

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: The Lofts at Tarpon River, LLC

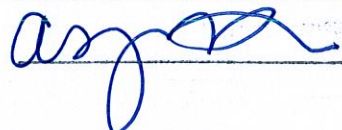
FHFC Case No.: 2013-024VW

ORDER GRANTING PETITION FOR WAIVER OF RULE 67-48.004(14)(j), FLORIDA ADMINISTRATIVE CODE (2011)

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" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on August 28, 2013, from The Lofts at Tarpon River, LLC ("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 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.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION



/DATE: 09/23/13

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 Pinnacle at Tarpon River f/k/a The Lofts at Tarpon River (the "Development") located in Broward 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. In its application, Petitioner committed to set aside 100% of the Development's 100 units at 60% AMI or less.

6. Petitioner requests waiver of the above rule to allow it to increase the total number of units in the Development from 100 to 112, and to decrease the Total Set-Aside Percentage from 100% to approximately 89.3%. Petitioner intends that the additional 12 units will be available for non-income restricted workforce housing. The Petitioner has requested no additional funding from Florida Housing for the 12 units in its Petition. As justification, Petitioner states that the zoning for the Development will allow for the addition of 12 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 workforce housing.

7. Granting the requested waiver 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. Furthermore, granting the requested waiver 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 12 units of workforce housing with no additional funding resources from Florida Housing.

8. The requested change would not affect the scoring of Petitioner's application nor allow Petitioner to gain an unfair advantage over other applicants.

9. 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.

10. 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 12 additional units, and more significantly 12 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 waiver of Rule 67-48.004(14)(j), Florida Administrative Code (2011), to permit Petitioner to increase the total number of units from 100 to 112 and to decrease the Total Set-Aside Percentage from 100% to approximately 89.3%, 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

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the initials "LH".

Copies furnished to:

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Joint Administrative Procedures Committee
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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.