

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**LRC Desert-Silver, LLC,
a Florida limited liability company,**

Petitioner,

CASE NO. 2020-058VW

vs.

Application No. 2018-507C

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

**PETITION FOR WAIVER OF RULE 67-21.003(8)(j) (7-8-2018)
FOR A CHANGE IN THE TOTAL SET-ASIDE PERCENTAGE**

LRC Desert-Silver, LLC, a Florida limited liability company (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” as set forth in Rule 67-21.003(8)(j), F.A.C. (July 8, 2018). Petitioner desired and intended for 100% of all 304 units to be at or below 60%. However, the Development involves the rehabilitation of units currently occupied and three of its residents – residents that were in-place Section 8 residents that qualified at move-in – are above 60% AMI, precluding satisfaction of the 100% set-aside requirement. Because these residents cannot be forced to leave, Petitioner attempted to work with these residents, but they were either unable or unwilling to move. Accordingly, Petitioner has no other option than to request this waiver to reduce the Total Set-Aside Percentage to 99.01% (*i.e.*, 301 out of 304 units will be at or below 60% AMI).. 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:

W. Daniel Hughes, Jr.
105 Tallapoosa St. Suite 300
Montgomery, AL 36104
Telephone: 334.954.4458
E-Mail: daniel.hughes@envolvellc.com
Facsimile: 334.954.4496

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
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B. THE DEVELOPMENT

3. The following information pertains to the Development:

- Development Name: Desert Winds and Silver Creek
- Developer: Envolve Community Management, LLC¹
- County of Development: Duval

¹ The Developer changed its name from LEDIC Realty Management, LLC to Envolve Community Management, LLC on January 17, 2020. Under the current version of Rule 67-21.003(8)(a), a developer name change must be approved by the Corporation. However, the version of Rule 67-21.003(8)(a) in effect at the time Petitioner submitted its application only applied to name changes of the applicant entity, and not to developer name changes. While Rule 67-21.003(8)(b) (2018) requires Board approval to change the Developer's principals, no principal change occurred as a result of the name change. Regardless, a letter was provided to Corporation staff advising of the name change, as well as notice to the Board via this Petition.

- Number of Units: 304
- Type: Garden Apts (1-3 Stories); Acquisition & Rehabilitation
- Demographics: Family
- Funding Amounts: \$10,587,594 4% non-competitive tax credit equity;
Jacksonville Housing Finance Authority tax-exempt MMRB of \$22,000,000.

C. RULE FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from 67-21.003(8)(j), Florida Administrative Code (7-8-18) (the "Rule"):

(8) 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 is deemed complete. Those items are as follows:

(j) 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; notwithstanding the foregoing, the Total Set-Aside Percentage 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;

D. STATUTES IMPLEMENTED BY THE RULE

5. The Rule implements Section 420.5099 of the Florida Housing Finance Corporation Act, Section 420.5099 (Allocation of the low-income housing tax credit) as well as:

- 420.502 (Legislative findings)
- 420.507 (Powers of the corporation)
- 420.508 (Special powers; multifamily and single-family projects)

E. JUSTIFICATION FOR THE WAIVER

6. Petitioner identified a set aside of 100% (*i.e.*, 304 units) at or below 60% AMI. However, the Development involves the rehabilitation of units currently occupied and three of its

residents are above 60% AMI, precluding satisfaction of the 100% set-aside requirement. These three residents were in-place Section 8 residents that qualified at move-in (*i.e.*, prior to the tax credit application). Accordingly these residents cannot be forced to leave their residences. Petitioner attempted to work with these residents, but they were either unable or unwilling to move. Petitioner thus has no choice but to request a waiver to lower the Development's overall set aside percentage to 99.01% (*i.e.*, 301 out of 304 units will be at or below 60% AMI).

7. 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 results in particular instances. Waivers must 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. "Substantial hardship" means a "demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver." *Id.*

8. If this Petition is denied, Petitioner will not be able to obtain the final cost certification and/or complete the form 8609 Low-Income Housing Credit Allocation and Certification application process.

9. Despite the lack of a requirement to do so, Petitioner wanted and intended to set aside 100% of the Development's units at or below 60% AMI. However, Petitioner is not able to satisfy this threshold through no fault of its own. Petitioner cannot make these three residents leave – nor does it wish to force these families from their homes.

10. 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 less than 1%. If the Petition is granted, and the set aside is reduced to 99.01% at or below 60% AMI,

Petitioner will still provide 301 more affordable housing units to the market than would be available if the Petition is denied. Accordingly, a waiver of the Rule's restriction against changing the Total Set-Aside Percentage 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.

11. The requested waiver will not prejudice the Development or the Corporation.

12. 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

13. 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 67-21.003(8)(j), F.A.C. (July 8, 2018), allowing it to decrease the Total Set-Aside Percentage from 100% to approximately 99.01% (i.e., from 304 units at or below 60% AMI to 301 units).
- 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

Counsel for Petitioner

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 15th of September, 2020.

s/Brian J. McDonough