

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: OAKLAND PRESERVE, LLC

FHFC Case No.: 2015-035VW

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

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on October 30, 2015, pursuant to a “Petition for Waiver of the Qualified Allocation Plan's Requirement for Returning Housing Credit Allocations, and for an Immediate Allocation of 2015 Housing Credits” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on September 8, 2015, from Oakland Preserve, LLC (“the Petitioner”). Notice of the Petition was published in Volume 41, Number 197, of the Florida Administrative Register on September 9, 2015. 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.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATL: 10-30-15

2. Petitioner successfully applied for an allocation of Low Income Housing Tax Credits (HC) under RFA 2013-003 to assist in the construction of 80 new garden apartments serving low-income residents in Oakland Park, Broward County, Florida, Application No. 2014-241C.

3. Rule 67-48.002(95), Fla. Admin. Code¹, provides:

(95) "QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2015 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the state of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits. The QAP is available on the Corporation's Website under the Multifamily Programs link or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-04614>.

4. Section II.K. of the Qualified Allocation Plan ("QAP"), as adopted by reference in Rule 67-48.002(95), Fla. Admin. Code, provides:

K. 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

¹ The Petition erroneously referenced Rule 67-48.002(94). This typographical error has been corrected.

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.

5. Petitioner is required by a carryover allocation agreement with FHFC to place its proposed Development in service by December 31, 2016. For reasons beyond its reasonable control, which are detailed in the Petition, it will not be possible for Petitioner to meet this deadline.

6. Strict compliance with the QAP would require Petitioner to wait until the fourth quarter of 2016 to return its housing credit allocation, and then hope that FHFC would exchange these credits for 2017 housing credits. According to Petitioner, this would put the financing of the project at risk.

7. 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.

8. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner. The Board further finds that granting this request will cause no harm to FHFC or any other parties, and will further 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 Rule 67-48.002(95), Fla. Admin. Code is hereby **GRANTED** to permit Petitioner to return its 2014 Housing Credit Allocation and to allow the Corporation to allocate an equivalent amount of 2015 Housing Credits to Petitioner.

DONE and ORDERED this 30th day of October, 2015.

Florida Housing Finance Corporation

By: _____


Chair

Copies furnished to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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.