

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: GM Silver Creek, Ltd.

FHFC Case No.: 2017-067VW

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**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 October 27, 2017, pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on October 4, 2017, from GM Silver Creek, Ltd (“Petitioner”). Notice of the Petition was published on October 5, 2017, in Volume 43, Number 193, 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 9% Housing Credit Financing for Affordable Housing Developments Located in Miami-Dade County under RFA 2016-114 to assist in financing the construction of a development serving low-income households in Miami-Dade County, Florida.

3. Petitioner sought and received approval from Florida Housing to increase the total number of units from 80 to 90, pursuant to Rule 67-48.004(3)(i), F.A.C. Petitioner now seeks permission to reduce the Total Set-Aside Percentage from 100% to 90%. This would have the effect of allowing the development of one additional ELI unit (so that 10% of the new unit total will continue to be set aside for ELI Households, as required by the RFA) and nine additional units that would not be set aside for households at 60% AMI. The total number of 60% AMI units would remain at 72. Petitioner has stated that it intends to provide these additional units as workforce housing at or below 140% AMI. Although an additional ELI unit will be constructed, the housing tax credit allocation will not increase.

4. Petitioner seeks a Waiver of Rule 67-48.004(3)(j), F.A.C., which would allow Petitioner to change the total set-aside percentage. Rule 67-48.004(3)(j), F.A.C., provides as follows:

(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:

\* \* \*

(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. For the HOME Program, the total number of HOME-Assisted Units committed to in the Set-Aside Commitment section of the Application. Notwithstanding the foregoing, the Total Set-Aside Percentage, or total number of HOME-Assisted Units, as applicable, 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, as well as review of 24 CFR Part 92 to ensure continued compliance for the HOME Program.

5. 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.

6. Section 120.542(2), Fla. Stat., 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. Petitioner has demonstrated that the waiver is needed in order to efficiently serve low-income families, and that it would suffer a substantial hardship 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 Rule 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:**

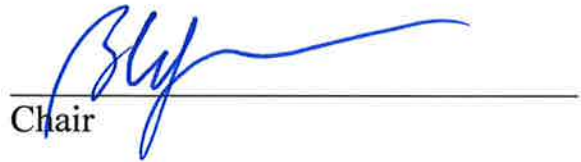
Petitioner's request for a waiver of 67-48.004(3)(j), F.A.C. is hereby **GRANTED** so that Petitioner may reduce its Total Set-Aside Percentage from 100% to 90% and add on additional ELI unit and nine additional units at market rate.

DONE and ORDERED this 27nd day of October 2017.

Florida Housing Finance Corporation

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

Chair



## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served by electronic mail this \_\_\_\_ day of October, 2017 to the following:

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

Brantley Henderson, Acting Director of Multifamily Programs  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301

Hollie A. Croft  
Broad and Cassel LLP  
390 N. Orange Ave., Suite 1400  
Orlando, Florida 32801

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

### **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.**