(3)(j) (5.18.21) TO CHANGE THE TOTAL SET-ASIDE PERCENTAGE

City Place Apartments, Ltd., a Florida limited partnership (the "Petitioner") hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's prohibition on changes in the "Total Number of Units" and for approval to change the "Total Set-Aside Percentage." *See* Rule 67-48.004(3)(i) and (j), Florida Administrative Code, ("F.A.C.") (5.18.21) (the "Rule"). Due to inflation induced construction cost increases, Petitioner is redesigning the development to remove the 11 market rate units, which will increase the total set-aside percentage to 100% while decreasing the total number of units to 99 – the total number of affordable housing units will remain the same if the requested waiver is granted. Specifically, Petitioner seeks:

	Total Number of Units	**Set-Aside**
Current	110 units	10% (11 units) @ < 28% 80% (88 units) @ < 60% 10% (11 units) @ market rate Total: 90%
Proposed	99 units	11% (11 units) @ < 28% 89% (88 units) @ < 60% Total: 100%

Number of Bedrooms/Bathrooms per Unit	Number of Units per Bedroom Type	Number of Units that are ELI Set-Aside Units
Current[1]		
1 Bedroom/1 Bathroom	28	3
2 Bedrooms/2 Bathrooms	82	8
Proposed[2]		
1 Bedroom/1 Bathroom	23	3
2 Bedrooms/2 Bathrooms	76	8

In support of this request, Petitioner states:

A. <u>THE PETITIONER</u>

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

Francisco Rojo
3050 Biscayne Boulevard, Suite 300
Miami, FL 33137
Attn: Francisco Rojo
Telephone: (305)538-9552 x 103
Facsimile: (305)538-9553
E-Mail: Francisco@landmarkco.net

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

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street
Suite 2200
Miami, Florida 33130
Telephone: 305-789-3350
Fax: 305-789-3395
Email: Bmcdonough@stearnsweaver.com

Bridget Smitha
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
106 East College Avenue, Suite 700
Tallahassee, FL 32301
Telephone: 850-329-4852
Fax: 850-329-4844
Email: BSmitha@stearnsweaver.com

[1] As approved by the Corporation on May 26, 2022.

[2] The unit mix may vary, provided that 2 Bedroom/2 Bathroom units will be at least 68% of the total units, as per the Housing Credit application submitted on August 30, 2021. In the event the unit mix changes, the breakdown of the ELI units will be revised in order to match the unit mix breakdown on a pro rata basis.

B. RULE FROM WHICH WAIVER IS SOUGHT

3. To change the total number of units, Petitioner requests a waiver from Rule 67-48.004(3)(i), F.A.C., in effect as of the submission of Petitioner's Application. 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:
>
> ***
>
> (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, as well as review of 24 CFR Part 92 to ensure continued compliance for the HOME Program;

C. RULE PURSUANT TO WHICH APPROVAL IS REQUESTED

4. To change the total set-aside percentage, Petitioner requests approval pursuant to Rule 67-48.004(3)(j), F.A.C. (5.18.21). 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:
>
> ***
>
> (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. For the HOME Program, the total number of HOME-Assisted Units committed to in the Set-Aside Commitment section of the Application. Notwithstanding the foregoing, the Total Set-Aside Percentage, or total number of HOME-Assisted Units, as applicable, 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, as well
> as review of 24 CFR Part 92 to ensure continued compliance for the HOME Program;

D. STATUTES IMPLEMENTED BY THE RULE

5. 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. THE DEVELOPMENT

6. The following information pertains to the development underlying Petitioner's Application No. 2022-124C (the "Application"):

- Development Name: City Place
- Development Address: NE corner of the Intersection of S.W. 3rd Ave. & S.W. 1st St., Dania Beach, FL
- County: Broward
- Developer: Landmark Development Corp.
- Number of Units: 110 newly constructed units were identified in the Application, but Petitioner respectfully requests approval to decrease this amount to 99 units.[3]
- Type: High-Rise
- Set Asides: Petitioner is currently[4] subject to the following set aside commitments: 10% (11 units) at or below 28%; 80% (88 units) at or below 60%; and 10% (11 units) at market rate, for a total set-aside percentage of 90%. Petitioner seeks a Rule waiver to allow a change such that the total number could be reduced to 99 units, of which 11% (11 units) would be at or below 28% and 89% (88 units) would be at or below 60% (*i.e.*, if the waiver is granted, the total set-aside percentage could increase to 100%).
- Demographics: Family
- Funding: Housing Credit Request Amount (annual amount): $2,718,000. Petitioner also requested additional Housing Credits in response to the Invitation to Participate ("ITP") Construction Housing Inflation Response Program ("CHIRP").

[3] If the Petition is granted, Petitioner will seek approval from the City of Dania Beach to amend the site plan.

[4] The Corporation approved the current set-asides on May 26, 2022.

F. JUSTIFICATION FOR THE REQUESTED WAIVER

7. On August 30, 2021, Petitioner timely submitted its Application in response to RFA 2021-202 Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, And Pinellas Counties (the "RFA"). The Application reflected a total of 110 units, with a Total Set-Aside-Percentage of 90%.

8. Petitioner accepted the Corporation's invitation to credit underwriting on January 24, 2022.

9. Inflation and supply chain disruptions subsequently caused construction costs to unexpectedly, and drastically, increase. In response, the Corporation issued an ITP CHIRP, which provides funding to assist competitive projects in the development pipeline experiencing cost increases related to market inflation. Although Petitioner applied on June 24, 2022, to participate in CHIRP, additional measures must be taken to maintain the feasibility of the Development's completion. Accordingly, Petitioner is engaging in value engineering to lower the total development costs. Rather than sacrifice affordable housing units and/or the amenities available to same, Petitioner chose to forego the eleven market rate units. If this Petition is granted, the removal of the eleven market rate units will reduce the total number of units from 110 to 99 while increasing the total set aside percentage from 90% to 100%, necessitating a waiver of Rule 67-48.004(3)(i) and approval pursuant to Rule 67-48.004(3)(j). Thus, Petitioner is seeking the relief described in Sections B and C, above.

10. 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. *See* § 120.542(2), Fla. Stat.

11. The Corporation has the authority to grant the requested waiver because application of the Rule would create a substantial hardship and the purpose will be achieved by other means. Petitioner seeks only to reduce the number of market rate units in an effort to maintain the Development's viability. Granting the requested waiver will not impact the number or quality of affordable housing units and will not prejudice the Corporation, the Development, or any other applicant.

12. Indeed, a waiver of the Rule's restriction against changing the total number of units would serve the purposes of Section 420.5099, F.S., and the Act as a whole, because the total set-aside percentage would **increase** and 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.

13. In contrast, a denial of this Petition (a) will result in substantial economic hardship to Petitioner; (b) could deprive Broward County of essential, affordable housing, and (c) would violate principles of fairness[5]. *See* § 120.542(2), Fla. Stat.

14. 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.

[5]"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. *See* § 120.542(2), Florida Statutes.

G. PERMANENCY

15. The waiver being sought is permanent in nature.

H. ACTION REQUESTED

16. Petitioner requests the following:

a. That the Corporation grant Petitioner a waiver from Rule 67-48.004(3)(i), F.A.C., allowing it to decrease the total number of units in the Development from 110 to 99, and to approve Petitioner's request pursuant to Rule 67-48.004(3)(j), F.A.C., to increase the Total Set-Aside Percentage from 90% to 100%;

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

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

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Counsel for Petitioner
150 West Flagler Street, Suite 150
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@swmwas.com

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

CERTIFICATE OF SERVICE

The Petition is being served via e-mail for filing with the Corporation Clerk for the Florida Housing Finance Corporation, *CorporationClerk@FloridaHousing.org*, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 30th day of August, 2022.

s/Brian J. McDonough
Brian J. McDonough, Esq