

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

CASE NO. 2016-001VW

CITY VISTA ASSOCIATES, LLC,
Petitioner

vs.

FHFC APPLICATION: 2014-147C
REQUEST FOR APPLICATIONS: 2014-115

FLORIDA HOUSING FINANCE
CORPORATION,
Respondent

**PETITION FOR WAIVER OF RULE 67-48.004(3)(i) and (j)
FOR A CHANGE IN NUMBER OF UNITS AND IN TOTAL SET-ASIDE PERCENTAGE**

Petitioner City Vista Associates, LLC, a Florida limited liability company (“City Vista”) submits its Petition to Respondent Florida Housing Finance Corporation (the “Corporation”) for (i) a waiver or variance of the Corporation’s prohibition on changes in “Total Number of Units” designated by an applicant, and (ii) a waiver or variance of the Corporation’s prohibition on changes in the “Total Set-Aside Percentage” designated by an applicant and set forth in the Total Set-Aside Breakdown Chart, in its response to RFA 2014-115 – Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach and Pinellas Counties. See Rule 67-48.004(3)(i) and (j), Florida Administrative Code.

In support of its Petition, City Vista states:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for City Vista and its qualified representative for City Vista’s application (the “Application”) in response to RFA 2014-115 – Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach and Pinellas Counties (the “RFA”) are:

City Vista Associates, LLC
3050 Biscayne Boulevard, Suite 300
Miami, Florida 33137
Attention: Francisco Rojo
Telephone: (305) 538-9552 x103
Facsimile: (305) 538-9553
E-Mail: francisco@landmarkco.net

2. The name, address, telephone and facsimile numbers for City Vista's attorney are:

Brian J. McDonough, Esq.
Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Telephone: (305) 789-3350
Facsimile: (305) 789-3395
E-Mail: bmcdonough@stearnsweaver.com

B. THE DEVELOPMENT

3. City Vista timely submitted its Application in response to the RFA for the development named "City Vista Apartments" (the "Development"). *See* Application No. 2014-147C. On October 30, 2015, City Vista accepted the Corporation's invitation to Credit Underwriting. On November 6, 2015 City Vista requested an increase in the total number of units in the Development from 107 to 111 units. The Corporation approved the increase to 111 units via email correspondence from Libby O'Neil, Multifamily Programs Manager on December 3, 2015, but indicated that a rule waiver was required in order to change the "Total Set-Aside Percentage" designated by City Vista in its Application.

4. The requested rule waiver will not adversely affect the Development. However, a denial of this Petition (a) could deprive Broward County of desperately needed entry-level market-rate

housing units, and (b) would violate principles of fairness¹. Section 120.542(2), Fla. Stat. (2013).

5. The waiver being sought is permanent in nature.

C. RULES FROM WHICH WAIVER IS SOUGHT

6. City Vista requests a waiver from Rule 67-48.004(3)(i) and (j), Florida Administrative Code (the “Rule”). Specifically, City Vista is requesting an increase in the total number of units from 107 to 111 and a decrease in the Total Set-Aside Percentage from 100% to 96.3964%. City Vista will maintain the total number of “low-income units” committed to in its Application at a minimum of 107, and is adding four (4) units which will be available for market-rate housing. City Vista recognizes that the Rule provides that the Corporation may approve an increase in the number of units in its underwriting process, but since (a) in this case, the additional units are not “like-kind” (i.e., set-aside at the same income limitations as the units described in the Application), and (b) adding such units is the direct cause of the decrease in the Total Set-Aside Percentage, City Vista is requesting that the change in unit count be approved as part of the Corporation’s approval of the decrease in the Total Set-Aside Percentage.

The Rule provides, in relevant part, as follows:

“(3) For the SAIL, HOME and Housing Credit Program, notwithstanding any other provision of these rules, the following items identified by the Applicant in the Application must be maintained and cannot be changed by Applicant after Application submission, unless provided otherwise below:

(i) Total number of units; notwithstanding the foregoing, for the SAIL and HC Programs 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 Corporation staff and approval of the Corporation;

¹“ Principles of Fairness” are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. Section 120.542(2), Florida Statutes.

(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.”

Rule 67-48.004(3)(i) and (j), F.A.C.

D. STATUTES IMPLEMENTED BY THE RULE

7. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that designated the Corporation as the housing credit agency responsible for the allocation and administration of Low-Income Housing Tax Credits. See Section 420.5099, Florida Statutes.

E. PETITIONER REQUESTS A WAIVER FROM THE RULE FOR THE FOLLOWING REASONS

8. City Vista requests a waiver from Rule 67-48.004(3)(i) and (j), Florida Administrative Code. City Vista is seeking a waiver from the Rule allowing it to increase the total number of units from 107 to 111, and to decrease the Total Set-Aside Percentage from 100% to 96.3964%. As a matter of information, in the Set-Aside Commitments section of the Application, City Vista committed to set aside 10% (i.e. 11 units) of the Residential Units at or below 30% of the Area Median Income (“AMI”) level. As a result of the requested increase in Residential Units from 107 to 111, the Development will remain committed to providing 10% (i.e. now 12 units, given the overall increase to 111 units) of the Residential Units at or below 30% of the AMI.

9. It is not uncommon for development changes to occur after submission of an application to the Corporation. 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. § 120.542(2), Fla. Stat. (2011).

10. The following facts demonstrate the circumstances which justify City Vista’s request for waiver:

- a. City Vista timely submitted its Application to the Corporation in response to the RFA, for 107 low-income tax credit housing units, with the Total Set-Aside Percentage of 100% at or below 60% of the AMI level.
- b. During the site planning process with the City of Pompano Beach and its Community Redevelopment Agency (“CRA”) (which is the seller of the land upon which the Development is to be constructed and has a vested interest in the completion and operation of the Development) CRA officials verbally requested that City Vista provide a few market-rate units at the Development. It was determined by City Vista that four (4) additional units could be added to the Development in compliance with applicable zoning, and without disrupting the overall project design.
- c. An increase in the number of residential units will allow City Vista to provide a mixed-income development with both affordable housing and market-rate housing. The four (4) additional market-rate units in the Development would serve the needs of students, teachers and other professionals earning in excess of the income limitations applicable to affordable housing.
- d. City Vista’s scoring and allocation of Low-Income Housing Tax Credits would not have been affected if City Vista had originally included 111 units in the Application, with 96.3964% of them designated as units set aside for occupancy by households earning not more than 60% of the AMI. In the Application, City Vista

indicated it would be providing 107 units, with 100% of them designated as set-aside units. If this request is granted, City Vista will be providing 111 total units, with 96.3964% of them (i.e., 107 units) being set aside for occupancy by households earning not more than 60% of the AMI. However, if this request is granted, 12 of the 107 set-aside units will be set-aside for occupancy by households earning not more than 30% of the AMI, as opposed to 11 as set forth in the Application. Given that the 107 set-aside units will remain unchanged, the Application's Leveraging Classification will remain the same, since this is determined by calculating the Total Corporation Funding Per Set-Aside Unit. There are no points associated with this aspect of the Application. Nor does this change adversely impact any other applicant in the RFA.

e. The waiver requested herein will not result in any decrease in number of "low-income units," but rather will only increase the total number of units to provide for additional market-rate housing units. The addition of four (4) market-rate housing units to the total unit count will necessarily result in a corresponding decrease in the Total Set-Aside Percentage provided for in the Application, from 100% to 96.3964%.

11. A waiver of the Rule's restriction against increasing the total number of units and changing the Total Set-Aside Percentage from City Vista'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, and would provide the additional benefit of meeting the critical need for mixed-income developments. CRA officials have verbally indicated support for a mixed-income development, in an effort to create a more diverse and vibrant environment.

12. By granting the waiver and permitting City Vista to decrease the total Set-Aside Percentage, the Corporation would recognize the principles of fundamental fairness in developing affordable rental housing by encouraging the development of mixed-income housing projects, particularly in urban areas well-suited to a mixed-income housing project, and enabling developers to meet the needs of both low-income families and households in need of market-rate housing.

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

F. ACTION REQUESTED

City Vista requests the following:

- a. That the Corporation grant City Vista a waiver from Rule 67-48.004(3)(i) and (j), Florida Administrative Code, allowing it to decrease the Total Set-Aside Percentage from 100% to 96.3964% and to increase the total number of units in the Development from 107 to up to 111;
- b. That the Corporation grant the Petition and all the relief requested therein; and
- c. That the Corporation grant such further relief as may be deemed appropriate.

Respectfully submitted,

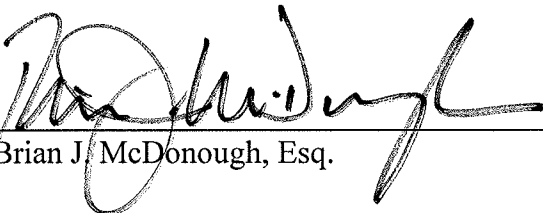
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By: _____


BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served overnight delivery on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 6th day of January, 2016.



Brian J. McDonough, Esq.