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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In re: Beacon at Creative Village Partners, Ltd.,

Petitioner.
_____/

FHFC File No: 2022-122C
FHFC Case No.: 2025-002VW

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

Petitioner, BEACON AT CREATIVE VILLAGE PARTNERS, LTD. ("Petitioner" or "Beacon I"), 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)(i), Fla. Admin. Code in order to allow Beacon I to decrease the total number of units in Beacon Phase I by the transfer and conversion of market rate units to Set-Aside units at an adjacent phase of the same development (Beacon II). Beacon I would then consist entirely of Set-Aside units, in the same number of Set-Aside units as it is currently approved for (76 units).

As explained more fully in this petition, this Rule variance is being sought in conjunction with a separate request to increase the total number of units in Beacon II, all of which will be Set-Aside units. Beacon I proposes to transfer nine (9) market rate units (120% AMI) to Beacon at Creative Village Phase II ("Beacon II"). Beacon II has been selected for an award of State Apartment Incentive Loan ("SAIL") funding, tax-exempt bonds, and non-competitive housing credits in RFA 2024-205 for a 30 unit development, and has been invited into credit underwriting. All nine of the transferred market rate units would be converted to additional Set-Aside Units in Beacon II, at 30%, 60%, and 80% AMI levels, without any additional SAIL or tax-exempt bond financing.

A. NATURE OF REQUEST

1. Pursuant to Section 120.542, Fla. Stat. (2024), and Rules 28-104.001 through 28-104.006, Fla. Admin. Code, Petitioner requests a waiver of provisions of Rule 67-48.004(3)(i), Fla. Admin. Code. Rule 67-48.004(3)(i) prohibits an Applicant from changing the total number of units in a development; it allows an Applicant to request an increase in the number of units after being invited into credit underwriting, but does not allow a decrease in the number of units, even if the number of Set-Aside Units remains the same. 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 does allow an applicant to request approval for an increase in its Total Set-Aside Percentage, and Beacon I's proposal will increase its Set-Aside percentage (from 89.41% to 100%). The proposed changes to Beacon I and Beacon II will also increase the total number of affordable units in the market, by transferring market rate units to Beacon II for conversion to Set-Aside Units.

B. THE PETITIONER

2. As explained in this Petition, Beacon I was the recipient of $2.375 million in Housing Credits from FHFC for a new construction development in Orange County in RFA 2021-202. Beacon I subsequently received an additional $500,000 in Housing Credits through Invitation to Participate (ITP) 2022-CHIRP, the Construction Housing Inflation Response Program, in 2023 (Appl. No. CHIRP 22-2022-122C). 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).

3. The Applicant Entity for Beacon I 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.

4. The original Developer Entity for Beacon I was Atlantic Housing Partners II, LLC. The Applicant submitted a letter request to Florida Housing staff on October 2, 2024, requesting a change of the Developer to Atlantic Housing Partners, L.L.L.P. ("AHP"), a Florida limited liability limited partnership. The request is still in process as of this date, but the Applicant has been informed by staff that the request will be approved. The General Partner of AHP is Atlantic Housing Partners Managers, LLC and the Limited Partners of AHP are Florida CIS Housing Advisors, LP and Atlantic Housing Group Partners, Ltd. The natural person Principal of AHP whose development experience was relied upon in the application process to establish General Development Experience was W. Scott Culp.

C. THE BEACON I APPLICATION IN RFA 2021-202, LATER MODIFICATIONS, AND BEACON II APPLICATION

5. 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.

6. Beacon I 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 Set-Aside units, and the remaining four to be unrestricted market rate housing. Beacon I sought Housing Credits in the annual amount of $2,375,000.

7. As initially proposed, the Beacon I development would consist of 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.

8. In its application in RFA 2021-202, Beacon I 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%.

9. In August 2022, Beacon I sought a rule waiver from FHFC in order to add six (6) more units to the development: one (1) additional ELI unit at 30% AMI (for a total of 13 ELI units), and five (5) additional market rate units (for a total of 9 market rate units), resulting in 85 total 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. Beacon I still met the Average Income Test, with the average income level for the 76 Set-Aside units equaling 59.6% AMI for those 76 units. By Order entered September 19, 2022, in FHFC Case No. 2022-50VW, Florida Housing's Board of Directors approved the requested Variance.

10. In September 2024, a related entity, Beacon at Creative Village - Phase II Partners, Ltd., submitted an application in RFA 2024-205 for financing for the construction of 30 affordable units to be known as The Beacon at Creative Village- Phase II ("Beacon II"). Beacon II will be

located in the same mid-rise building as Beacon I, and will occupy space through a condominium ownership arrangement. The funding sources applied for included SAIL and ELI loans totaling $1,319,400; $8.5 million in Corporation-issued MMRB; and annual non-competitive housing credits of $555,128. Beacon II is a self-sourced application in which the Applicant will provide $1.1 million of the financing required for the development. As set forth in its SAIL application, Beacon II originally was to consist of four (4) ELI units at 30% AMI; twenty (20) units at 60% AMI; and six (6) units at 80% AMI, satisfying the Average Income Test with an average of 60.00% AMI.

11. Beacon II was assigned application number 2024-284BS, and was recommended for an award of funding by staff. The FHFC Board of Directors adopted staff's scoring, eligibility, and funding recommendations; and the selections were posted on the Corporation's website on October 22, 2024. Two formal written protests were filed in response to the SAIL RFA funding selections, but neither one directly challenged the selection of Beacon II, and neither one would have displaced Beacon II, even if it prevailed. One of the formal protests was voluntarily dismissed on November 8, before the settlement conference; and the remaining formal protest voluntarily dismissed on December 13, 2024. On November 18, 2024, FHFC issued Beacon II an at-risk invitation to credit underwriting, and Beacon II accepted the credit underwriting invitation on November 19, 2024.

12. Beacon I now seeks to transfer its nine (9) market rate (120% AMI) units to Beacon II, which would then be redesignated by Beacon II as Set-Aside Units as follows: one (1) 30% AMI (ELI) unit, seven (7) 60% AMI units, and one (1) 80% AMI unit. Beacon II would not seek any additional SAIL or MMRB financing as a condition of providing these additional Set-Aside units.

13. The resulting complement of units in Beacon I would be 76 total units, allocated as twelve (12) 30% AMI units, forty-six (46) 60% AMI units, and eighteen (18) 80% AMI units, with a weighted average income restriction of 60.00%. The resulting complement of units in Beacon II would be 39 total units, allocated as five (5) 30% AMI units, twenty-seven (27) 60% AMI units, and seven (7) 80% AMI units, with a weighted average income restriction of 59.75%. A chart showing the current and proposed new mix of units in Beacon I and Beacon II (and their total) by AMI and number of bedrooms is attached as Exhibit A.

D. RULE PROVISIONS

14. 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…

15. Rule 67-48.004(3)(i) expressly allows an increase in the total number of units, subject to written request, but does not expressly allow a decrease. Beacon I requests a variance in order to reduce the total number of units in Beacon I, by transferring market rate units to Beacon II for conversion to Set-Aside units.

16. Rule 67-48.004(3)(j) prohibits an Applicant from changing its Total Set-Aside Percentage after submitting its Application. However, the rule permits an Applicant to submit a written request to the Corporation to increase the Total Set-Aside Percentage after entering credit underwriting. Beacon I seeks to transfer its 9 market rate units to Beacon II, which has the result of increasing the Total Set-Aside Percentage for Beacon I. Therefore, Beacon I requests a decrease in the Total Number of Units in the Beacon I development from 85 units (consisting of 76 Affordable Units and 9 Market Rate Units) to 76 units (all Affordable); this would increase the Total Set-Aside Percentage for Beacon I from 89.41% to 100%.

E. JUSTIFICATION FOR REQUESTED VARIANCE

17. Both Beacon I and Beacon II 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, low-income and mixed-income residential, retail and commercial uses, and a hotel.

18. The addition of nine more affordable rental units will continue to serve the purpose of the Creative Village Planned Development, as well as the Corporation's purpose in providing ELI units and other affordable units.

19. Notably, if Beacon I had proposed this complement of ELI and other affordable

units when it applied for funding in RFA 2021-202, it still would have been selected for funding. Beacon I 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.

F. RELIEF REQUESTED

20. Beacon I seeks to have a variance from Rule 67-48.004(3)(i) to allow it to decrease the total number of units in Beacon I, while still providing the same number of Set-Aside units. As explained above, the Total Set-Aside Percentage for Beacon I will increase from 89.41% to 100%, and the number of affordable units will remain at 76. Beacon I seeks both the variance from the rule and the approval of the resulting unit mix. Further, as noted in paragraph 12 above, Beacon I seeks approval to change the Total Set-Aside Percentage, which does not require a rule waiver or variance but does require express approval of the Corporation.

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

22. The requested Rule variance will not adversely impact the Beacon I 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.

G. STATUTORY PURPOSE SERVED

23. 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.

24. 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.

25. 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 I is requesting a decrease in the numbers of market rate units only, which increases the Total Set-Aside Percentage. This decrease in market rate units in Beacon I is being sought simultaneously with an increase in the number of Set-Aside Units in Beacon II. So, Florida Housing's statutory purpose is still served.

H. AVOIDING PRINCIPLES OF FAIRNESS BEING VIOLATED

26. The rule at issue is intended to prevent an applicant from relying on a particular number of units in the competitive application selection process, and then later seeking to change that number after it has been selected for funding. Typically, one would expect a request in a change of unit count to reduce number of units, possibly to address development costs that increased since the time of application. The potential consequences of allowing an applicant to change its number of units include frustrating FHFC's expectations as to the number of housing

units, especially affordable housing units, that the Applicant will bring to the market, after the competitive process has been concluded. The rule does contain an exception allowing an applicant to increase its number of units, which presumably will keep the same number of affordable units, or even increase them.

27. Instead of increasing its unit count, Beacon I seeks to reduce its total number of units, while keeping all of the affordable Set-Aside Units. In addition, through its proposed arrangement with an adjacent related development, Beacon II, the total number of affordable units being added to the market will increase. This will occur through the transfer of Beacon I's nine market rate units to Beacon II, and their conversion to nine additional Set-Aside units in Beacon II. Further, these nine additional units do not require any additional amount of Florida Housing's scarce subsidies: SAIL and ELI loans, or Corporation-issued Tax Exempt bonds.

28. If Beacon I were seeking to increase its total number of units, it could do so by request without requiring a rule waiver. But because it is seeking to decrease its total unit count by transferring units to the adjacent related development, such that the number of units the two developments together are adding to the housing market, it cannot do so by request alone. Beacon I is thus treated differently than an applicant seeking to increase its unit count, even when such other applicant may not bring the additional benefits to Florida Housing, the City of Orlando, and the affordable housing market, without additional Florida Housing subsidy.

29. The waiver and variance being sought are permanent in nature, in that the total number of Set-Aside units within Creative Village will be operated as affordable for the duration of the affordability periods set forth in the Beacon I and II applications.

30. 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 number of units and Total Set-Aside Percentage in the Beacon I development;

C. Approve the increase in the Total Set-Aside Percentage; and.

D. Approve the decrease in the total number of units in Beacon I from 85 units to 79 units, consisting of 12 Extremely Low Income units at 30% or less Area Median Income; 43 units at 60% or less AMI; 21 units at 80% or less AMI; and 0 market rate units.

RESPECTFULLY SUBMITTED this 6th day of January, 2025.

/s/ M. Christopher Bryant

M. Christopher Bryant
Fla. Bar Number 434450
OERTEL, FERNANDEZ, BRYANT
& ATKINSON, P.A.
P.O. Box 1110
Tallahassee, Florida 32302
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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 Ethan Katz, Assistant General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301, Ethan.Katz@floridahousing.org, this 6th day of January, 2025.

/s/ M. Christopher Bryant
Attorney

THE BEACON AT CREATIVE VILLAGE - All Phases

As currently approved with FHFC

Phase I - Unit Mix & Set-Asides Approved by FHFC - Phase I

AMI	0 Bedroom	1 Bedroom	2 Bedroom	Total		
30%	0	7	6	13	15%	
60%	0	22	23	45	53%	
80%	0	9	9	18	21%	89.41%
120%	4	0	5	9	11%	10.59%
				85		
Total	4	38	43	85	100%	100%

2022-07-29 Revised Mix Approval Request for FHFC

9/19/2022 Order Granting Rule Waiver for Units and Unit Mix

Phase II - Unit Mix & Set-Asides - Phase II

AMI	0 Bedroom	1 Bedroom	2 Bedroom	Total		
30%	1	3	0	4	13%	
60%	0	13	7	20	67%	
80%	0	6	0	6	20%	100.00%
120%	0	0	0	0	0%	0.00%
				30		
Total	1	22	7	30	100%	100%

RFA 2024-205 Set-Asides

TOTAL - Unit Mix & Set-Asides

AMI	0 Bedroom	1 Bedroom	2 Bedroom	Total		
30%	1	10	6	17	15%	
60%	0	35	30	65	57%	
80%	0	15	9	24	21%	92.17%
120%	4	0	5	9	8%	7.83%
				115		
Total	5	60	50	115	100%	100%

Contingent upon FHFC Approval - 76 / 39 Scenario

Phase I - Unit Mix & Set-Asides - Phase I

AMI	0 Bedroom	1 Bedroom	2 Bedroom	Total		
30%	0	6	6	12	16%	
60%	0	24	22	46	61%	
80%	0	9	9	18	24%	100.00%
120%	0	0	0	0	0%	0.00%
				76		
Total	0	39	37	76	100%	100%

Phase II - Unit Mix & Set-Asides - Phase II

AMI	0 Bedroom	1 Bedroom	2 Bedroom	Total		
30%	0	3	2	5	13%	
60%	0	19	8	27	69%	
80%	0	6	1	7	18%	100.00%
120%	0	0	0	0	0%	0.00%
				39		
Total	0	28	11	39	100%	100%

TOTAL - Unit Mix & Set-Asides

AMI	0 Bedroom	1 Bedroom	2 Bedroom	Total		
30%	0	9	8	17	15%	
60%	0	43	30	73	63%	
80%	0	15	10	25	22%	100.00%
120%	0	0	0	0	0%	0.00%
				115		
Total	0	67	48	115	100%	100%

Ana McGlamory

From: Ethan Katz
Sent: Monday, January 13, 2025 8:54 AM
To: Ana McGlamory
Subject: FW: Beacon at Creative Village I Petition for Variance

For the 2025-002VW file.

From: Chris Bryant <cbryant@ohfc.com>
Sent: Friday, January 10, 2025 5:54 PM
To: Ethan Katz <Ethan.Katz@floridahousing.org>
Subject: Re: Beacon at Creative Village I Petition for Variance

Ethan-

Yes this is correct. Reduction by 9 units, all market rate, with the resulting 76 being all affordable.

Thank you.

Chris Bryant
Sent from my iPhone

> On Jan 10, 2025, at 1:39 PM, Ethan Katz <Ethan.Katz@floridahousing.org> wrote:
>
> Good Morning Chris,
>
> Following up on our conversation this morning. As we discussed, the attached Creative Village Petition contains a discrepancy regarding the requested unit reduction. Based on our conversation this morning, please confirm that the intent of the Petition is, amongst other things, to request a reduction of 9 units in the Beacon I Development from 85 units to 76 units. Thanks,
>
> **Ethan Katz**
> *Assistant General Counsel*
> Ethan.Katz@floridahousing.org
> p. 850.488.4197
> www.FloridaHousing.org
> https://www.floridahousing.org/home" style='position:absolute;margin-left:.75pt;margin-top:31.2pt;width:111.6pt;height:30.75pt;z-index:251659264;visibility:visible;mso-wrap-style:square;mso-width-percent:0;mso-height-percent:0;mso-wrap-distance-left:9pt;mso-wrap-distance-top:0;mso-wrap-distance-right:9pt;mso-wrap-distance-bottom:0;mso-position-horizontal:absolute;mso-position-horizontal-relative:text;mso-position-vertical:absolute;mso-position-vertical-relative:text;mso-width-percent:0;mso-height-percent:0;mso-width-relative:page;mso-height-relative:page' o:button="t">
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Florida has a broad and inclusive public records law. This e-mail and any responses to it should be considered a matter of public record.

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Florida has a broad and inclusive public records law. This e-mail and any responses to it should be considered a matter of public record.”

<2025 01-06 Petition for Variance-Beacon.pdf>