

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

GARDEN GROVE APARTMENTS, LTD.
UPTOWN MAITLAND PARTNERS, LTD.,

Petitioners,

vs.

APPLICATION NOS. 2011-232C
 2013-003C
 2011-234C
 2012-031C
 2013-004C

FHFC CASE NO.: 2013-032VW

FLORIDA HOUSING FINANCE CORP.,

Respondent.

**PETITION FOR WAIVER FROM FLORIDA
ADMINISTRATIVE CODE RULE 67-48.004**

GARDEN GROVE APARTMENTS, LTD. ("Garden Park") AND UPTOWN MAITLAND PARTNERS, LTD. ("Uptown Maitland") (collectively the "Petitioners"), by and through their undersigned attorney, hereby petition the Florida Housing Finance Corporation ("Florida Housing") for a waiver from Rule 67-48.004, Florida Administrative Code ("FAC"). This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

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

Garden Park Apartments, Ltd.
Uptown Maitland Partners, Ltd.
c/o Atlantic Housing Partners
200 East Canton Avenue, Suite 102
Winter Park, FL 32789
407-741-8500 (telephone)
(407) 643-2551 (facsimile)

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2. The address, telephone and facsimile number of Petitioners' attorney is:

Kerey Carpenter
AHG Group, LLC
700 West Morse Blvd., Suite 220
Winter Park, FL 32789
407-691-5605 (direct line)
407-371-6126 (facsimile)

3. Petitioners successfully applied for financing from the Housing Credits Program in the 2011 Universal Application Cycle that Florida Housing administers pursuant to Chapter 67-48, Florida Administrative Code. Garden Park's Application Numbers are: 2011-232C and 2013-003C (forward allocation number assigned by Florida Housing) and Uptown Maitland's Application Numbers are: 2011-234C, 2012-031C (partial forward allocation number assigned by Florida Housing and 2013-004C (partial forward allocation number assigned by Florida Housing) (the "Applications"). Garden Park applied for Housing Credits to finance a portion of the costs to develop a 108-unit multifamily rental apartment community located in Seminole County, Florida, to be known as the Garden Park. Uptown Maitland applied for Housing Credits to finance a portion of the costs to develop a 93-unit multifamily rental apartment community located in the City of Maitland, Orange County, Florida, to be known as the Uptown Maitland (the "Developments").

THE RULES FROM WHICH A WAIVER IS SOUGHT

4. Petitioners request a waiver from Rule 67-48.004(14), as in effect for the 2011 Universal Application Cycle. Rule 67-48.004(14) provides in relevant part as follows:

(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 attempt to make changes to these items will not be accepted. Those items are as follows:

* * *

- (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.

* * *

STATUTES IMPLEMENTED BY THE RULE

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act¹, the statute that created the Housing Credits Program. Section 420.5093, Florida Statutes. The Act designates Florida Housing as the State of Florida's housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). Section 420.5099(1) and (2), Florida Statutes. Accordingly, the Rule implements, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the Housing Credit Program.

6. Florida Housing has authority pursuant to Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C. to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes.

¹ The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.526, Florida Statutes.

FACTS DEMONSTRATING ENTITLEMENT TO WAIVER

7. For the reasons set forth below, compliance with the provisions of the aforementioned Rule would give rise to substantial hardship to Petitioners and would violate principles of fairness.

8. The provisions of the aforementioned Rule prohibit a change in the “Total Set-Aside Percentage”. Petitioner is seeking to shift affordable units from the Uptown Maitland location to the Garden Park location resulting in a change in the Total Set-Aside Percentage for each Development, but without any change in the total set-aside units for the two Developments when combined. Uptown Maitland applied for Housing Credits for the new construction of 93 total units with 100% of the units set aside as affordable (93). Garden Park applied for Housing Credits for the new construction of 108 total units with 85% of the units set aside as affordable (92). The Applicants are seeking to shift the percentage of affordable units so that Uptown Maitland would be changed to 91% affordable (85 units) and Garden Park would be changed to 92% affordable (100 units).

9. Uptown Maitland and Garden Park are in close proximity to each other. The Developments are just 1.4 miles apart on the same road (U.S. 17-92), and both developments are located within the same narrow market area. Both developments are in close proximity to the SunRail Station in Maitland -- Garden Park is approximately 1 mile from the station and Uptown Maitland is less than a quarter of a mile from the station. The proposed shift would result in the same number of affordable units in the same narrow submarket at the same delivery time frame. Additionally, no additional housing credit allocation is being requested even with the significant cost overruns from unforeseen subsurface soil conditions at Uptown Maitland that increased

overall construction costs by more than \$1,000,000.00. Further, Uptown Maitland is located in an area of this narrow submarket market that can support market rate rents, and the City of Maitland would prefer a mixed income community.

10. In light of the considerable time that it takes to develop and construct multifamily rental housing, Florida Housing's statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances, particularly those that arise through no fault of the Petitioner, which might necessitate a modification in a proposed project. Florida Housing routinely approves such changes when they would not have otherwise affected the scoring of the application, because the Applicant thus derives no unfair advantage over its competitors in an application cycle. Indeed, the specific purpose of Rule 67-48.004(14) is to prevent an applicant from changing certain key elements in its application after reviewing the applications of its competitors, thereby allowing the applicant to gain a possible advantage.

11. As explained above, the project changes requested by Petitioner will result in the same number of affordable units in this narrow market and will benefit both developments without any additional housing credit allocation, despite the unforeseen subsurface soil conditions at Uptown Maitland. Further, the proposed changes to Uptown Maitland and Garden Park would have had no impact on scoring of the Applications, thus providing Petitioners with no advantage over its competitors.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

12. Florida Housing's approval of the requested waiver would serve the purpose of the underlying Florida Statute, Section 420.5093, as well as the Housing Credit Program. The purpose of both the Statute and the program is to facilitate and stimulate the development of

multifamily rental housing that is affordable to families of limited means. If the requested waiver is granted, the Housing Credit allocation in question will be used to fund an affordable multifamily rental housing community for which there is a desperate need in this submarket.

13. The violation of principles of fairness and imposition of a substantial hardship which would result from strict compliance with the provisions of FAC Rule 67-48.004(14), would be as follows. Unless the waiver is granted, Petitioners would not be able to adapt to the market conditions even though the end result is the same number of affordable units at the same delivery time frame with the same amount of subsidy.

14. By granting a waiver and permitting Petitioners to revise the number of set-aside units, Respondent would recognize the economic realities of developing and constructing affordable rental housing. This recognition would promote participation by owners and developers such as Petitioners in meeting Respondent's purpose by providing affordable housing, through new construction, in an economical and efficient manner.

TYPE OF WAIVER

15. The waiver being sought is permanent in nature.

ACTION REQUESTED

16. Petitioners request a waiver from Rule 67-48.004(14) to permit a change in the

Total Set-Aside Percentage submitted in the Applications and with carryover documentation to the percentages set forth in Paragraph 8 above.


Respectfully submitted this 12th day of November, 2013.



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CERTIFICATE OF SERVICE

I hereby certify that an original and one copy of the foregoing Petition for Waiver have been filed with Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301; and that a true and correct copy of the foregoing has been furnished to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300.



Kerey Carpenter