

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: CORNERSTONE PORTOFINO, LLC

FHFC Case No.: 2009-022VW  
Application No.: 2004-057S

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**ORDER GRANTING PETITION FOR WAIVER OF  
RULE 67-48.004(14)(j), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation ("Florida Housing") on July 24, 2009, pursuant to a "Petition for Variance/Waiver from Rule 67-48.004(14)(j) and 67-48.004(14)(k)" ("Petition"), filed by Cornerstone Portofino, LLC ("Petitioner") on June 19, 2009. On July 2, 2009, the Notice of the Petition was published in Volume 35, Number 26, of the Florida Administrative Weekly. 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. During the 2004 Universal Cycle, Petitioner applied for and received State Apartment Incentive Loan (SAIL) funding to finance the development Portofino Apartments ("Development") located in Palm Beach County, Florida.

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*Della on Jarrett* / DATE: 7/24/09

3. Rule 67-48.004(14)(j), Fla. Admin. Code (2004) provides, in pertinent part<sup>1</sup>:

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... [t]hose items are as follows:

(j) With regard to 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 Total Set-Aside Commitment section of the Application...

4. Petitioner has requested a waiver of the above Rule to permit the SAIL set-aside percentage to be lowered from its current 100% at 60% of Area Median Income (AMI) to 94% at 60% AMI, to match the set-aside requirements already in place for the Guarantee and 4% non-competitive LIHTC requirements.
5. 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.

6. The Board finds that strict application of the above Rule under these circumstances, where the requested change constitutes a minimal reduction to the set-aside requirements to make them more consistent among the funding

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<sup>1</sup> Petitioner submitted its SAIL application in the 2004 Universal Cycle, and this Application is subject to the 2004 version of the Rule. Petitioner cites both the 2004 (section j) and 2005 (section k) versions of the Rule in its Petition. For the purposes of this waiver/variance request, the 2005 version of the Rule will be ignored.

programs, and where the request will help to ensure the continued financial viability of the Development, would violate the principles of fairness and result in substantial hardship to Petitioner.

7. Furthermore, the Board finds that the granting of this waiver request would serve the underlying purposes of Chapter 420, Part V, Florida Statutes.
8. The granting of this waiver request would neither effect the scoring of Petitioner's original application for funding, nor allow Petitioner to gain an unfair advantage over other applicants.


**IT IS THEREFORE ORDERED:**

The "Petition for Variance/Waiver from Rule 67-48.004(14)(j)..." is hereby **GRANTED** to permit the reduction of the SAIL set-aside percentage for the Development from 100% at 60% AMI down to 94% at 60% AMI. All other relief requested in the Petition, if any, is denied.

DONE and ORDERED this 24 day of July 2009.

Florida Housing Finance Corporation



By:   
Chair

**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 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.**