

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In re: North Central Heights, LLC

Case No. 2010-021VW

**ORDER GRANTING 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 April 30, 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 March 30, 2010 (the "Petition"). Notice of the Petition was published in Volume 36, Number 14, 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

Dula M. Farrel / DATE. 5/4/2010

“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. By Amended Petition filed on December 14, 2009, Petitioner petitioned Florida Housing for a waiver of Rule 67-48.0072(4)(c), Florida

Administrative Code (2007), and an extension of the time period within which to close the HOME Loan. By Order dated January 22, 2010, the Board granted the waiver and extended the time period in which the HOME Loan must close to May 7, 2010, which is the current deadline for closing.

6. Florida Housing has outstanding PLP loans on both phases of the Development.

7. Since the entry of the Order, Petitioner has secured signed FHLB AHP Agreements with FHLB Atlanta and Sun Trust for Phase I and II of the Development. In addition, a Preliminary Funding Commitment from Bonneville Mortgage for the USDA RDS 538 Loan is in place. However, since the loan is guaranteed by USDA there is a due diligence component which requires an environmental review and public comment period.

8. To expedite the review process, Petitioner offered the environmental review that was performed as part of the Corporation's due diligence process, but was advised that this would not be sufficient for purposes of USDA's review.

9. On March 17, 2010, the USDA issued its "Findings of No Significant Environmental Impact" (FONSI) for the Development. Notice of the FONSI was published in area newspapers on March 22 through 24, 2010, and the public has a 15-day period in which to file comments or objections. The last day for the public

to provide comments or objections regarding the Development was Thursday, April 8, 2010.

10. While Petitioner is hopeful that at the conclusion of the public comment period it will be able to close in time to meet the current May 7, 2010 deadline, Petitioner requests a 60 day extension of the closing date so as to avoid the application of the rule which would result in the de-obligation of the HOME funds if the loan does not close by that date due to issues that might arise during or as a result of the public comment period.

11. Petitioner requests a waiver of the Rule requiring it to close the HOME Loan within twenty-four months of the issuance of the preliminary commitment, and that it be granted a further extension of sixty (60) days to close the HOME Loan.

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. Petitioner has continued to work diligently to secure the other sources necessary to finance the Development and the events in question now (i.e., issues that might arise during, or as a result of, the public comments period) are outside Petitioner's control. 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 60 days to July 6, 2010.

DONE and ORDERED this 30th day of April, 2010.



Florida Housing Finance Corporation

By: *David Schaefer*
Chair

Copies furnished to:

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Joint Administrative Procedures Committee
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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.