STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: PINNACLE 441, LLC FHFC CASE NO.: 2022-008VW

_____/

ORDER GRANTING WAIVER OF RULE 67-48.004(3)(j), FLORIDA ADMININSTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on March 4, 2022, pursuant to a "Petition for Waiver of Rule 67-48.004(3)(j) for a Change in Total Set-Aside Percentage" (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on February 4, 2022, from Pinnacle 441, LLC (the "Petitioner"). Notice of the Petition was published on February 7, 2022, in Volume 48, Number 25, of the Florida Administrative Register. Florida Housing has received no comments concerning 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 Tax Credits under Request for Applications 2020-202 (the "RFA"), to assist in the construction of a housing Development in Broward County, Florida.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
Ann McMurray /DATE: 3/4/2022

3. Rule 67-48.004 provides, in relevant part, as follows:

> (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 Application submission, unless otherwise provided below:
>
> (j) For the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the total set-aside break-down chart for the program(s) applied for in the Set-Aside Commitment section of the Application…

4. Petitioner requests a waiver of the above Rule to decrease the Total Set-Aside Percentage from 100% to 97%. Petitioner also requests staff approval to add units to the Development, thus necessitating the request for relief from the Rule.

5. Petitioner timely submitted its application for 110 low-income tax housing units, with a Set-Aside Percentage of 100%, with 10% set-aside at 25% below the Area Median Income (AMI). Petitioner seeks to add three additional units, pursuant to applicable zoning regulations.

6. Petitioner wishes to add these market rate units because the development is located in a special overlay transportation-oriented development district of Hollywood, which encourages the development of mixed income housing, particularly in urban areas well-suited to a mix of income development.

7. One of the three non-income restricted units will serve as a "live-work" space, which allows a resident to operate a storefront business on the street and occupy a residential unit located on the ground floor of the building. This concept meshes well with the urban designed mentioned previously, but is problematic when it comes down to execution, which is why the Petitioner requests to add additional market rate units.

9. 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. The scoring of the application would not have been affected if Petitioner originally included 113 units with 97% of such units designated as set-aside for occupancy of households not earning more than 60% AMI. Granting this request will increase in units for households not earning more than 25% AMI. (from11 to 12).

11. Moreover, denial of this request would result in a substantial economic hardship for Petitioner, because of lower rental revenues, and lower economies of scale. In addition, three families would be deprived of the opportunity to obtain market rate housing in a mixed income development.

12. 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.

13. Petitioner has demonstrated that the waiver is needed to avoid substantial hardship and 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.

14. 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 Rule 67.004(3)(j) Florida Administrative Code (2020), is **GRANTED** allowing it to decrease the Total Set-Aside Percentage of the Development from 100% to 97%.

DONE and ORDERED this 4th day of March, 2022.

Florida Housing Finance Corporation

By: _____
Chair

Copies furnished to:

Hugh R. Brown, General Counsel
Marisa Button, Managing Director of Multifamily Programs

Florida Housing Finance Corporation
Hugh.Brown@floridahousing.org
Marisa.Button@floridahousing.org

Gary J. Cohen, Esq.
Shutts & Bowen LLP
gcohen@shutts.com

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.