

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Lofts at Lavilla 2, Ltd.

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FHFC Case No.: 2018-061VW

**ORDER GRANTING WAIVER OF RULE 67-48.004(3)(i)**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 14, 2018, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on August 10, 2018, from Lofts at Lavilla 2, Ltd. ("Petitioner"). Notice of the Petition was published on August 14, 2018 in Volume 44, Number 158, 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.
2. Petitioner was selected to receive nine percent Housing Credit Financing for Affordable Multifamily Housing Developments under RFA 2017-113 to assist in the construction of a development serving low-income families in Jacksonville, Florida.

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*Thomas Blamery* DATE: 9/17/18

3. Petitioner has received approval from staff to increase the total number of units from 98 to 133, pursuant to Rule 67-48.004(3)(i). Petitioner now seeks a waiver from Rule 67-48.004(3)(j) to reduce the Total Set-Aside Percentage from 81.6% to 60.1%. This would have the effect of allowing the development of 35 additional units and for these units to be rented at market rate. Without this waiver, these additional units would also have to be limited to low-income tenants, which the Petitioner asserts would negatively affect the financial viability of this Development. Petitioner has committed to provide an additional 4 ELI units (limited to tenants with income at or below 33% AMI) out of the total 80 set-aside units.

4. Petitioner seeks a Waiver of Rule 67-48.004(3)(j) of the Fla. Admin. Code, which would allow Petitioner to change the total set-aside percentage. Rule 67-48.004(3)(j) of the Fla. Admin. Code, provides as follows:

(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:

\* \* \*

(j) For 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. For the HOME Program, the total number of HOME-Assisted Units committed to in the Set-Aside Commitment section of the Application. Notwithstanding the foregoing, the Total Set-Aside Percentage, or total number of HOME-Assisted Units, as applicable, 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, as well as review of 24 CFR Part 92 to ensure continued compliance for the HOME Program..

5. Additionally, Petitioner is seeking a waiver of Section 6(d)(2)(a)i of RFA 2017-113, which states: "If the proposed Development has a Demographic Commitment of Family or Elderly Non-ALF, the Applicant must set aside a total of at least 80 percent of the Development's total units at 60 percent AMI or less." If the rule waiver is granted, the Applicant will only set aside 60.1% of the Development's total units at 60% AMI or less, but will maintain the total number of set-aside units originally committed to in the application.

6. The Board finds that granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

7. Section 120.542(2), Fla. Stat., 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.

8. Petitioner has demonstrated that it would suffer a substantial hardship if the waiver is not granted. Petitioner has also demonstrated that the purpose of the

underlying statute, which is to “encourage development of low-income housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

9. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner. The Board further finds that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.


**IT IS THEREFORE ORDERED:**

Petitioner’s request for a waiver of Rule 67-48.004(3)(j), Fla. Admin. Code, and of Section 6(d)(2)(a)i of RFA 2017-113 is therefore **GRANTED**, so that Petitioner may reduce its Total Set-Aside Percentage from 81.6% to 60.1% and add 35 additional units at market rate. As a condition of this waiver, Petitioner must provide four additional ELI units, which results in a new set-aside commitment of 14 units (10.5%) at 33% AMI or less and 66 units (49.6%) at 60% AMI or less.

DONE and ORDERED this 14th day of September 2018.

Florida Housing Finance Corporation



By:   
Chair

**Copies furnished to:**

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**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.**