

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In re: North Central Heights, LLC

Case No. 2009-056VW

ORDER GRANTING AMENDED PETITION FOR WAIVER OF RULE 67-48.0072(4)(C), FLORIDA ADMINISTRATIVE CODE (2007)

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation ("Florida Housing") on January 22, 2010, pursuant to a "Petition for Waiver of Rule 67-48.0072(4)(c), Florida Administrative Code (2007)" filed by North Central Heights, LLC ("Petitioner") on November 19, 2009, and an Amended Petition filed by the same on December 14, 2009 (as amended, the "Petition"). Notice of the Petition was published in Volume 35, Number 48, 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 2007 Universal Cycle, Petitioner applied for and was subsequently awarded funding from the Home Investment Partnership ("HOME") Rental Program to help finance the construction of North Central Heights (the

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Allegra Harris DATE: 1/22/10

“Development”), a (40) unit, single-family rental development, located in Highlands County, Florida.

3. Rule 67-48.0072(4)(c), F.A.C, (2007) (the “Rule”) states in pertinent part:

(4) If the credit underwriting invitation is accepted:

(c) For SAIL and HOME Applicants and Applicants eligible for a supplemental loan, the loan(s) must close within 14 months of the issuance of the preliminary commitment. Applicants may request one (1) extension for up to 10 months. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The written request will then be submitted to the Corporation’s Board for consideration. The Board shall consider the facts and circumstances of each Applicant’s request and any credit underwriting report, if available, prior to determining whether to grant the requested extension. The Corporation shall charge a non-refundable extension fee of 1 percent of each loan amount if the Board approves the request to extend the commitment beyond the initial 14 month period. In the event the loan does not close within 24 months of the issuance of the preliminary commitment, the preliminary commitment or firm commitment, as applicable, will be deemed void and the funds will be de-obligated.

4. 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.

5. Petitioner received a preliminary commitment for the HOME loan from Florida Housing on January 7, 2008.

6. In spring 2008, Petitioner applied for a Federal Home Loan from the Federal Home Loan Bank (“FHLB”). Due to a change in the timing of the FHLB’s application process in 2008 (i.e., the annual funding rounds conducted by FHLB were reduced from 2 to only 1), the Petitioner’s application for the FHLB loan was not approved until December 2008. As a result, the credit underwriting process for the HOME loan did not begin until January of 2009.

7. In May 2009, the Petitioner requested and was granted a ten (10) month extension of the HOME loan closing. Credit underwriting was completed in September 2009. Approval of the credit underwriting report was placed on the October 2009 Board Consent Agenda. However, shortly before the October meeting, the FHLB member bank withdrew its offer to provide permanent financing, and approval of Petitioner’s credit underwriting report was pulled from the October Board Agenda.

8. Since that time, Petitioner has secured a commitment for permanent financing from Bonneville Mortgage and, in addition, received a \$350,000 increase in a previously approved FHLB grant of \$650,000, bringing the total grant amount to \$1 Million.

9. Petitioner also has outstanding a PLP Loan on this Development in the amount of \$500,000 from Florida Housing. In addition, a second PLP loan has been approved for Phase II of this Development.

10. The current deadline for closing the HOME loan is January 7, 2009.

11. Petitioner requests a 120 day extension of the closing date to allow time to close the HOME loan and avoid the application of the Rule which provides for the de-obligation of the funds in the event the loans are not closed within twenty-four months of the issuance of the preliminary commitment.

12. Strict application of the Rule in this circumstance will create a substantial hardship for the Petitioner who will suffer significant economic loss if the HOME funds are deobligated. The events giving rise to the delay (the change in the FHLB funding process and withdrawal of the funding by the FHLB member bank) were outside Petitioner's control. And, since that time, Petitioner has worked diligently to replace the withdrawn funding and to increase the amount of funding under the previously approved grant. Under these circumstances, strict application of the Rule would also violate principles of fairness. In addition, granting the requested waiver will serve the underlying purpose of the statute that the Rule implements which, in part, is to encourage the development of affordable rental housing.


IT IS THEREFORE ORDERED:

The Petition for waiver of Rule 67-48.0072(4)(c), F.A.C, (2007) is hereby **GRANTED**. The time period within which the HOME loan must close is extended for an additional 120 days to May 7, 2010.

DONE and ORDERED this 22nd day of January 2010.



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.