STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: PINNACLE AT LA CABANA, LLLP

FHFC Case No.: 2023-041VW

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ORDER GRANTING WAIVER FROM RULE 67-48.002(96), FLORIDA ADMINISTRATIVE CODE (2021) AND THE 2021 QUALIFIED ALLOCATION PLAN

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on June 9, 2023. On May 17, 2023, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.002(96) and the 2021 Qualified Allocation Plan's Requirement for Returning Housing Credit Allocations (the "Petition") from Pinnacle at La Cabana, LLLP ("Petitioner") to exchange its 2022 housing credits for an allocation of 2023 housing credits. Notice of the Petition was published on May 19, 2023, in Volume 49, Number 98, 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 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

Ann McManus DATE: 6/12/2023

2. Petitioner successfully applied for competitive housing credits in Request for Applications 2021-202 (the "RFA") to assist in financing the construction of a 110-unit elderly development named Pinnacle at La Cabana located in Broward County, Florida (the "Development").

3. Rule 67-48.002(96), Florida Administrative Code (2021), adopts and incorporates the 2021 Qualified Allocation Plan ("QAP").

4. Subsection II.J of the 2021 QAP states:

> Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required pursuant to Section 42 of the IRC, or it is apparent that a Development will not be placed in service by the date required pursuant to Section 42 of the IRC, and the Applicant has returned its Housing Credit Allocation after the end of the second calendar quarter of the year in which it was otherwise required to be placed in service pursuant to Section 42 of the IRC, the Corporation will reserve allocation in an amount not to exceed the amount of Housing Credits returned, and will issue a Carryover Allocation Agreement allocating such Housing Credits to the Applicant for either the current year or the year after the year in which the Development was otherwise required to be placed in service pursuant to Section 42 of the IRC, provided the following conditions have been met: (i) The sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) A site inspection reflecting the percentage of Development completion must be completed. If the Development is at least fifty (50) percent completed, as reflected in the site inspection, the approval may be made by Corporation staff. If the Development is less than fifty (50) percent completed, as reflected in the site inspection, the approval must be made by the Board. In making such determination, the Board must find and determine that the

> delay was caused by circumstances beyond the Applicant's control, and that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay; and (iii) The Corporation or Board, as applicable, must find that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs.

5. Petitioner requests a waiver of the timing provision in the QAP, so that it may exchange its housing credits now, rather than wait until the end of the second quarter of the year in which the Development was otherwise required to be placed in service. Due to events outside of Petitioner's control, Petitioner cannot meet the "placed in service" and "10% test" deadlines as required by the Carryover Allocation Agreement ("CAA").

6. On July 21, 2022, Petitioner and Florida Housing entered into the CAA. The CAA requires satisfaction of the 10% test by January 31, 2023, which was later extended to July 21, 2023, upon Petitioner's request, (collectively, the "Deadlines"). The CAA also requires the development be placed in service by December 31, 2024. In order to meet the 10% test, Petitioner will need to have closed debt and equity financing, which will likely not occur by July 21, 2023.

7. Petitioner is uncertain as to whether the Development will be able to meet the Deadlines, and as such, Petitioner is requesting this exchange of housing credits to effectuate an extension of such deadlines.

8. Petitioner states that the Development has suffered unforeseen events outside of its control so that the Development may not be able to meet its December 31, 2024, deadline, or meet the 10% test by July 21, 2023. The challenges are set forth below:

a. Petitioner states that it commenced pre-development activities in January 2022 upon receipt of its invitation to credit underwriting. Petitioner has been processing all necessary approvals diligently. Petitioner received final site plan approval from the City of Miramar (the "City") in November 2022, secured plat approval from both the City and Broward County (the "County"), and has submitted for all permits, except for building permits with the City which Petitioner anticipates submitting within 15 days from the date of filing its Petition. Petitioner anticipates placing the construction contract for the Development out to bid within this same time frame.

b. In the second quarter of 2022, due to the significant increase in construction costs, a budgetary gap existed that could not be bridged without further assistance. Without additional assistance, Petitioner was unable to proceed towards closing the financing for the Development.

c. On May 9, 2022, Florida Housing issued the 2022 Construction Housing Inflation Response Program ("CHIRP") Invitation to Participate. The purpose of CHIRP is to fill the funding gap experienced due to increased construction costs, such as those currently encountered by Petitioner. However, Petitioner states that it was unable to participate in the CHIRP funding cycle because it could not meet the construction commencement deadlines contained therein, due to the amount of time necessary to complete the entitlement process in the County, with respect to the platting of the Development.

d. Petitioner plans to apply to RFA 2023-211, Construction Inflation Response Viability Funding, and has been deemed eligible by Florida Housing to do so. RFA 2023-211 anticipates that the participants therein which have already received an allocation of 9% housing credits will return such credits in exchange for a new award of 9% credits pursuant to the terms of such RFA.

e. Based upon Petitioner's current construction schedule for the Development, construction completion is scheduled to occur late in the fourth quarter of 2024. The tax credit investor for the transaction requires three months between scheduled construction completion and

the required placed in service date, December 31, 2024, in order to proceed to closing on the equity financing.

f. Petitioner's estimated completion date for the Development does not fall within the tax credit investor's required scheduling parameters without an exchange of housing credits, the tax credit investor will not close on the agreed funding.

9. As noted above, Petitioner is required to satisfy the 10% test by July 21, 2023. Petitioner has been advised by its tax accountants that the capital lease payment in Petitioner's ground lease will no longer be considered in the basis for satisfaction of the 10% test. Petitioner states that even if it purchases materials, accrues a portion of developer fee, and accrues or prepays other fees, such amounts would not be sufficient to meet the 10% test. As such, Petitioner states that it will be unable to timely satisfy the 10%.

10. Petitioner acknowledges that, if it is successful in receiving an award of funds under RFA 2023-211, the exchange of housing credits requested herein will occur pursuant to the provisions of that RFA. In an abundance of caution, Petitioner is submitting this Petition in the event the RFA does not actually move forward or if Petitioner is not awarded funds under that RFA.

11. As noted above, the delays have been caused by circumstances outside Petitioner's control. As a result, such delays make it difficult to meet the 10% test deadline of July 21, 2023, and places in jeopardy Petitioner's ability to meet the placed in service deadline of December 31, 2024.

12. Petitioner seeks to return its 2022 housing credit allocation now, rather than wait for the third calendar quarter of 2024 as required under the QAP and obtain from Florida Housing an immediate allocation of new housing credits with a later required 10% test date and placed in service date.

13. Petitioner states that the requested waivers and variance will not adversely affect the Development. A denial of the Petition, however, would result in substantial economic hardship to Petitioner, as it has invested over $900,000 in the Development, deprive the City and the County of new constructed affordable housing rental units set aside, and violate principles of fairness.

14. Section 120.542(2), Florida Statutes, provides in pertinent part:

> Variances 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.

15. The Board finds that granting the requested waiver will not impact other participants in funding programs administered by Florida Housing, nor will it detrimentally impact Florida Housing.

16. The Board also finds that 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.

17. The Board further finds that Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" would still be achieved if the waiver is granted. §420.5099, Fla. Stat.

IT IS THEREFORE ORDERED: Petitioner's request for a waiver of Rule 67-48.002(96), Florida Administrative Code (2021), and the timing provisions of subsection II.J of the 2021 QAP is hereby **GRANTED** to allow Petitioner to exchange its 2022 housing credits for an allocation of 2023 housing credits now rather than waiting until the end of the second quarter 2024.

DONE and ORDERED this 9th day of June 2023.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

Gary J. Cohen, Esq.
Petitioner's Counsel
gcohen@shutts.com

Betty Zachem, Interim General Counsel
Melissa Levy, Managing Director of Multifamily Programs
Florida Housing Finance Corporation
Betty.Zachem@floridahousing.org
Melissa.Levy@floridahousing.org

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
Joint.admin.procedures@leg.state.fl.us

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.