

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Fair Oaks, LLC

FHFC CASE NO.: 2019-084VW

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**ORDER GRANTING WAIVER OF RULE 67-48.002(95)**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on December 13, 2019, pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on October 3, 2019, from Fair Oaks, LLC (“Petitioner”). Notice of the Petition was published on October 7, 2019, in Volume 45, Number 195, of the Florida Administrative Register. 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. Petitioner successfully applied for an award of 9% Housing Tax Credits under Request for Applications 2017-112 (the “RFA”) to assist in the construction of 120 Mid-rise apartments for low-income families in Miami-Dade County, Florida, known as Fair Oaks Apartments.
3. Rule 67-48.002(95), Fla. Admin. Code (2017), defines and incorporates by reference the following provision of the 2016 QAP at Section II.2:

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HOUSING FINANCE CORPORATION

Thomas Delaney ATTL: 12/10/19

K. ...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...

4. Petitioner received an award of 2018 tax credits and signed its carryover agreement in December of 2018. Under the terms of the agreement and federal regulations, Petitioner is required to place the development in service by December 31, 2020. Petitioner requests a waiver of the above Rule and bolded selection of the QAP provision above to permit it to exchange its tax credits now rather than in the last calendar quarter of 2020.

5. Petitioner asserts that because of unforeseen delays in obtaining all necessary approvals from HUD as well as funding delays from Miami-Dade County, which are described in detail in the Petition, it will be unable to place the Development in service by December 31, 2020. Petitioner therefore requests a waiver of the timing requirements found in the 2016 QAP to permit Florida Housing to approve a tax credit exchange now and to allow the allocation of 2019 tax credits pursuant to that exchange. Petitioner notes that it expects to receive all necessary approvals to commence construction by January, 2020.

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

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. Petitioner has demonstrated that the waiver is needed in order to efficiently serve low-income families. 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.

9. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, 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 Rule 67-48.002(95), Fla. Admin. Code (2017), and the incorporated 2016 QAP provision is hereby **GRANTED** to permit Petitioner to exchange its 2018 tax credits for an allocation of 2019 tax credits.

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



Florida Housing Finance Corporation

By:   
Chair

**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.**