

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Pinnacle Heights, LLC

FHFC Case No.: 2016-036VW

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

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 16, 2016, pursuant to a Petition for Waiver of Rule 67-48.004(3)(j) for a Change in Total Set-Aside Percentage (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on August 30, 2016, from Pinnacle Housing Group (“Petitioner”). Notice of the Petition was published in Volume 42, Number 171, 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 \$2,560,900 in Housing Tax Credit Financing for Affordable Housing Developments from Florida Housing under RFA 2014-116 to assist in the construction of a 105-unit low-income family housing development named “Pinnacle Heights” (the “Development”). Petitioner has

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATL: 9-19-16

received approval from Florida Housing to increase in the total number of units from 105 to 109, pursuant to Rule 67-48.004(3)(i). Petitioner now seeks a waiver that will allow it to reduce the Total Set-Aside Percentage from 100% to 96.33%, which would have the effect of allowing these four additional units to be rented at market rate. Without this waiver, these four additional units would also have to be limited to low-income tenants.

3. Rule 67-48.004(3), Fla. Admin. Code, provides in relevant 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, for the SAIL and HC Programs 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.

(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.

4. Under Section 120.542(2), Fla. Stat., and Chapter 28-104, Fla. Admin. Code, Florida Housing has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Section 120.542(2) 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

The principles of fairness are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

5. The Board finds that granting the waiver would not have any impact on other participants in funding programs administered by Florida Housing nor allow Petitioner to gain an unfair advantage over other applicants. The Board further finds that granting the waiver would have no detrimental impact on Florida Housing or any of its programs.

6. Petitioner has demonstrated 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.

7. 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 waiver of Rule 67-48.004(3)(j), Fla. Admin. Code, is hereby **GRANTED**, so that the total set-aside percentage may be changed from 100% to 96.33%, allowing Petitioner to rent the four additional units in the Development at market rate.

DONE and ORDERED this 16th day of September, 2016.

Florida Housing Finance Corporation

By:



Chairperson

Copies furnished to:

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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.