

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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CENTENNIAL TOWERS, LTD.,
a Florida limited partnership,

Petitioner,

CASE NO. 2020-004VW

vs.

Application No. 2019-126C

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

PETITION FOR WAIVER OF RULE 67-48.004(3)(j) (2018)
FOR A CHANGE IN THE TOTAL SET-ASIDE PERCENTAGE

Centennial Towers, Ltd., a Florida limited partnership (the "Petitioner") hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver or variance of the Corporation's prohibition on changes in the "Total Set-Aside Percentage" designated by an applicant as set forth in Rule 67-48.004(3)(j), F.A.C. (July 8, 2018). At the time of the application's submission, Petitioner intended to set aside 100% of the development's units at or below 60% AMI. However, the development involves substantial rehabilitation of an existing public housing community and five households exceed 60% AMI and may exercise their right to remain residents. If they remain, the set aside percentage will be reduced from 100% to 97.59% (Petitioner will nonetheless still provide 36 more units at or below 60% AMI than is required). Accordingly, Petitioner has no other option than to request this waiver. In support of this petition, Petitioner states as follows:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for the Petitioner and its qualified representative for Petitioner's application:

Centennial Towers, Ltd
1300 N. Broad Street
Jacksonville, FL 32202
Attn: Dwayne Alexander
Telephone: (904)630-3810
E-Mail: DAlexander@jaxha.org

2. For purposes of this Petition, the address, telephone number and facsimile number of the Petitioner's attorney are:

Brian J. McDonough, Esquire
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street
Miami, Florida 33130
Telephone: 305-789-3350
Facsimile: 305-789-3395
E-mail: bmcdonough@stearnsweaver.com

B. THE DEVELOPMENT

3. Petitioner timely submitted its Application No. 2019-126C on November 14, 2018 in response to RFA 2018-113 Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments (the "RFA") for the development named "Centennial Towers" (the "Development"). The following information is provided to aid Corporation staff in preparing a memo to the Corporation Board:

- Development Name: Centennial Towers
- Developers: TVC Development, Inc. (James R Hoover) and Jax Urban Initiatives Development, LLC
- County of Development: Duval
- Number of Units: 208
- Type: High Rise
- Demographics: Elderly, Non-ALF
- Funding Amounts (annual amount): \$1,868,000 competitive housing credits

4. Petitioner’s Application identified a set aside of 100% (*i.e.*, 208 units) at or below 60%. However, the Development involves the rehabilitation of units currently occupied. Of the existing residents, five units exceed 60% AMI and have the right to remain. Accordingly, Petitioner must change the set aside to 97.59% (*i.e.*, 203 units) to reflect these five households.

5. The request, if granted, would remain in compliance with Section 6(d)(2)(a)(i) of the RFA, which states: “If the proposed Development has a Demographic Commitment of Family, Elderly Non-ALF, or Person with a Disability, the Applicant must set aside a total of at least 80 percent of the Development’s total units at 60 percent AMI or less.”

6. If this petition is granted, Petitioner agrees to maintain the same number of ELI units as committed in the original application (*e.g.*, 42 units).

C. RULE FROM WHICH WAIVER IS SOUGHT

7. Petitioner requests a waiver from Rule 67-48.004(3)(j), Florida Administrative Code in effect as of the submission of Petitioner’s Application (the “Rule”):

(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. . . .

D. STATUTES IMPLEMENTED BY THE RULE

8. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, Section 420.5099 (Allocation of the low-income housing tax credit).

E. JUSTIFICATION FOR THE WAIVER

9. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its rule requirements when strict application of these rules

would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when: (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Fla. Stat.

10. Here, Petitioner was only required by the RFA to set aside 80% of the Development's total units. *See* RFA, Section 6(d)(2)(a)(i). Nonetheless, Petitioner wanted and intended to set aside 100% of the units at or below 60% AMI. Petitioner did not learn until after the Application's submission that five households exceeding 60% AMI desired to continue living at the Development. Petitioner cannot make these residents leave – nor does it wish to force these families from their homes. Petitioner has no control over the circumstances necessitating this Petition. Moreover, due to the scarcity of nearby affordable housing, permanent relocation of tenants would impose a severe hardship upon each tenant. The purpose of the underlying statute (*i.e.*, increasing the supply of affordable housing through private investment) will still be achieved, even if the set aside is reduced by 2.41% -- even at the reduced percentage (*i.e.*, 97.59%), Petitioner will still provide 36 more units at or below 60% AMI than is required.

11. A waiver of the Rule's restriction against changing the Total Set-Aside Percentage from Petitioner's Application would serve the purposes of Section 420.5099, F.S., and the Act as a whole, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to households of limited means.

12. The requested waiver will not prejudice the Development, Corporation, or any other applicant. Petitioner would still have been funded even if the Application had initially included the set aside requested here (*i.e.*, 97.59%) – the scoring would not have changed as a result and Petitioner gains no competitive advantage by granting this Petition.

13. Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

F. PERMANENCY

14. The waiver being sought is permanent in nature.

G. ACTION REQUESTED

Petitioner requests the following:

- a. That the Corporation grant Petitioner a waiver from Rule 67-48.004(3)(j), Florida Administrative Code, allowing it to decrease the Total Set-Aside Percentage from 100% to approximately 97.59%;
- b. Grant the Petition and all the relief requested therein; and
- c. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.

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By: s/Brian J. McDonough

CERTIFICATE OF SERVICE

The Petition is being served via e-mail for filing with the Corporation Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 10th of February, 2020.

s/Brian J. McDonough