STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2021-089VW

414 EAST PINE STREET, LP,

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

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FLORIDA HOUSING FINANCE CORPORATION

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

414 EAST PINE STREET, LP, a Florida limited partnership, (the "Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver or variance of Rule 67-21.003(8)(i), Florida Administrative Code ("F.A.C") (2020) to decrease the Total Set-Aside Percentage from 99.492% to 98.985% as reflected in the Proposed Unit Mix attached hereto in Exhibit A (the "Proposed Unit Mix"). This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code. In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone number and facsimile number of the Petitioner is:

414 EAST PINE STREET, LP
101 S. Terry Avenue
Orlando, FL 32805
Telephone: (407) 648-1623
Facsimile: (410) 685-6677
Attention: Orlando Neighborhood Improvement Corporation, c/o Alfred Arzuga

Email: Arzuaga@orlandoneighborhood.org

2. For purposes of this petition, the address, telephone number, facsimile number, and email address of Petitioner's counsel is:

David F. Leon, Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4276
Facsimile: (407) 425-8377
Email: david.leon@nelsonmullins.com

B. THE DEVELOPMENT

3. Petitioner is the owner of that certain 197-unit multifamily residential development commonly known as BAPTIST TERRACE, located within Orange County, Florida (the "Development"). Petitioner's acquisition, rehabilitation, installation and equipping of the Development was financed, in part, by a loan in the principal amount of up to $21,500,000 (the "Loan") from the ORANGE COUNTY HOUSING FINANCE AUTHORITY (the "OHFA") that was financed by the proceeds of multifamily housing revenue bonds (the "Bonds"). On July 1, 2020, the OHFA issued the Bonds and disbursed a portion of the Loan to Petitioner. On June 29, 2020 Petitioner submitted its Non-Competitive 4% Application Package (Rev. 04-2020) for Non-Competitive Housing Credits (the "Application") and requested an annual amount of $1,250,412 in Housing Credits to assist in financing the acquisition and rehabilitation of the Development.

4. In the Application, Petitioner selected the Average Income Test under Section 10(a) of the Application and under Section 10(b) of the Application, Petitioner elected to set-aside 27 units at 30 percent AMI; 17 units at 40 percent AMI; 97 units at 60 percent AMI; 55 units at 80 percent AMI; and 1 market rate unit (i.e., 196 of the 197 units or 99.492%) (the "Total Set-Aside Breakdown Chart"). Due to circumstances relating to a holdover tenant of the previous owner of

the Development, Petitioner now seeks to change the Total Set-Aside Breakdown Chart from 99.492% to 98.985% (195 out of 197 units). In Particular, Petitioner seeks to remove two (2) units from the 80 percent AMI income band, and reallocate one (1) such unit as a market rate unit, and reallocate the other unit as a 60 percent AMI unit, thereby revising the set-asides to reflect those shown in the Proposed Unit Mix, which such Proposed Unit Mix will enable the Petitioner to maintain an overall income average below 60 percent AMI and therefore satisfy the Average Income Test.

C. THE RULE FROM WHICH WAIVER IS SOUGHT

5. Petitioner requests a waiver from Rule 67-21.003(8)(i), F.A.C. (2020) (the "Rule"), which provides:

> **67-21.003 – Application and Selection Process for Developments.**
>
> * * *
>
> (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**:
>
> * * *
>
> (i) **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;
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> (Emphasis added.)

D. STATUTES IMPLEMENTED BY THE RULES

6. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. See §§ 420.509, 420.5099, Fla. Stat.

E. WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

7. Petitioner requests a waiver of the Rule to decrease the total set-aside percentage in the Total Set-Aside Breakdown Chart from 99.492% to 98.985% as reflected in the Proposed Unit Mix.

8. Petitioner was originally underwritten for the Total Set-Aside Breakdown Chart that was submitted in the Application. Petitioner demonstrated eligibility for Housing Credits, as evidenced by that certain Preliminary Determination Certificate dated November 20, 2020 (the "Certificate"). Subsequent to Petitioner's submission of the Application and receipt of the Certificate, Petitioner was informed that a tenant occupying an efficiency unit of the Development pursuant to a United States Department of Housing and Urban Development lease (the "Tenant"), who initially qualified under the tax credit requirements, was now over income when the Tenant was recertified upon acquisition. Petitioner offered the tenant generous relocation packages; however, the Tenant declined all of Petitioners offers to relocate and elected to remain a tenant of the Development. As such, Petitioner requests a waiver from, or variance to, the Rule to enable Petitioner to revise the Total Set-Aside Breakdown Chart in order to i) re-designate one (1) 80 percent AMI unit as a market rate unit, to resolve the situation concerning the Tenant, and ii) to re-designate one (1) 80 percent AMI unit as a 60 percent AMI unit, which such re-designation will

allow the Petitioner to maintain an overall income average at or below 60 percent AMI and thus satisfy the Average Income Test.

9. Pursuant to Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the power and authority to grant waivers or variances to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences in particular instances. A waiver or variance shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship[1] *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.

10. Here, Petitioner meets the requirements for the waiver or variance. The requested waiver will not adversely impact the Development or the Corporation and will ensure that the 195 affordable housing units of the Development will be preserved and made available for the target population in Orange County. However, strict application of the Rule will result in substantial hardship to Petitioner. Despite Petitioner's efforts, the Tenant has declined incentivized offers to relocate and has elected to remain a tenant of the Development. As such, Petitioner will be unable to meet the set-aside requirements committed to in the Application. Without a waiver of, or variance from, the Rule, Petitioner will be out of compliance with the set-aside commitment made in the Application and will potentially lose its Housing Credits. A loss of the Housing Credits will cause substantial and unnecessary financial and operational hardship due to the commitments made by the investor of the Petitioner with respect to certain financial obligations which are

[1] "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. Further, "principles of fairness" are violated when the 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* Fla. Stat. § 120.542.

contingent on the receipt of Housing Credits, which obligations have been critical to Petitioner's acquisition and rehabilitation of the Development. A loss of the Housing Credits at this time will undoubtedly trigger various defaults and have a substantial impact on Petitioner's ability to maintain the Development as committed to.

11. The requested waivers serve the purpose of the Statute that is implemented by the rules. The Florida Housing Finance Corporation Act (Section 420.501, *et seq*.) was passed 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 and Multifamily Mortgage Revenue Bonds Program is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting these waivers, Petitioner will be able to obtain the needed Housing Credits and avoid suffering financial and administrative hardship, and the Corporation would recognize the goal of providing persons of low-income with of affordable housing through private investment.

E. TYPE OF WAIVER

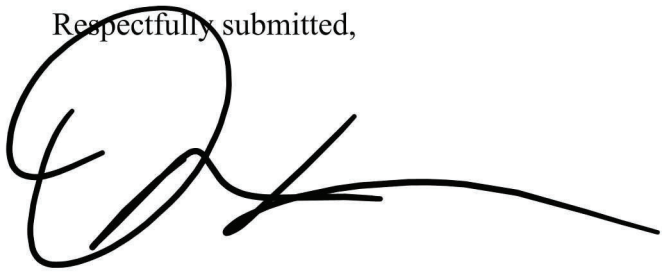
11. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

12. For the reasons set forth herein, Petitioner respectfully requests the Corporation (*i*) grant the requested waiver of the Rule; (*ii*) grant the requested reduction in the total set-aside percentage in the Total Set-Aside Breakdown Chart from 99.492% to 98.985% as reflected in the Proposed Unit Mix attached hereto as Exhibit A, (*iii*) grant the Petition and all the relief requested herein, and (*iv*) grant such further relief as it may deem appropriate.

Respectfully submitted the 18th day of November, 2021.

Respectfully submitted,



David F. Leon, Esq.
Fla. Bar No. 53929
Nelson Mullins Broad and Cassel
390 N. Orange Ave., Suite 1400
Orlando, FL 32801
Telephone: (407) 839-4276
Facsimile: (407) 425-8377
Email: david.leon@nelsonmullins.com
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org,

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

The 18th day of November, 2021.



By: _____
David F. Leon, Esq.
Fla. Bar No. 53929

Exhibit A

Proposed Income Bands

Unit Type	AMI %	No. of Units
Eff	30%	15
Eff	40%	9
Eff	60%	53
Eff	80%	28
Eff	market	1
1BR	30%	12
1BR	40%	8
1BR	60%	45
1BR	80%	25
1BR	market	1
	Total	197