

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: MARBELLA LAKE  
APARTMENTS, LLC.

FHFC Case No.: 2005-026VW

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**ORDER GRANTING PETITION FOR WAIVER  
OF RULE 67-47.120(1), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation ("Florida Housing") on August 25, 2005, pursuant to a Petition for Waiver of Rule 67-21.008(1)(g), Fla. Admin. Code, (the "Petition"), filed by Marbella Lake Apartments, LLC, a Delaware limited liability corporation ("Petitioner") on July 20, 2005. Notice of the Petition was published in Volume 31, Number 30, of the Florida Administrative Weekly. 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 finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. Petitioner is the current owner of Marbella Lake Apartments, a 200-unit development located in Orange County, Florida. Petitioner purchased this development in 2004 from Kings Lakeside Apartments, LLC ("Seller"). The development had previously been known as "Lakeside South Apartments" and was financed through Florida Housing's Multifamily Mortgage Revenue Bond (MMRB) program (\$7,600,000 1985 Series B).
3. Rule 67-21.008(1)(g), Fla. Admin. Code states, in pertinent part:
  - (1) Each Mortgage Loan for a Development made by the Corporation shall:

...

(g) Require the submission to the Corporation of an annual financial statement for the Development, and for the Applicant if revenue from multiple projects is being pledged. An annual financial statement compiled or reviewed by a licensed Certified Public Accountant may be submitted in lieu of an audited financial statement for the Development prior to the issuance of a certificate of occupancy for any unit in the Development, provided that the subsequent annual audited financial statement shall include all operations since inception.

4. Petitioner requests a waiver of the requirement to submit audited financial statements above rule for the fiscal year 2004.

5. The above requirement was incorporated into Section 14, pp. 16-18 of that certain Multifamily Mortgage and Assignment of Rents and Security Agreement, Instrument No. 20030670439, recorded in the Official Records of Orange County, Florida, Book 07199, page 4740.

6. Section 120.542(2), Florida Statutes 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.

7. As grounds for granting this waiver, Petitioner reports that since its purchase of Marbella Lakes Apartments (aka Lakeside South Apartments), it has attempted to obtain the necessary information to complete a 2004 audited financial statement from the Seller, but has been unsuccessful and is currently unable to obtain the information or to submit an audited financial statement for fiscal year 2004.

8. The purpose of the underlying statutes, Sections 420.507 and 420.508, Fla. Stat., will be achieved by other means. These statutes authorize Florida Housing to provide affordable housing financing through the MMRB program and to adopt rules to administer the loans granted

through the MMRB program. The financial reporting requirement of Rule 67-21.004(8)(g), Fla. Admin. Code, is imposed to assist Florida Housing in monitoring the financial capability and creditworthiness of entities to which MMRB loans have been granted and to monitor compliance with the key financial terms and conditions of such loans. In the instant case, the annual audited financial statements have been submitted for the Marbella Lake Apartments for all, or substantially all, of the years prior to fiscal year 2004, and Petitioner reports that it will submit the required annual audited financial statement for fiscal year 2005. Furthermore, in connection with Petitioner's recent purchase of Marbella Lake Apartments, Petitioner has already provided Florida Housing with numerous documents concerning Petitioner's financial capability and creditworthiness as well as Seller's previous compliance with the terms and conditions of the MMRB loan. Collectively, these documents demonstrate that the affordable housing provision purposes of Sections 420.507 and 420.508, Fla. Stat., are otherwise met in this particular case.

9. Moreover, not granting this waiver will create a substantial hardship for Petitioner, as Petitioner is now placed in the awkward position of facing potential sanction for violation of this Rule under circumstances that make it physically and legally impossible for Petitioner to comply in a meaningful manner.

10. Refusing to grant this waiver under Petitioner's circumstances would also lead to unreasonable, unfair and unintended consequences which would violate the principles of fairness.

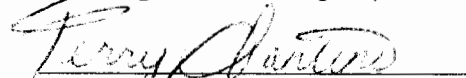
**IT IS THEREFORE ORDERED:**

The Petition for Waiver of Rule 67-21.008(1)(g), Fla. Admin. Code, is hereby **GRANTED**. Petitioner shall not be required to submit audited financial statements regarding fiscal year 2004, but shall present information regarding fiscal year 2004, to the extent possible, in its 2005 annual audited financial statement.

DONE and ORDERED this 25th day of July, 2005.

Florida Housing Finance Corporation

By:



Terry Santini  
Chair

**Copies furnished to:**

Wellington H. Meffert II  
General Counsel  
Florida Housing Finance Corporation  
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Tallahassee, Florida 32301-1329

Stephen P. Auger  
Deputy Development Officer  
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Cathy M. Sellers, Esquire  
Broad and Cassel  
215 South Monroe Street, Suite 400  
Tallahassee, Florida 32301

Joint Administrative Procedures Committee  
Attention: Ms. Yvonne Wood  
120 Holland Building  
Tallahassee, Florida 32399-1300

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN L. KING, JR., BOULEVARD, TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: NEW SINGELTARY SCATTERED SITES,  
LIMITED PARTNERSHIP

FHFC Case No.: 200~~5~~<sup>5</sup>-027VW

**ORDER GRANTING PETITION FOR WAIVER OF RULE  
67-48.004(14), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on August 25, 2005, pursuant to a Petition for Variance From or Waiver of Rule 67-48.004(14), Fla. Admin. Code ("Petition"). Florida Housing Finance Corporation ("FHFC") received the Petition on July 25, 2005, from New Singeltary Scattered Sites, Limited Partnership. ("Petitioner"). On August 5, 2005, the Notice of the Petition was published in Volume 31, Number 31, of the Florida Administrative Weekly. FHFC has received no comment regarding the Petition. After review and consideration of the record, and being otherwise fully advised, the Board of Directors ("Board") of FHFC hereby finds as follows:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. During the 2004 Universal Cycle, Florida Housing awarded an allocation of low-income housing credits to Petitioner.
3. Rule 67-48.004(14), Florida Administrative Code, states in pertinent part:

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 Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

(e) Site for the Development;

(j) Total number of units;

(m) Funding Request (except for Taxable Bonds) amount . . .

4. Section 120.542(2), Florida Statutes 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.

5. Petitioner was awarded \$600,000 in annual tax credits to finance the development of Bradenton Village II, which was to consist of 69 affordable rental units on two scattered sites, 33 townhouse units on one site and 36 units in a single mid-rise building on the second site.

6. Bradenton Village II, in downtown Bradenton, is a “Front Porch Florida Community,” as designated by Governor Bush. FHFC has financed two previous phases of this redevelopment project: Bradenton Village (#2000-116C) and New Singeltary (#2002-161C).

7. Petitioner requests a waiver to reduce the “total number of units” for Bradenton Village II from 69 to 36, to alter the development “site” by eliminating the parcel that was to be used for the townhouse units, and to proportionally reduce its requested annual tax credits from \$600,000 to \$313,033.38, resulting in the return of \$286,966.62 in annual tax credits.

8. The purpose of the underlying statute is to encourage development of affordable housing. Allowing Petitioner to reduce the number of units from 69 to 36, eliminate the parcel to be used for townhouse units, and reduce its requested annual tax credits will allow the purpose of



the underlying statute to be achieved. Petitioner demonstrated that present and future property taxes generated from within a special taxing district were to be dedicated as a source of financing to help pay for the redevelopment. However, Petitioner was unable to locate a lender willing to produce immediate capital to fund the redevelopment process. Granting Petitioner's waiver will allow the redevelopment to proceed.

9. Moreover, not granting this waiver will create a substantial hardship for Petitioner. Without the waiver, Petitioner would have to return of all of the project's tax credits and would not be able to go forward, threatening the completion of the development.

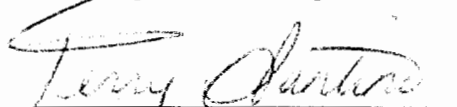
**IT IS THEREFORE ORDERED:**

The Petition for Waiver is hereby **GRANTED** and the provisions of Rule 67-48.004(14), Florida Administrative Code, are waived only to: reduce the "total number of units" from 69 to 36; eliminate the parcel that was to be used for the townhouse units; and to proportionally reduce the awarded annual tax credits from \$600,000 to \$313,033.38. Petitioner shall return \$286,966.62 in annual tax credits.

DONE and ORDERED this 25<sup>th</sup> day of August, 2005.

Florida Housing Finance Corporation

By:

  
Chairman

**Copies furnished to:**

Wellington H. Meffert, II, General Counsel  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329

Mr. Steve Auger  
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Warren H. Husband  
Metz, Hauser, Husband & Daughton, P.A.  
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Joint Administrative Procedures Committee  
Attention: Ms. Yvonne Wood  
120 Holland Building  
Tallahassee, Florida 32399-1300

**NOTICE OF RIGHTS**

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