

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: LIVE OAK MEADOWS, LP.

FHFC Case No. : 2010-039VW

**ORDER GRANTING PETITION FOR WAIVER FROM
RULE 67-48.004(14)(k), FLORIDA ADMINISTRATIVE CODE (2009)**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on January 21, 2011, pursuant to a Petition for Waiver from Rule 67-48.004(14)(k), Florida Administrative Code (2009), (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on December 20, 2010, from Live Oak Meadows, LP ("Petitioner"). On December 30, 2010, the Notice of the Petition was published in Volume 36, Number 52, of the Florida Administrative Weekly. Florida Housing did not receive any 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 2009 Universal Application Cycle, Florida Housing awarded an allocation of Housing Credits to Petitioner to rehabilitate an apartment complex known as Live Oak Homes (the "Development") in Suwannee County, Florida.
3. Petitioner requests a waiver from Rule 67-48.004(14)(k), Florida Administrative Code (2009), which provide as follows:

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HOUSING FINANCE CORPORATION

Dulock Harrell / DATE: 1-21-2011

(14) 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. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows.

(k) 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 Set-Aside Commitment section of the Application. With regard to the HOME Program, the Total Set-Aside Percentage as stated in the Set-Aside Commitment section of the Application, unless the change results from the revision allowed under paragraph (m) below;

4. The Petitioner requests for a waiver of the Rule, and a corresponding revision to Section 3(a) of the Extended Low Income Housing Agreement (ELIHA) to permit five (5) tenants currently occupying the Development to remain as tenants, where such tenant's income exceeds the permitted income for HC financing, but which is within the income range permitted by the United States Department of Agriculture Rural Development Section 515 Program.

5. The waiver requested is temporary in nature and would expire when the tenants no longer reside in the Development, to be replaced with new tenants who will be income qualified under the HC Program and the Rule. To accomplish this accommodation, Petitioner seeks to temporarily waive the provision of the above Rule to permit a change in the Set-Aside Commitment.

6. Both Section 42 of the Internal Revenue Code and the rules of the HC program permit tenants to continue to reside at a property when their income level initially meets the income requirement, but subsequently increases to an amount which

exceeds the income limits. Unfortunately, Petitioner cannot take advantage of this accommodation, as Petitioner recently acquired ownership of the Development from a previous owner, and must recertify the income levels of its tenants. Petitioner agrees that the rent charged to the subject tenants will not exceed the maximum rent permitted under the HC program.

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. Under these circumstances, strict application of the above Rule to this Petitioner would create a substantial hardship or violate the principals of fairness, and Petitioner has demonstrated that the granting of this waiver will serve the underlying purpose of the statute.

IT IS THEREFORE ORDERED:

The Petition for Waiver from Rule 67-48.004(14)(k), Florida Administrative Code (2009), is hereby **GRANTED** to permit the ELIHA to be amended to change the Set Aside Commitment for the development to 94.25% of the units (82 of 87) at 60% of Area Median Income or less, and that at such time as the five (5) tenants in question no longer reside at the Development, the Set-Asides shall revert to their original terms as committed to by Petitioner in its Application and the subject units will be rented to income qualified tenants under these original terms. The five tenants shall continue to pay rent which does not exceed the maximum rents permissible under the HC Program.

DONE and ORDERED this 21st day of January 2011.



Florida Housing Finance Corporation

By: 
Chairperson

Copies furnished to:

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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.