

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In re: SAN JUAN OF OSCEOLA, LP

Case No. 2015-030VW

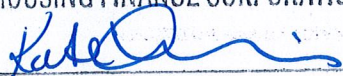
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**ORDER GRANTING PETITION FOR WAIVER OF RULE 67-48.004(3)(g),  
FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation ("Florida Housing") on September 18, 2015, pursuant to a "Petition for Waiver from Florida Administrative Code Rule 67-48.004," filed by San Juan of Osceola, LP ("Petitioner") on August 20, 2015. Notice of the Petition was published in Volume 41, Number 162, 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. In response to RFA 2014-114, Petitioner successfully applied for an allocation of Low Income Housing Tax Credits (HC) to finance the construction of The San Juan (the "Development") located in Osceola County, Florida. As part of its application, Petitioner stated that the Development Type as Garden Apartments.

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

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3. Rule 67-48.004(3)(g), Florida Administrative Code (2013), provides in pertinent part:

(3) 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...(g) Development Type;...

4. 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.

5. Petitioner requested a waiver of the above rule to change the Development Type from Garden Apartments to Mid-Rise with Elevator. After submitting its Application for funding and prior to final design and permitting, the South Florida Water Management District (the "District") could not verify that adequate storm water retention was available from the existing on-site pond (the "Existing Pond"). The original master-plan for the Existing Pond was engineered to accommodate the surface water runoff for the Development as well as two adjacent communities intended to be served by the Existing Pond. The District is now requiring that the Existing Pond be enlarged to serve all the adjoining properties, regardless of whether its current capacity is adequate for that intended purpose. The result is that the increased surface area of the Existing Pond will

usurp the square footage within the Development, leaving inadequate space in which to build three separate low-rise buildings that would be mandated under the Garden Designation.

6. Petitioner obtained a confirmatory letter from Osceola County, Florida, in which it is stated that there is no limitation on building height within the Planned Unit Development zoning affecting the Development.

7. Petitioner has demonstrated that the total development cost limitation of constructing the Development will not change from the total cost planned at the time of filing of the Application.

8. The requested change would neither affect the scoring of Petitioner's application nor allowed Petitioner to gain an unfair advantage over other applicants.

9. The Board finds that strict application of the above Rule under these circumstances would violate the principles of fairness. The change in Development Type, 'Mid-Rise with Elevator,' would not have given Petitioner an unfair advantage in scoring of its Application, and denial of the Petition would preclude the residents the required parking and the amenities to be enjoyed by the residents of the Development in the form of green space, recreational areas and parking. Petitioner demonstrated that permitting this change in Development would also

serve the underlying purpose of the statute. By granting the Petition, Petitioner will be able to provide needed housing in Osceola County.

**IT IS THEREFORE ORDERED:**

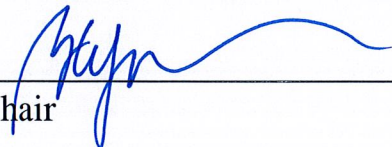
The Petition for a waiver of Rule 67-48.004(3)(g) Florida Administrative Code (2013) is hereby **GRANTED**, to the following extent: the Development Type is changed from Garden to Mid-Rise with elevator, provided that Petitioner will be subject to and must complete the Development within the Total Development Cost limits of the Garden Development Type.

DONE and ORDERED this 18<sup>th</sup> day of September 2015.



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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Tallahassee, Florida 32399-1300

## **NOTICE OF RIGHTS**

**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.**