

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: PETERBOROUGH 2, LTD

FHFC Case No.: 2016-011VW

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**ORDER GRANTING WAIVER OF RULES 67-48.004(3)(j) and  
67-21.003(8)(j), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on May 6, 2016, pursuant to an “Amended Petition for Waiver of Rule 67-48.004(3)(j) and Rule 67-21.003(8)(j) to Change Total Set-Aside Percentage” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the original Petition on February 22, 2016, and the Amended Petition on April 4, 2016, from Peterborough 2, LTD (“Petitioner”). Notice of the Petition was published on February 24, 2016, in Volume 42, Number 37, 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 SAIL funding used in conjunction with Multifamily Mortgage Revenue Bonds (MMRB) and non-competitive

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housing credits (HC) under RFA 2014-103 to assist in the construction of high-rise apartments known as Peterborough serving low-income elderly tenants in St. Petersburg, Florida. Petitioner now seeks a waiver that will allow it to reduce the Total Set-Aside Percentage from 100% to 98.6%. This would have the effect of allowing 2 out of 150 units to be rented to tenants with income exceeding 60% of AMI.

3. Rule 67-48.004(3), Fla. Admin. Code, prohibits an Applicant from changing certain items identified in the Application. It 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:

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(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. Notwithstanding the foregoing, the Total Set-Aside Percentage 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.

4. Similarly, Rule 67-21.003(8)(j), Fla. Admin. Code, prohibits an Applicant for MMRB or non-competitive HC from changing certain items in the application.

(3) 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 is deemed complete. Those items are as follows:

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(j) 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; notwithstanding the foregoing, the Total Set-Aside Percentage 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.

5. Petitioner is seeking this waiver because two units that were occupied at the closing of the SAIL and Bond loans do not comply with the tenant income requirements because the total household incomes exceed 60% of AMI. Petitioner states that this was discovered only after the submission of the response to the RFA. A HUD memo issued January 12, 2015, has the effect of preventing Petitioner from terminating the tenancies of these HUD-assisted tenants. Petitioner's attempts to persuade the tenants to vacate have been unsuccessful. Unless the waiver is granted, Petitioner will be out of compliance with its Total Set-Aside Percentage yet will be prohibited from coming into compliance.

6. Under Section 120.542(1), 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.

7. The Board finds that granting the waiver would neither affect the scoring of Petitioner's application 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.

8. Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would violate principles of fairness 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.

9. 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.

10. In its Amended Petition, Petitioner suggests that this waiver should be temporary in nature. However, the Board finds that a temporary waiver would be impractical in this case.

**IT IS THEREFORE ORDERED:**

Petitioner's request for waiver of Rules 67-48.004(3)(j)) and 67-21.003(8)(j)), Fla. Admin. Code, is hereby **GRANTED**, reducing the Total Set-Aside Percentage from 100% to 98.6%, so that Petitioner will be able to continue renting two units to tenants with incomes over 60% AMI. This waiver will also have the effect of allowing the Petitioner to seek a Total Set-Aside Requirement that is not a whole number as is required by Section A.5.j.(2) of the Non-Competitive Application Package, which is incorporated by reference in Rule 67-21.003, Fla. Admin. Code.

DONE and ORDERED this 6th day of May, 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.**