

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

FLORIDA HOUSING FINANCE  
CORPORATION,

Petitioner,

v.

FHFC Case No. 2017-029GA  
DOAH Case No. 17-3260  
3DCA Case No. 3D-17-1244  
Case No. 17-015714 CA 25

PINNACLE HOUSING GROUP, LLC,  
PHG BUILDERS, LLC, FELIX  
BRAVERMAN, DAVID O. DEUTCH,  
MITCHELL M. FRIEDMAN, MICHAEL  
D. WOHL, and LOUIS WOLFSON, III,

Respondents.

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**ORDER APPROVING SETTLEMENT AGREEMENT**

This cause came before the Board of Directors of the Florida Housing Finance Corporation (“Board”), for consideration and approval on September 22, 2017. On August 23, 2017, the parties executed the attached Settlement Agreement resolving the above-captioned cases.

**IT IS HEREBY ORDERED** that the attached Settlement Agreement is approved and adopted.

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*J. Marshall* / DATE: *9/22/2017*

**DONE AND ORDERED** this 22nd day of September 2017.

FLORIDA HOUSING FINANCE CORPORATION

By:   
Chair

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served by electronic mail this 22nd day of September, 2017 to the following:

Hugh R. Brown, General Counsel  
Marisa G. Button, Asst. Gen. Counsel  
Florida Housing Finance  
Corporation  
227 North Bronough Street,  
Suite 5000  
Tallahassee, Florida 32301  
[Hugh.brown@floridahousing.org](mailto:Hugh.brown@floridahousing.org)  
[Marisa.button@floridahousing.org](mailto:Marisa.button@floridahousing.org)

Michael J. Glazer, Esquire  
Erik M. Figlio, Esquire  
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[ncarlos@carltonfields.com](mailto:ncarlos@carltonfields.com)

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J. Stephen Menton, Esquire  
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Peter D. Webster, Esquire  
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215 South Monroe Street  
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Corporation Clerk

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) dated August 23, 2017 (“Effective Date”), is entered into by and between PINNACLE HOUSING GROUP, LLC, a Florida limited liability company, PHG BUILDERS, LLC, a Florida limited liability company, FELIX BRAVERMAN, DAVID O. DEUTCH, MITCHELL M. FRIEDMAN, MICHAEL D. WOHL, and LOUIS WOLFSON, III (collectively referred to herein as “PINNACLE”); FLORIDA HOUSING FINANCE CORPORATION, (“FLORIDA HOUSING”) a public corporation created by section 420.504, Florida Statutes, located at 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, each of which may be referred to individually as a “Party” and collectively are the “Parties.”

**RECITALS**

WHEREAS, Florida Housing issued an Administrative Complaint against Pinnacle on May 1, 2017 in FHFC Case No. 2017-029GA, in accordance with section 420.507(35), Florida Statutes, and Rule 67-48.004(16), Florida Administrative Code;

WHEREAS, Pinnacle submitted a Response to Administrative Complaint and Request for Formal Administrative Hearing (“Response”) on May 22, 2017, denying the allegations of the Administrative Complaint;

WHEREAS, on June 5, 2017, Florida Housing referred the Administrative Complaint and Response to the Division of Administrative Hearings (“DOAH”) for a formal administrative hearing (DOAH Case No. 17-3260);

WHEREAS, in conjunction with the issuance of the Administrative Complaint, Florida Housing also issued an Order of Suspension pursuant to Rule 67-48.004(2)(b), Florida Administrative Code, against Pinnacle and its related entities on May 2, 2017, which was subsequently amended by the issuance of an Amended Order of Temporary Suspension against Pinnacle on June 27, 2017;

WHEREAS, Pinnacle filed a Petition to Review Non-Final Agency Action, at the Third District Court of Appeal, seeking a stay of the suspension entered by Florida Housing, (Case No. 3D17-1244), on June 1, 2017;

WHEREAS, The Third District Court of Appeal denied Pinnacle’s Petition to Review Non-Final Agency Action on August 10, 2017;

WHEREAS, Pinnacle Housing Group, LLC filed a Complaint for Declaratory and Injunctive Relief against the State of Florida and Florida Housing on June 30, 2017, in the Circuit Court of the Eleventh Judicial District in and for Miami-Dade County, Florida (Case No. 17-015714 CA 25) seeking a declaration of unconstitutionality and enjoinder of the enforcement of certain proviso language set forth in Specific Appropriation 2225 of the 2017-2018 General Appropriations Act;

WHEREAS, the Parties have engaged in mediation in furtherance of reaching this Agreement; and

WHEREAS, no Party admits fault or liability of any kind, and each party wishes to resolve all claims and potential claims among and between them, and further wishes to avoid the inconvenience, expense, and uncertainty of litigating their disputes, and have reached a full and final compromise and settlement of all claims and causes of action between them, whether existing, contingent or potential, it being the express intent of all Parties to buy their peace through this Agreement, all of which is still subject to approval of the Board of Directors of Florida Housing ("Board").

NOW, THEREFORE, in consideration of the mutual covenants and agreements provided for herein, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Parties hereby agree to the following terms and conditions:

### **AGREEMENT**

1. **Stipulations.**

- a. The Parties acknowledge that the following stipulations are subject to the approval of the "Board."
- b. The Parties agree that pending the review and approval of this Agreement by the Board, all pending litigation referenced above between the Parties will be held in abeyance.
- c. The Parties stipulate that for the next two Request for Applications ("RFA") cycles for the 2017-2018 and 2018-2019 fiscal years, if an application is submitted by Pinnacle, or any Pinnacle Principal or Affiliate (a "Pinnacle-related applicant"), as those terms are defined in Rule 67-40.002, Florida Administrative Code, for the following RFAs:
  - Housing Credit Financing for Affordable Housing Developments Located in Miami-Dade County
  - Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties
  - Housing Credit Financing for Affordable Housing Developments Located in Small and Medium Counties
  - Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments
  - Housing Credit Financing to Provide Affordable Multifamily Rental Housing that is a Part of Local Revitalization Initiatives

- SAIL Financing of Affordable Multifamily Housing Developments to be used in conjunction with Tax-Exempt Bonds and Non-Competitive Housing Credits
- SAIL Financing for the Construction of Workforce Housing

then the Pinnacle-related applicant, if applying as the sole developer or general contractor, will not be entitled to collect more than the following fees:

- Developer Fee Maximum 5%
- General Contractor Fee Maximum 6%.

To the extent any Pinnacle-related applicant is applying as a co-developer, the Pinnacle-related developer shall receive a maximum 5% developer fee while the non-affiliated developer shall be entitled to receive up to the remaining 11%. If, in connection with any development application submitted by any Pinnacle-related applicant, the general contractor applicant is unaffiliated with Pinnacle, the unaffiliated general contractor may receive the maximum General Contractor fee permitted by FHFC rules.

- d. The Parties stipulate that other RFAs not referenced herein, for the 2017-2018 and 2018-2019 fiscal years are not subject to the above referenced limitations, e.g. special needs, disabled, homeless, MMRB and 4% non-competitive credit applications.
- e. The Parties stipulate that any applications that are awarded subject to this Agreement in the 2017-2018 and 2018-2019 fiscal years, and in which a Pinnacle affiliate is the general contractor, will undergo heightened General Contractor Cost Certification auditing requirements above current requirements, which will include audits of at least twelve (12) subcontractors, and at least 80% of construction costs.
- f. The Parties stipulate that the Pinnacle at Peacefield development (Application No. 2017-211C) in RFA 2016-113 will be completed and finalized with a maximum Developer Fee capped at 13% and a maximum General Contractor fee capped 12% if the general contractor is a Pinnacle Affiliate.
- g. Within 3 days after the date of Board approval of this Agreement, Florida Housing will file a Joint Motion to Relinquish Jurisdiction in DOAH Case No. 17-3260, to issue an Order of Withdrawal of the Administrative Complaint *nunc pro tunc* and withdrawal of the Amended Temporary Suspension Order *nunc pro tunc* against Pinnacle.
- h. Upon the issuance of the Order of Withdrawal of the Administrative Complaint and Amended Temporary Suspension Order, and based on Florida Housing's representation that it is not required to, and it will not, enforce the proviso language set forth in State of Florida Specific Appropriation 2225 of the 2017-2018 General

Appropriations Act against any Pinnacle-related projects awarded prior to or during the 2017-2018 fiscal year pertaining to the Administrative Complaint in FHFC Case No. 2017-029GA, Pinnacle Housing Group, LLC will file a Voluntary Dismissal of the Complaint for Declaratory and Injunctive Relief in Case No. 17-015714 CA 25.

- i. Pinnacle will take no further action nor seek any additional relief in Third DCA Case No. 3D17-1244.
  - j. The Parties stipulate that Pinnacle will pay Florida Housing's attorney's fees and costs incurred in the collective actions referenced above, not to exceed one hundred seventy-five thousand dollars (\$175,000.00) and Florida Housing will provide documentation to Pinnacle of the specific amount.
2. Board Approval. This Agreement is not final and binding until approved by the Board of Florida Housing. In the event that it is not approved by the Board, this agreement will be automatically cancelled, void and of no further force and effect.
  3. No Admission of Facts or Liability. This Agreement is made regarding disputed facts. None of the Parties to this Agreement either expressly or impliedly admits to any liability, obligation, wrongdoing, or fault, and they specifically deny any such allegations. The Parties acknowledge that this Agreement is a compromise of disputed claims and defenses and that the execution of this Agreement does not express, imply, or admit any liability, obligation, wrongdoing, or fault by any of the Parties to it. Each of the Parties hereto denies any liability in connection with any claim and intends merely to avoid the time and expense of further negotiation or litigation and to forever buy its peace under the terms of this Agreement. The Agreement is not, and shall not be construed to constitute, a debarment or suspension of Pinnacle's right to participate in any Florida Housing program.
  4. Breach of Agreement. The Parties agree that a Party may enforce this Agreement by using any and all remedies available at law and in equity, including but not limited to specific performance and injunctive relief, in order to ensure compliance with the terms of the Agreement.
  5. Further Assurances. Each of the Parties agrees to cooperate with each other in effectuating the terms of this Agreement, and will, if necessary, take such further actions and execute such further documents as are necessary to carry out the intent and provisions of this Agreement. The Parties agree to execute and exchange such additional documentation as may be necessary to accomplish and fulfill their respective obligations and agreements as set forth herein.
  6. Warrant of Authority. Each of the Parties warrants and represents to the other that, as of the time it executed this Agreement, each Party had the right and authority to execute this Agreement and the person executing this Agreement for each of the Parties is authorized to do so by and on behalf of the Party.

7. No Assignment. Each Party represents and warrants there has not been any assignment or other transfer of any interest in any claim which they may have against any other Party, their agents, employees, subsidiaries, parent companies or affiliates, and each Party agrees to indemnify and hold harmless each and every other Party, their agents, employees, subsidiaries parent companies, or affiliates, from any judgment, liability, claim, demand, damage, reasonable costs, reasonable expenses and reasonable attorneys' fees incurred by them as a result of any person asserting any such assignment or transfer of any rights or claims under any such assignment or transfer. However, this paragraph does not relate to or prohibit any assignment or other transfer of interest in any claim between or among a Party or their principals, parent companies or subsidiaries or relate to or prohibit any assignment or other transfer of interest in any claim as a result of organizational or ownership changes of a Party.
8. Effect on Other Entities. Each of the Parties warrants that it is entering into this Agreement on behalf of, and that this Agreement is binding upon, itself and its officers, managers, members, shareholders, directors, employees, principals, predecessors, successors, heirs, insurers, insureds, attorneys, sureties, assigns, agents, guardians, heirs, descendants, devisees, legatees, trustees, legal representatives, executors and administrators, subsidiaries, parents, divisions, partners, and affiliated entities.
9. Advice of Counsel. The Parties represent and warrant that they have had ample time to consider the terms of this Agreement, that they have consulted with their respective counsel, and that they understand and voluntarily accept the terms of this Agreement. All Parties acknowledge that they were afforded ample time to review this Agreement, that they have carefully read and completely understand this Agreement in its entirety and that they have executed this Agreement freely and voluntarily, without any mental, physical, or economic duress.
10. Merger/Entire Agreement. All negotiations relating to this Agreement are merged herein. There are no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, express or implied, among the Parties as to such matters other than as set forth herein. This Agreement represents and contains the entire agreement and understanding between the Parties and supersedes any and all prior negotiations, agreements, representations, understandings, and communications with respect to the matters contained herein and may only be subsequently modified in a writing signed by both Parties. Each Party agrees that it has not relied upon any representation, warranty, condition, understanding, or agreement of any kind in entering into this Agreement other than those actually set forth in this Agreement.
11. Severability. If any provision of this Agreement or if the application of any provision of this Agreement to any person, entity, or circumstance, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons, entities, or circumstances other than those as to which it is held invalid or unenforceable shall not be affected and each provision of this Agreement not found to be invalid or unenforceable shall be enforced to the fullest extent



permitted by law. If any provision of this Agreement may be construed in two ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

12. Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Facsimile signatures on this document shall be considered as binding as original signatures.
13. No Waiver. No waiver of any provision of the Agreement shall be effective unless agreed to in writing by the Party against whom such waiver is sought to be enforced. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach, whether similar or otherwise.
14. Participation in Drafting. The Parties acknowledge that this is a negotiated Agreement, and all Parties participated in drafting this Agreement and any ambiguity in or dispute about the meaning of any part of this Agreement shall not be presumptively construed against any of them.
15. Governing Law and Venue. The terms and provisions of this Agreement shall be construed, interpreted, and governed under the laws of the State of Florida, and venue and jurisdiction of any proceeding in connection with this Agreement shall be in Leon County, Florida.
16. Waiver of Trial by Jury. Should any litigation ensue concerning or related to this Agreement, each and every Party knowingly, willingly, voluntarily and intentionally waives their right to a trial by jury on any and all issues.
17. Consideration. Each Party hereto agrees and acknowledges that the promises and obligations in this Agreement constitute binding and valid consideration and that pursuant to this Agreement each Party has and will receive reasonably equivalent value and appropriate consideration from each other Party in exchange for entering into this Agreement and making and agreeing to the respective acknowledgements, obligations and releases contained within.
18. Headings. The various headings in this Agreement are for convenience only and shall not be deemed a part of or in any manner affect this Agreement or any of its provisions.
19. Notice. Whenever notice is required or may be provided under this Agreement, it shall be provided via e-mail and certified mail to the following:

As to FLORIDA HOUSING FINANCE CORPORATION:

General Counsel  
227 North Bronough Street  
Suite 5000  
Tallahassee, FL 32301-1329

As to PINNACLE PARTIES (Pinnacle Housing Group, LLC; PHG Builders, LLC; Felix Braverman; David O. Deutch; Mitchell M. Friedman; Michael D. Wohl; Louis Wolfson, III):

Alan Rosenthal  
Carlton Fields  
Suite 4200, Miami Tower  
100 S.E. Second Street  
Miami, Florida 33131

*[Remainder of the page intentionally left blank]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above and agree to be bound by its terms.

**FLORIDA HOUSING FINANCE CORPORATION**

By: 

Name: Harold (Tony) Price

Title: Executive Director

Date: Aug 23 2017

**PINNACLE PARTIES**

(Pinnacle Housing Group, LLC; PHG Builders, LLC; Felix Braverman; David O. Deutch; Mitchell M. Friedman; Michael D. Wohl; Louis Wolfson, III)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date set forth above and agree to be bound by its terms.

**FLORIDA HOUSING FINANCE CORPORATION**

By: \_\_\_\_\_

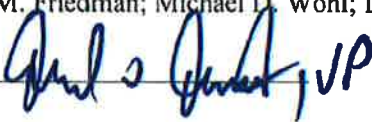
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PINNACLE PARTIES**

(Pinnacle Housing Group, LLC; PHG Builders, LLC; Felix Braverman; David O. Deutch; Mitchell M. Friedman; Michael D. Wohl; Louis Wolfson, III)

By:  VP

Name: David O. Deutch

Title: Vice President

Date: 8-23-17