

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: GARDEN VISTA  
PRESERVATION, L.P.

FHFC Case No.: 2016-012VW

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**ORDER GRANTING WAIVER OF RULE  
67-21.003(8)(j), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on May 6, 2016, pursuant to a “Petition for Waiver of, or Variance From, Rule 67-21.003(8)(j) to Decrease the Total Set-Aside Percentage” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on April 1, 2016, from Garden Vista Preservation, LP (“Petitioner”). Notice of the Petition was published on April 5, 2016, in Volume 42, Number 66, of the Florida Administrative Register. 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 hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
  
2. Petitioner was selected to receive non-competitive housing credits (HC) to assist in the acquisition and rehabilitation of garden apartments known as

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HOUSING FINANCE CORPORATION



/DNL: 8-12-16

Garden Vista Apartments serving low-income tenants in Miami Gardens, Florida.

Petitioner now seeks a waiver that will allow it to reduce the Total Set-Aside Percentage from 100% to 99%. This would have the effect of allowing 1 out of 150 units to be rented to tenants with income exceeding 60% of AMI.

3. Rule 67-21.003(8)(j), Fla. Admin. Code, prohibits an Applicant for MMRB or non-competitive HC from changing certain items in the application.

(3) 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:

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(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.

4. Petitioner is seeking this waiver because one unit that is currently occupied does not comply with the tenant income requirements because the total household income exceeds 60% of AMI. Petitioner states that this tenant initially qualified to reside in the Development pursuant to the HUD Section 8 income restrictions in place prior to Petitioner's acquisition of the Development. A HUD memo issued January 12, 2015, has the effect of preventing Petitioner from terminating the tenancy of this tenant. Unless the waiver is granted, Petitioner will

be out of compliance with its Total Set-Aside Percentage yet will be prohibited from coming into compliance.

5. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, Fla. Admin. Code, Florida Housing 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. Section 120.542(2) 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

The 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.

6. The Board finds that granting the waiver would neither affect the scoring of Petitioner's application nor allow Petitioner to gain an unfair advantage over other applicants. The Board further finds that granting the waiver would have no detrimental impact on Florida Housing or any of its programs.

7. Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would violate principles of fairness if the waiver is not granted. 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.

8. The Board finds that strict application of the above rules under these circumstances would cause substantial hardship to Petitioner. The Board further finds 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 waiver of Rule 67-21.003(8)(j)), Fla. Admin. Code, is hereby **GRANTED**, reducing the Total Set-Aside Percentage from 100% to 99%, so that Petitioner will be able to continue renting one unit to a household with income over 60% AMI.

DONE and ORDERED this 6th day of May, 2016.

Florida Housing Finance Corporation

By:  \_\_\_\_\_  
Chairperson

**Copies furnished to:**

Hugh R. Brown  
General Counsel  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329

Ken Reecy  
Director of Multifamily Development Programs  
Florida Housing Finance Corporation  
337 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301

Brian J. McDonough, Esq.  
Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson, P.A.  
150 West Flagler Street, Suite 2200  
Miami, Florida 33130

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

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

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