

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: St. Elizabeth Garden
Apartments, Ltd.

FHFC Case No.: 2018-081VW

**ORDER GRANTING WAIVER OF RULE 67-48.004(3)(i)
AND (j), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on February 1, 2019, pursuant to an “Amended Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on December 27, 2019, from St. Elizabeth Gardens, Ltd. (“Petitioner”). Notice of the original Petition was published on November 19, 2018, in Volume 44, Number 225, 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 Preservation of Existing Affordable Multifamily Housing Developments under RFA

2016-116 to assist in the acquisition and preservation of a development serving low-income elderly households in Pompano Beach, Florida (the “Development”).

3. Petitioner currently requests a waiver of Rules 67-48.004(3)(i) and (j), Fla. Admin. Code, to permit it to decrease the Total Set-Aside Percentage from 98.7% to 97.4% and to add two additional market-rate units to the Development.

4. Rule 67-48.004, Fla. Admin. Code, provides in pertinent 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, 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. 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 with the HOME Program;

(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. In October, 2017, the Board granted a previous request from Petitioner on the same issue, permitting Petitioner to add two market rate units (total 153 units) to the Development and approving the corresponding reduction in Total Set Aside percentage (from 100% to 98.7%).

6. Petitioner now seeks a second waiver from Rules 67-48.004(3)(i) and (j) to add two more market rate units (total 155) and to reduce the Total Set-Aside Percentage from 98.7% to 97.4%. This would have the effect of allowing the development of two additional units and for these units to be rented at market rate.

7. Without this waiver, these two additional units would also have to be limited to low-income tenants, and so Petitioner requests this change to permit current tenants to remain who receive assistance through HUD programs, but who otherwise may exceed the 60% AMI limit. Petitioner proposes to convert and divide existing larger units to create the new market rate units.

8. Due to the presence of over-income units, Petitioner may not be eligible to use the Average Income Test in this instance, but perhaps will be eligible for this relief in the future. The Board finds that granting the waiver will not impact other

participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

9. 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.

10. 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.

11. 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 a waiver of 67-48.004(3)(i) and (j), Fla. Admin. Code, is hereby **GRANTED** so that Petitioner may decrease its Total Set-Aside Percentage from 98.7% to 97.4%.

DONE and ORDERED this 1st day of February, 2019.



Florida Housing Finance Corporation

By:


Chair

Copies furnished to:

Hugh R. Brown, General Counsel
Hugh.Brown@floridahousing.org

Jesse Leon, Director of Multifamily Development
Jesse.Leon@floridahousing.org

Donna E. Blanton
dblanton@radeylaw.com

Yvonne Wood, Joint Administrative Procedures Committee
Wood.Yvonne@leg.state.fl.us

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.