

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Brickell View Terrace Apartments, Ltd.

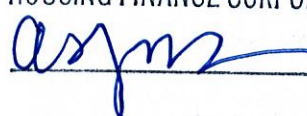
FHFC Case No.: 2013-023VW

ORDER GRANTING PETITION FOR WAIVER OF RULE 67-48.004(14)(j), FLORIDA ADMINISTRATIVE CODE (2011), AND PART III.E.1.b.(2)(c) OF THE 2011 UNIVERSAL APPLICATION INSTRUCTIONS

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 20, 2013, pursuant to a “Petition for Waiver of Rule 67-48.004(14)(j) for a Change in Total Set-Aside Percentage and Variance From Universal Application Instructions Part III.E.b.1.(2)(c)”¹ (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on August 28, 2013, from Brickell View Terrace Apartments, Ltd. (“the Petitioner”). On August 29, 2013, the Notice of the Petition was published in Volume 39, Number 169, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the

¹ The Petition, on page 1, transposes letter and number within the section number of the relevant Application Instructions. Instead of *Part III.E.b.1.(2)(c)*, the section number at issue is Part III.E.1.b.(2)(c) as correctly cited elsewhere in the Petition.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATE: 09/23/13

premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. During the 2011 Universal Cycle, Petitioner applied for and was awarded an allocation of tax credits to finance the construction of a 100 unit, high-rise, family development known as Brickell View Terrace (the "Development") located in Miami-Dade County, Florida.

3. Rule 67-48.004(14) Fla. Admin. Code (2011) provides in relevant part:

"(14) 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 Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

(i) Total number of units; notwithstanding the foregoing, for the SAIL and HC Programs 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;

(j) With regard to the SAIL and HC Programs, 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..."

4. Part III.E.1.b.(2)(c) of the 2011 Universal Application Instructions provides in relevant part:

“(c) Total Set-Aside Commitment (3 Points)

Applicants, except those requesting funding for ALF Developments, will receive 3 points for a commitment to set aside at least 70 percent of the Development’s units at 60 percent AMI or less...”

5. In its application, Petitioner committed to set aside 100% of the Development’s 100 units at 60% AMI or less.

6. Petitioner requests waivers of the above rule and instructions to allow it to increase the total number of units in the Development from 100 to up to 154, and to decrease the Total Set-Aside Percentage from 100% to approximately 65%. Petitioner intends that the additional (up to 54) units will be available for non-income restricted workforce housing. The Petitioner has requested no additional funding from Florida Housing for the additional (up to 54) units in its Petition. As justification, Petitioner states that the zoning for the Development will allow for the addition of up to 54 units; that local government has urged Petitioner to take full advantage of the zoning by providing an additional number of housing units; that the increase in the number of units will allow Petitioner to provide a mixed-income Development with both affordable and work-force housing; and, the

Development's location offers a unique opportunity to utilize its immediate proximity to the Brickell Metro Rail Station by offering housing to both low-income families and families in need of workforce housing.

7. Granting the requested waivers will recognize the economic realities of developing affordable rental housing by allowing mixed-income housing that will meet the housing needs of both low-income families and families in need of workforce housing. Because of its proximity to a metro rail station, the Development is uniquely suited to a mixed-income development that will include workforce housing. Furthermore, granting the requested waivers will not change the total number of Set-Aside units from that committed to by the Petitioner in its application, which will remain at 100, while making available up to 54 units of workforce housing with no additional funding resources from Florida Housing.

8. Section 120.542(2), Florida Statutes provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

9. The Board finds that strict application of the above rule and instruction provisions under these circumstances would constitute a

substantial economic hardship for Petitioner as a consequence of lower rental revenues and lower economies of scale that would otherwise flow from the 54 additional units, and more significantly up to 54 families would be deprived of the opportunity to obtain workforce housing. Granting the requested waivers will not only serve the purpose of the underlying statute and the Act as a whole by facilitating the availability of decent, safe and sanitary affordable housing to low-income persons and households, but provide the additional benefit of meeting the need for mixed-income developments with workforce housing units.

IT IS THEREFORE ORDERED:

Petitioner's request for waivers of Rule 67-48.004(14)(j), Florida Administrative Code (2011), and Part III.E.1.b.(2)(c) of the 2011 Application Instructions, to permit Petitioner to increase the total number of units from 100 to up to 154 and to decrease the Total Set-Aside Percentage from 100% to approximately 65%, subject to the condition that not less than 100 units remain Set-Aside Units, is hereby **GRANTED**.

DONE and ORDERED this 20th day of September, 2013.



Florida Housing Finance Corporation

By: _____

Chairperson

Copies furnished to:

Wellington H. Meffert II, Esq.
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Ken Reecy
Director of Multifamily Programs
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Gary J. Cohen, Esq.
Shutts & Bowen LLP
1500 Miami Center
201 S. Biscayne Blvd.
Miami, FL 33131

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
120 Holland Building
Tallahassee, Florida 32399-1300

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.