

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

IN RE: IN THE PINES, INC.

FHFC CASE NO.: 2018-079VW

ORDER GRANTING WAIVER OF RULE 67-48.010(7)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on December 14, 2018, pursuant to an “Amended Petition for Waiver/Variance of Rule 67-48.010, Florida Administrative Code” (the “Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the initial Petition on October 18, 2018, and an Amended Petition on November 4, 2018 from In The Pines, Inc., (“Petitioner”). Notice of the Petition was published on October 17, 2018, in Volume 44, Number 203, 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.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Thomas Delaney / DATE: 12/17/18

2. Petitioner successfully applied for a competitive award of State Apartment Incentive Loan (“SAIL”) funding to assist in financing the development known as In the Pines South (the “Development”).

3. Petitioner requests waiver of Rule 67-48.010(7), Fla. Admin. Code (2000), which provides as follows:

(7) If, in its Application, the Applicant agrees to a Very Low-Income set-aside for a term longer than that required by law, the deferred SAIL interest due pursuant to this Rule Chapter shall be forgiven in an amount equal to the amount of interest due pursuant to Fla. Admin. Code Ann. R. 67-48.01, multiplied by .05 multiplied by the number of years, not to exceed 15, that such set-aside for Very Low-Income persons or households was extended beyond that required by law.

(a) The amount of interest to be forgiven shall be determined upon maturity of the Note.

(b) Only interest which is in excess of the base interest rates specified in Fla. Admin. Code Ann. R. 67-48.010 shall be eligible for forgiveness.

4. Petitioner requests waiver of the above Rule to allow it to continue operating the Development. Petitioner has designated 80% of its units for Farm Workers. The term of the SAIL loan commenced on or about March 28, 2002 and matured on August 31, 2018. Petitioner asserts that the Development does not generate sufficient cash flow to pay the deferred interest under the SAIL loan.

5. Further, Petitioner asserts that it is currently working with Florida Housing staff to renegotiate the SAIL loan that will forgive all deferred interest on the SAIL loan and to extend payment of the outstanding principal balance of the SAIL loan over an additional 15 years at an interest rate of 0%, with principal

payments based on available cash flow for the first five years, with payments capped at \$36,000 per year while the first mortgage is being paid off. Thereafter and during the remaining 10-year term of the loan, minimum monthly principal payments of \$3,000 will be required.

6. Additionally, Petitioner asserts that the Florida Legislature recognized the hardship caused by requiring low income developments to pay the deferred interest and revised the SAIL statute to reduce the interest rate on affordable housing for low income developments.

7. Petitioner asserts that granting the waiver will allow Petitioner to continue to operate the affordable housing Development and will facilitate a loan restructure wherein the principal balance of the loan will amortize.

8. 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), 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.

10. Petitioner has demonstrated that strict application of the above Rule under these circumstances would constitute a substantial hardship and violate the

principles of fairness. 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 Rule under these circumstances would cause substantial hardship to Petitioner and violate the principles of fairness. 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 67-48.010(7), Fla. Admin. Code (2000) is GRANTED to forgive all deferred interest on the SAIL loan and to extend payment of the outstanding principal balance of the SAIL loan over an additional 15 years consistent with the terms in this Order.

DONE and ORDERED this 14th day of December 2018.



Florida Housing Finance Corporation

By: 
Chair

Copies furnished to:

Hugh R. Brown, General Counsel
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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.