

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

FHFC CASE NO. 2018-044VW

PHOENIX APARTMENTS VENTURE LP,

Petitioner

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-21.003(8)(j) OF
THE FLORIDA ADMINISTRATIVE CODE**

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FLORIDA HOUSING
FINANCE CORPORATION

Petitioner, PHOENIX APARTMENTS VENTURE LP, a Florida limited partnership (“Petitioner”), by and through its undersigned counsel, hereby petitions Respondent, FLORIDA HOUSING FINANCE CORPORATION (the “Corporation”) for a waiver of Rule 67-21.003(8)(j), Florida Administrative Code (“F.A.C.”) to decrease the total set-aside percentage from 100 percent to 95 percent (156 out of 164 units). In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone number, facsimile number and e-mail address for Petitioner and its qualified representative are:

Phoenix Apartments Venture LP
c/o MRK Partners Inc.
Attention: Sydne M. Garchik
2711 N. Sepulveda Blvd, #526
Manhattan Beach, CA 90266
Telephone: (310) 545-2587
Facsimile: (484) 210-0671
Email: sgarchik@mrkpartners.com

2. The address, telephone number, facsimile number and e-mail address of Petitioner’s counsel is:

Hollie A. Croft, P.A.
Broad and Cassel LLP
390 N. Orange Avenue, Suite 1400
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3. On September 4, 2015, Petitioner applied for an aggregate allocation of \$10,500,000 Tax-Exempt Multifamily Mortgage Revenue Bonds (the “Bonds”) and \$687,441 per annum in 4% Non-Competitive Housing Tax Credits (the “Tax Credits”) (the “Application”) for the acquisition and rehabilitation of one hundred sixty-four (164) units throughout thirteen (13) buildings serving low-income individuals and families in the City of Homestead, Miami-Dade County, Florida and known as the Phoenix Apartments (the “Development”). The Development is an acquisition/rehabilitation of a garden-style apartment complex that serves a family demographic, which was initially placed in service around 1995. In its Application, Petitioner committed to set aside 100% of the units for low-income families. On April 29, 2016, Petitioner closed on the financing and housing tax credit syndication and thereafter completed the rehabilitation of the Development. All units are occupied by tenants who initially qualified, however, certain tenants are now over income.

B. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

**C. THE RULE FROM WHICH WAIVER IS REQUESTED
AND STATUTE IMPLEMENTED BY THE RULE**

5. Petitioner requests a waiver of Rule 67-21.003(8)(j), which provides, in relevant part, as follows:

(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:

(j) *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*; 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; (emphasis added).

D. STATUTES IMPLEMENTED BY THE RULE

6. The Rule implements, among other sections of the Florida Housing Finance Corporation Act, Florida Statutes, Section 420.501, *et seq.* (the "Act"), the statute that created the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. *See* Fla. Stat. § 420.5099 (the "Statute").

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE

7. The Rule requires that an applicant maintain the set asides as selected at the time of application. In the Application, Petitioner committed to set aside one hundred percent (100%) of the units for low-income households, with 40% of the units to be set aside for households at or below 50% of the area median income ("AMI") and 60% of the units to be set aside for households at or below 60% of the AMI. However, currently, there are seven (7) households whose income exceeds the 60% AMI limitation. As such, in order to allow these families to continue to reside in their units and allow Petitioner to remain in compliance with the Multifamily Mortgage Revenue Bonds Program, Petitioner is in need of a waiver of the Rule to allow a decrease in the total set-asides from 100% to 95% (156 out of 164 units).

8. The over-income tenants initially qualified to reside in the Development and would be permitted to continue to reside in the Development under the various restrictive covenants which encumber the Development. Moreover, all new tenants will still be income qualified pursuant to the various restrictive covenants encumbering the Development in connection with the HOME Program¹ and the Tax Credits. Lastly, because the Petitioner obtained the financing through the non-competitive application process, allowing the decrease in the set-asides will not give Petitioner an unfair advantage over other developers.

9. Under Section 120.542(1), Florida Statutes (2017), and Chapter 28-104, F.A.C., the Corporation has the power and authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers 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 or violate principles of fairness,² and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See Fla. Stat. § 120.542(2) (2017).*

10. In this instance, Petitioner meets the standard for a waiver of the Rule.

11. The requested waiver will not adversely impact the Development or the Corporation.

12. In this case, strict application of the Rule will violate principles of fairness and create a substantial hardship for Petitioner. The denial of this request will be a substantial

¹ The Development is subject to a Land Use Restriction Agreement entered into in connection with a HOME loan that has been paid off.

² “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(2) (2017).*

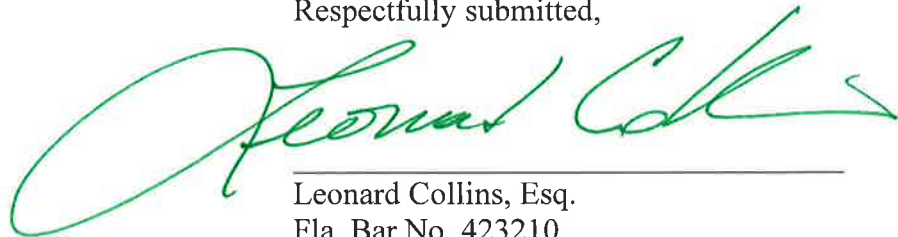
hardship and violate the principles of fairness for the 7 families that do not currently qualify to reside in the Development as well as the Petitioner.

13. As outlined above, the requested waiver serves the purpose of the Statute because one of the primary goals of the Statute is to facilitate the availability of decent, safe and sanitary housing in the State of Florida for low-income households. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons and families of low-income. By granting this waiver, the Corporation would realize its goal of facilitating the availability of affordable housing to families in Florida. *See Fla. Stat. § 420.5099(2) (2017).*

F. ACTION REQUESTED

14. For the reasons set forth herein, Petitioner respectfully requests the Corporation (i) to grant the requested waiver of Rule 67-21.003(8)(j) to permit Petitioner to decrease the total set-aside percentage from 100% to 95% (156 out of 164 units), and (ii) grant such further relief as the Corporation may deem appropriate.

Respectfully submitted,



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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

The original Petition is being served by hand delivery, for filing with the Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, with copies being served by hand delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, on this 21st day of May, 2018.

By: 
Leonard Collins, Esq.
Fla. Bar No. 423210