

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: River Oaks Partners, Ltd.

FHFC Case No.: 2017-072VW

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**ORDER GRANTING WAIVER OF RULE 67-21.026(10)**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on October 27, 2017, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on October 10, 2017, from River Oaks Partners, Ltd ("Petitioner"). Notice of the Petition was published on October 11, 2017, in Volume 43, Number 197, 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, 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. In 2015, Petitioner acquired and began rehabilitating a 160-unit development in Miami-Dade County known as River Oaks, and entered into a stipulated sum contract with its general contractor on January 27, 2015 to accomplish this. The financing included tax exempt bond financing from the local

bond issuer in Miami-Dade County. At that time, Rule 67-21.026(10), F.A.C., read: “The Corporation’s assigned Credit Underwriter shall require a guaranteed maximum price or stipulated sum construction contract.” On February 2, 2015, after execution of the stipulated sum contract, Rule 67-21.026(10), F.A.C., was revised to allow only a guaranteed maximum price contract. In October 2016, Petitioner submitted a non-competitive application for the allocation of four percent low-income housing tax credits. The work contracted for under the stipulated sum contract has been completed, rendering it impossible to retroactively have the work performed under a guaranteed maximum price contract.

3. Petitioner seeks a Waiver of Rule 67-21.026(10), F.A.C. (2016), which would allow Petitioner to continue to use the stipulated sum contract with its general contractors. Rule 67-21.026(10), F.A.C. (2016) provides as follows:

The Corporation’s assigned Credit Underwriter shall require a guaranteed maximum price construction contract, acceptable to the Corporation, which may include change orders for changes in cost or changes in the scope of work, or both, if all parties agree, and shall order, at the Applicant’s sole expense, and review a pre-construction analysis for all new construction units or a physical needs assessment for rehabilitation units and review the Development’s costs.

4. 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.

5. Section 120.542(2), Fla. Stat., 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.

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

7. 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 furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

**IT IS THEREFORE ORDERED:**

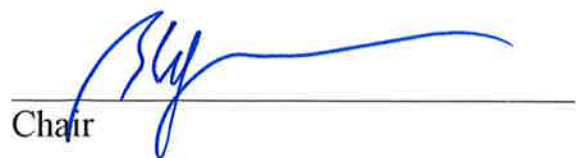
Petitioner's request for a waiver of 67-21.026(10), F.A.C. (2016) is hereby **GRANTED** so that Petitioner may continue to use a stipulated sum contract with its general contractors.

DONE and ORDERED this 27th day of October 2017.

Florida Housing Finance Corporation

By:

Chair



## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by electronic mail this \_\_\_ day of October, 2017 to the following:

Hugh R. Brown, General Counsel  
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Tallahassee, Florida 32301-1329

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Florida Housing Finance Corporation  
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Tallahassee, Florida 32301

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Joint Administrative Procedures Committee  
Attention: Ms. Yvonne Wood  
120 Holland Building  
Tallahassee, Florida 32399-1300

## 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.**