

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Lofts on Lemon Development
Partners, LLC

FHFC CASE NO.: 2020-035VW

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 July 17, 2020, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on June 18, 2020, from Lofts on Lemon Development Partners, LLC ("Petitioner"). Notice of the Petition was published on June 19, 2020, in Volume 46, Number 120, of the Florida Administrative Register. 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 successfully applied for an award of competitive Housing Credits under Request for Applications 2017-111 (the "RFA") to assist in the construction of 76 Mid-rise apartments for low-income families in Sarasota County.
3. Rule 67-48.004(3), Fla. Admin. Code, provides in relevant part:

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Atome Alamy /DATL: *7/17/2020*

(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:

* * *

(i) Total number of units; notwithstanding the foregoing, 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 the 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....

(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....

4. Section 4.A.6.d.(2)(a)(i) of RFA 2017-111 provides that applicants "must set aside a total of least 80 percent of the Development's total units at 60 percent AMI or less."

5. Petitioner has requested approval from the Corporation to increase the total number of units from 76 to 128 pursuant to Rule 67-48.004(3)(i), Fla. Admin. Code. Petitioner also seeks a waiver of Rule 67-48.004(3)(j), Fla. Admin. Code to reduce the Total Set-Aside Percentage from 100% to 59.375%. This would have the effect of allowing the development of 52 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. The local government has urged Petitioner to take advantage of the zoning density by providing additional units and the local government has committed to provide additional subordinate financing in the amount of \$3,500,000. In addition, the Petitioner has received commitments for an additional \$4,000,000 from two foundations with the goal of constructing additional units for local residents that will be market units geared to certain service-oriented workers such as teachers, police, health care personnel, and public employees.

6. Petitioner will be required to provide a total of 13 ELI units (limited to tenants with income at or below 33% AMI) out of the total 76 set-aside units so that it will continue to meet the 10% ELI set-aside requirement based on the total number of units (128). Petitioner has also submitted a request to use the Average Income test; if such request is approved, Petitioner will be required to provide a total of 20 ELI units in order to meet the 15% ELI set-aside requirement.

7. 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.

8. Section 120.542(2), Fla. Stat. provides in pertinent part:

Variances 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.

9. Petitioner has demonstrated that the waiver is needed in order to efficiently serve low-income residents. 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.

10. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, and 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 4.A.6.d.(2)(a)(i) of RFA 2017-111, is hereby **GRANTED** so that so that Petitioner will be able to reduce its Total Set-Aside Percentage from 100% to 59.375%.

Petitioner's request to increase the total number of units from 76 to 128 pursuant to Rule 67-48.004(3)(i), Fla. Admin. Code is hereby **GRANTED**.

As a condition of this waiver, Petitioner must provide additional ELI units, which results in a new set-aside commitment of 13 units (10.16%) at 33% AMI or less and 63 units (49.22%) at 60% AMI or less. If Petitioner's request to use the

Average Income test is approved, Petitioner must provide 20 ELI units (15.625%) at 30% AMI or less.

DONE and ORDERED this 17th day of July, 2020.



Florida Housing Finance Corporation

By:


Chair

Copies furnished to:

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NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE 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.