

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: NORTH CENTRAL HEIGHTS, LLC

FHFC Case No.: 2009-026VW

**ORDER GRANTING WAIVER OF RULE 67-48.020(2),
FLORIDA ADMINISTRATIVE CODE, (2007)**

THIS CAUSE came for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on September 18, 2009, pursuant to a "Petition for Waiver or Variance from Florida Administrative Code Rule 67-48.020(2)" (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on November 1, 2006, from North Central Heights, LLC, ("Petitioner" or "NCH"). On November 9, 2006, Florida Housing published the Notice of the Petition in Volume 35, Number 34, of the Florida Administrative Weekly. Florida Housing received no comments regarding the Petitions. 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.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Suzanne Harrell / DATE: 9/18/09

2. In 2007, by Florida Housing Application No, 2007-04IH, NCH applied to the Florida Housing for a HOME loan to help finance North Central Heights, a low-income multifamily housing development located in Avon Park, Florida, which NCH is developing in cooperation with the Avon Park Housing Development Corporation. NCH was awarded a HOME loan of \$5,340,560.00 (five million three hundred forty thousand five hundred sixty dollars) by the Florida Housing.

3. NCH is wholly owned and controlled by the Avon Park Housing Development Corporation, which is a 501(c)(3) non-profit entity established under Chapter 617, Florida Statutes.

4. Generally under Florida Housing rules, a for-profit HOME loan applicant receives a 1.5% interest rate, whereas a non-profit applicant receives a 0% interest rate. The North Central Heights low-income multi-family housing development project will not be financially feasible unless NCH receives a HOME loan with a 0% interest rate.

5. Rule 67-48.020(2), Florida Administrative Code (2007), provides, in pertinent part:

(2) The annual interest rate will be determined by the following:

(a) All for-profit Applicants that own 100 percent of the ownership interest in the Development held by the general partner entity will receive a 1.5 percent per annum interest rate loan.

(b) All qualified non-profit Applicants that own 100 percent of the ownership interest in the Development held by the general partner entity will receive a 0 percent interest rate loan. For purposes of determining the annual HOME interest rate, the definition of Non-Profit found at Rules 67-48.002 and 67-48.0075, F.A.C., shall not apply; instead, qualified non-profit Applicants shall be those entities defined in 24 CFR Part 92, Section 42(h)(5)(c), subsection 501(c)(3) or 501(c)(4) of the IRC and organized under Chapter 617, F.S., if a Florida corporation, or organized under similar state law if organized in a jurisdiction other than Florida.

6. The waiver is necessary because North Central Heights, LLC, is wholly-owned by the Avon Park Housing Development Corporation, which is a 501(c)(3) not-for-profit entity established under Ch. 617, Florida Statutes; however, North Central Heights is a Limited Liability Company (“LLC”), rather than a Ch. 617 not for profit corporation.

7. North Central Heights does not qualify for the zero interest loan, because it is a form of business entity not recognized in the 2007 rule.

8. In 2008, Rule 67-48.020(2)(b) was amended to include the where the qualified nonprofit is the “managing member,” of an LLC. Imposition of the standard HOME 1.5% interest rate will render that financial development of the project untenable.

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.

Under these circumstances, strict application of the above Rule to this Petitioner would create a substantial hardship or violate the principals of fairness. Petitioner demonstrated that if it does not qualify for the zero percent interest rate, it may not be able to develop the Development. Granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

7. Absent the requested waiver, the 1.5% interest rate will render the project financially untenable.

8. 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.

9. The Board finds that a waiver from the above Rules is necessary and that denial thereof would create a substantial hardship for Petitioner or would violate the principles of fairness.

10. The granting of a variance of the aforementioned rule would serve the purpose of the underlying statute, Chapter 420, Part V, Fla. Stat., in that it would

further the goal of facilitating the availability of decent, safe and sanitary housing in the State of Florida to low-income households and elderly persons.

IT IS THEREFORE ORDERED:

The relief requested in the Petition is hereby **GRANTED**. The requirements of Rule 67-48.020(2), Florida Administrative Code (2007) is hereby waived so that Petitioner qualifies for the 0% HOME interest rate.

DONE and ORDERED this 18th day of September, 2009.



Florida Housing Finance Corporation

By: Stuart Schaefer
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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NOTICE OF RIGHTS

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO PROCEEDINGS 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