

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: SP HK Apartments, LLC

FHFC CASE NO.: 2018-074VW

**ORDER GRANTING WAIVER OF
RULES 67-21.003(8)(i) and 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 December 14, 2018, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on October 2, 2018, from SP HK Apartments, LLC ("Petitioner"). Notice of the Petition was published on October 3, 2018, in Volume 44, 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 successfully applied for an award of SAIL funding used in conjunction with Multifamily Mortgage Revenue Bonds (MMRB) and non-competitive housing credits (HC) under RFA 2015-112 to assist in the acquisition

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

James R. Lamoreaux / DATE: 12/17/18

and rehabilitation of garden apartments serving low-income families in Marion County, Florida.

3. Both Rules 67-21.003(8)(j) and 67-48.004(3)(j), Fla. Admin. Code, provide that certain items must be included in the application and cannot be revised, corrected or supplemented after the application is submitted. Those items include the following:

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 . . .

4. Petitioner seeks a waiver that will allow it to reduce the Total Set-Aside Percentage from 100% to 97%. This would have the effect of allowing 2 out of 96 units to be rented to tenants with income exceeding 60% of AMI.

5. Petitioner is seeking this waiver because two units that were occupied at the closing of the SAIL and Bond loans do not comply with the tenant income requirements because the total household incomes exceed 60% of AMI. Petitioner states that this was discovered only after the submission of the response to the RFA. Guidelines from the Department of Housing and Urban Development (HUD) have the effect of preventing Petitioner from terminating the tenancies of these HUD-assisted tenants. 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.

6. 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.

7. 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.

8. Petitioner has demonstrated that the waiver is needed in order to efficiently serve for homeless individuals or families and persons with a disabling condition and that, if the waiver were not granted, Petitioner would suffer a substantial hardship. 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 waivers are granted.

9. The Board finds that strict application of the above Rule 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 Rules 67-21.003(8)(j) and 67-48.004(3)(j), Fla. Admin. Code, is hereby **GRANTED** to permit a reduction in the Development's set-aside percentage for the both SAIL funding and Non-Competitive Housing Credits from 100% to 97% so that Petitioner will be able to continue renting two units to tenants with incomes over 60% AMI.

DONE and ORDERED this 14th day of December, 2018.

Florida Housing Finance Corporation



By:


Chair

Copies furnished to:

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Joint Administrative Procedures Committee
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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.