

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Residences at Dr. King  
Boulevard, Ltd.

FHFC Case No.: 2019-097VW

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**ORDER GRANTING WAIVER FROM RULE 67-48.002(95),  
FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Florida Housing Finance Corporation pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on November 19, 2019, from Residences at Dr. King Boulevard, Ltd. (“Petitioner”). Notice of the Petition was published on November 21, 2019, in Volume 45, Number 227, 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, Florida Housing hereby finds:

1. Florida Housing has jurisdiction over the subject matter of this case and the parties hereto.
2. Petitioner was selected to receive 9% housing tax credits under Request for Applications 2017-112 (the “RFA”) to assist in the construction

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*Thomas Slattery* DATE: 12/16/19

of a 120-unit high-rise development located in Miami-Dade County, Florida, known as Residences at Dr. King Boulevard (the “Development”).

3. Rule 67-48.002(95), *Florida Administrative Code* (2017), adopts the Qualified Allocation Plan (“QAP”) and incorporates the QAP by reference.

Section II.K of the 2016 QAP, in relevant part, provides:

Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required or it is apparent that a Development will not be placed in service by the date required, and such failure is due to circumstances beyond the Applicant’s control, and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may allocate such Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service, provided the following conditions have been met: (i) the sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant’s control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs.

4. Pursuant to Rule 67-48.028(1), *Florida Administrative Code*, if an Applicant cannot complete its development by the end of the year in which the preliminary allocation of housing credits is issued, the applicant must enter into a carryover allocation agreement with Florida Housing by December 31 of the year in which the preliminary allocation is issued. Petitioner and Florida Housing entered into the carryover allocation agreement on December 10, 2018, which required the Development to be placed in service by December 31, 2020.

5. Petitioner asserts that it is unable to meet the December 31, 2020 placed-in-service deadline due to delays outside of Petitioner's control. According to Petitioner, changing interpretations from the local permitting authorities regarding how to resolve a previous subdivision of a portion of the development site and delays in receiving gap financing commitments for the development which resulted in delays in the receipt of the credit underwriting report. Petitioner requests an exchange of its 2018 housing credits for an allocation of 2019 housing credits now, rather than wait until the last quarter of 2020, which would effectively extend the placed-in-service date of the Development until December 31, 2021.

6. Specifically, Petitioner asserts that the development site issues arise from the discovery that a piece of the site awarded to Petitioner through

a competitive process by the City of Miami for the proposed Development is, in fact, owned by Miami-Dade County. According to Petitioner, during the predevelopment process, it was discovered that the County retains ownership of a 30-foot strip of land on the Development site as the result of a previous subdivision of the lots. Initially, the affected local governments determined that no additional formal conveyance of the County-retained strip of land was required for Petitioner to proceed with the Development. However, Petitioner asserts that in September of 2019, the City's Public Works Department modified its previous determination and advised that the property was an illegal subdivision, which would require re-platting of the land. According to Petitioner, the parties have agreed that the most efficient means of resolving the issue is for the County to convey the 30-foot-strip of land to Petitioner for incorporation into the proposed Development as open green space, thereby returning the lots to its originally platted configuration and avoiding the need to replat the land.

7. Additionally, Petitioner asserts that like most high-rise affordable housing developments in Miami-Dade County, its Development requires significant gap financing. Petitioner states that in 2018, it requested \$4,800,000 in Surtax funds from the Miami-Dade Public Housing and Community Development Department, but only received a conditional loan

commitment for \$2,053,447. According to Petitioner, it then sought other sources of funding from both Miami-Dade County and from the City of Miami and the allocation and commitment of these additional funds has taken longer than anticipated. Petitioner states that it received the commitment of additional funds in September and October of 2019, which was necessary to finalize Petitioner's credit underwriting report. Petitioner anticipates closing on the additional sources of funding in 2020 and thus needs the requested credit swap.

8. 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.

9. Florida Housing finds that granting the waiver will not impact other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

10. Petitioner has demonstrated that it would suffer a substantial hardship 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.

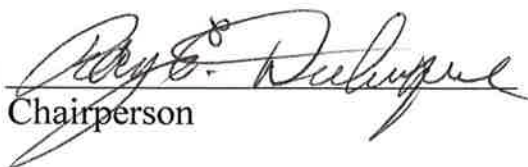
11. Florida Housing finds that strict application of the above Rule and selected QAP provision under these circumstances would violate principles of fairness, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

**IT IS THEREFORE ORDERED:** Petitioner's request for a waiver of Subsection II.K of the 2016 QAP which is incorporated by reference into Rule 67-48.002(95), *Florida Administrative Code* (2017), is hereby **GRANTED** to allow Petitioner return its 2018 housing credit allocation and immediately receive an allocation of 2019 housing credits with a placed-in-service date of December 31, 2021.

**DONE and ORDERED** this 13th day of December, 2019.



Florida Housing Finance Corporation

By:   
Chairperson

Copies furnished to:

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## **NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE 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.**