

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

CITY VISTA ASSOCIATES, LLC,

Petitioner

FHFC CASE NO.: 2016-001VW

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent

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 January 29, 2016, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on January 6, 2016, from City Vista Associates, LLC ("the Petitioner"). Notice of the Petition was published on January 8, 2016, in Volume 42, Number 5, 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.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATE: 1-29-16

2. Petitioner was selected to receive financing from the Housing Tax Credit Program under RFA 2014-115 to assist in the construction of high-rise apartments serving low-income tenants in Pompano Beach, Florida. Petitioner's Application Number was: 2014-147C (the "Application"). Rules 67-48.004(3)(i) and (j), Fla. Admin. Code, prohibit an Applicant from changing certain items identified in the Application. They provide, in relevant part:

(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, 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.;

(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. 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.

3. On December 3, 2015, Florida Housing granted City Vista's request to increase the total number of units in the development from 107 to 111.

Petitioner now seeks a waiver that will allow it to reduce the Total Set-Aside Percentage from 100% to 96%. This would have the effect of allowing these four additional units to be rented at market rate, while also requiring Petitioner to

continue to provide 107 low-income units. Petitioner has also committed to increase the number of units set aside for extremely low income individuals from 11 to 12.

4. Petitioner is seeking this waiver because the City of Pompano Beach and its Community Redevelopment Agency (CRA) have a policy of promoting mixed-income developments. The CRA, which is the current land owner for this development, asked Petitioner to provide as many market-rate units as possible. Petitioner determined that four additional units could be added without disrupting the overall project design. Without this waiver, these four additional units would also have to be limited to low-income tenants.

5. 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 could help Petitioner and the City of Pompano Beach promote mixed-income developments while continuing to provide the same level of housing to low income individuals.

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. Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, 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 Rules 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 (2011) is hereby **GRANTED** to permit Petitioner to add four additional units to the development that could be rented at market rate. Petitioner’s Total Set-Aside Percentage will be reduced from 100% to 96% so that the following requirements will apply:

1. Petitioner will set aside 107 units (96% of total units) for low income residents;
2. Petitioner will set aside at least 12 of those 107 units (10% of total units) for residents at or below 30% AMI;

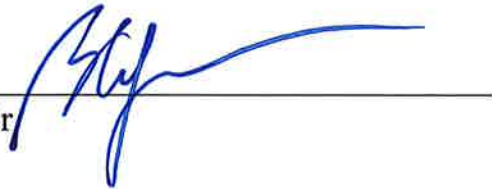
3. Petitioner will set aside 95 units (86% of total units) for residents at or below 60% AMI.

DONE and ORDERED this 29th day of January, 2016.

Florida Housing Finance Corporation

By:

Chair



Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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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.