

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: PINNACLE SQUARE, LTD.

FHFC Case No.: 2006-072VW
Application No.: 2006-046

**ORDER GRANTING WAIVER OF RULES 67-48.004(14)(j) AND 67-48.004(14)(m),
FLORIDA ADMINISTRATIVE CODE, (2005)**

THIS CAUSE came for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on October 20, 2006, pursuant to a "Petition for variance/Waiver from Florida Administrative Code Rule 67-48.004(14)" (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on November 1, 2006, from Pinnacle Square, Ltd., ("Petitioner"). On November 9, 2006, Florida Housing published the Notice of the Petitions in Volume 32, Number 45, 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.
2. During the 2006 Universal Cycle, Petitioner applied for an allocation of \$2,435,000 of Low Income Housing Tax Credits to finance the development of Pinnacle Square, a 114 unit high rise apartment building, with 100% of the units to be reserved for the elderly, to be located in Miami-Dade County, Florida. On November 29, 2005, Florida Housing issued its Preliminary Allocation of Housing Credits reserved in the amount of \$2,368,5000.00 ("2005 Housing Credit Allocation"), and as permitted by Rule 67-48.028, F.A.C.(2005). Petitioner and

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATE: 12-18-06

Florida Housing entered into a Carryover Allocation Agreement (“2005 Carryover Agreement”). Under the 2005 Carryover Agreement, the Development’s Placed-in-Service Date is December 31, 2007.

3. On April 7, 2005, Florida Housing issued Request for Proposals #2006-04 (“RFP #2006-04”), which it intended to provide a competitive process for 2005 Housing Credit recipients to apply for available SAIL funds for the so-called “Wilma GO Zone”, a portion of the Hurricane Wilma disaster area. As a 2005 Housing Credit development located in the Wilma GO Zone, Petitioner was eligible to participate. Petitioner timely submitted its 2006-04-10 SAIL Request for funding and received a total preliminary commitment of up to \$1,800,000 (“Preliminary SAIL Commitment”).

4. The RFP #2006-04 provided that, “Requests will be ranked on the Development’s 2005 Universal Application score and proximity tie-breaker points...” Petitioner requests a waiver of the Rules 67-48.004(14)(j) and 67-48.004(m), F.A.C., to the extent that the Rules prohibit changing the Applicant’s total number of units; and Applicant’s funding request amount, as applied to its 2006-04-10 SAIL Request, to allow the reduction in units from 160 to 125, with a proportional reduction in its Preliminary SAIL Commitment from \$1,800,000 to \$1,562,500.

5. Rule 67-48.004(14), Fla. Admin. Code (2005), provides:

(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

- (j) Total Number of Units; ...
- (m) Funding Request...

6. Petitioner states that the proposed reduction in the total number of units is necessary to preserve the integrity and amount of space in the common areas of the development, and to preserve the square footage amount of the apartment units. Petitioner proposes, in conjunction with the reduction in units, to reduce its annual tax credit amount from \$2,435,000.00 to \$2,349,561.40, resulting in the return of \$85,438.60 in annual tax credit allocation. The reduction in units and allocation would not have changed Petitioner's score on its 2006 Universal Cycle Application.

7. Absent the requested waiver, construction of the project cannot move forward. Delay raises the possibility that the project cannot be completed by its placed in service date.

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 67-48.004(14)(j) and 67-48.004(14)(m), F.A.C. (2006) are hereby waived only to the extent

necessary to allow Petitioner to reduce the total number of units from 114 to 110; and to reduce the annual Low Income Housing Tax Credit allocation from \$ \$2,435,000.00 to \$2,349,561.40.

DONE and ORDERED this 15th day of December, 2006.

Florida Housing Finance Corporation

By: 
Chairperson

Copies furnished to:

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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