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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

PARKWOOD PLAZA APARTMENTS, LTD.,
a Florida limited partnership,

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

FHFC CASE NO. 2023-058VW
Application No. 2023-254V (2021-112B)
RFA 2023-211

PETITION FOR WAIVER OF RULE 67-21.003(11), F.A.C. (05/18/2021)

Parkwood Plaza Apartments, Ltd. (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing") for a waiver of Rule 67-21.003(11), Florida Administrative Code ("F.A.C.") (eff. 05/18/2021) (the "Rule"), which provides that the withdrawal by the Applicant from any one program will be deemed by the Corporation to be a withdrawal of the Application from all programs." While the development was originally induced for bonds by the Orange County Housing Finance Authority ("OCHFA") in 2021, a 2022 allocation was not available for that region. The development was subsequently induced by Florida Housing in the second quarter of 2022. However, the OCHFA subsequently advised Petitioner that sufficient bond capacity now exists in the region and that OCHFA was able to secure a regional allocation for the development. Petitioner therefore respectfully requests a Rule waiver so that Petitioner may withdraw from the Florida Housing-Issued bonds (to instead use the OCHFA-issued bonds) without also withdrawing from RFA 2023-211, the Construction Inflation Response Viability Funding ("CIRVF"). If granted,

OCHFA will issue the bonds, while preserving Florida Housing's bond allocation to fund additional projects.

In further support of this request for Rule waiver, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone, facsimile numbers and e-mail address for Petitioner and its qualified representative are:

Parkwood Plaza Apartments, Ltd.
Attn: Russell Condas
Lincoln Avenue Capital
401 Wilshire Blvd. Suite 1070
Santa Monica, CA 90401
Telephone: (424)222-8258
rcondas@lincolnavecap.com

2. The address, telephone, and facsimile number and e-mail address of Petitioner's counsel is:

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street
Suite 2200
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Bridget Smitha, Esq.
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Suite 700
Tallahassee, Florida 32301
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Fax: 850-329-4864
Email: BSmitha@stearnsweaver.com

B. WAIVER IS PERMANENT

3. The waiver being sought is permanent in nature.

C. DEVELOPMENT BACKGROUND.

4. Petitioner provides the following information related to the development ("Development"):

- Development Name: 52 at Park
- Development Address: 3255 W Colonial Dr, Orlando, FL 32808

- County: Orange
- Developer: Parkwood Plaza Developer LLC
- Number of Units: 300 new construction
- Type: 8 three-story garden style buildings, 1 four-story midrise building, and a stand alone club house
- Set Asides: 100% of units at 60% AMI or less
- Demographics: Family
- Funding: $4,621,250 Non-Competitive HC funding request (annual amount); $4,300,000 CIRVF; $55,500,000 OCHFA bonds

D. THE RULE FROM WHICH WAIVER IS REQUESTED

5. At the time of Petitioner's application, the Rule provided in relevant part: " The withdrawal by the Applicant from any one program will be deemed by the Corporation to be a withdrawal of the Application from all programs." *See* Rule 67-21.003(11), F.A.C. (05/18/2021).

E. STATUTE IMPLEMENTED BY THE RULE.

6. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"): Section 420.5099, Allocation of the low-income housing tax credit; Section 420.502, Legislative findings; Section 420.507, Powers of the corporation; Section 420.508, Special powers; multifamily and single-family projects; and Section 420.509, Revenue bonds.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

7. The Development was originally induced for bonds by the OCHFA in 2021.

8. Unfortunately, a 2022 allocation was not available for that region.

9. Petitioner applied for, and Florida Housing issued, Multifamily Mortgage Revenue Bond and 4% non-competitive bonds in January of 2022. *See* Original Application 2021-112B.

10. The Project was subsequently induced by Florida Housing upon approval of the execution of the Acknowledgement Resolution at the Board's April 29, 2022 meeting.

11. On May 17, 2023, Petitioner submitted application number 2023-254V in response to RFA 2023-211 (Construction Inflation Response Viability Funding).

12. On June 14, 2023, Petitioner received a Notice of Preliminary Award for Viability Funding.[1]

13. Petitioner was recently informed by the OCHFA that there now exists sufficient bond capacity in the region and that OCHFA was able to secure a regional allocation for the Development.

14. The project has experienced substantial cost increases that have strained feasibility. Construction hard costs have increased and interest rates on Petitioner's construction financing and equity bridge loan have sharply increased causing it to require a much larger interest reserve for both throughout the construction period. Additionally, Petitioner's permanent interest rate increases have reduced its available mortgage proceeds.

15. Petitioner therefore respectfully requests a Rule waiver. If granted, Petitioner would utilize the local bond cap and to preserve Florida Housing's bond allocation to fund additional projects.

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[1] The Notice of Preliminary Award states that the credit underwriter assigned to the Development is AmeriNat. However, Petitioner respectfully requests reassignment to Seltzer Management Group, Inc. ("Seltzer") since Seltzer will be completing the credit underwriting for OCHFA.

16. Under Section 120.542(1), *Fla. Stat.,* and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or, violate principles of fairness,[2] and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat.

17. If the requested waiver is not granted, Petitioner will suffer a substantial and unnecessary economic and operational hardship. Specifically, denial of the waiver would delay the closing, which would delay beginning the construction of 300 new affordable units. That delay would increase construction inflation and interest rate risk, which could jeopardize the Development's feasibility. In addition, it would result in less bond allocation for Florida Housing that could be used to fund other developments. By approving the request, Florida Housing can ensure that bond allocation is being used as efficiently as possible to maximize the production and preservation of affordable housing, while expediting the closing and development timeline for 300 new affordable units. Thus, the requested waiver is consistent with RFA 2023-211 – Construction Inflation Response Viability Funding, which specifically includes a Quick Close Incentive to prioritize projects that can close and file a Notice of Commencement more quickly this year.

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[2] "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. § 120.542(2), Fla. Stat.

18. In this instance, Petitioner meets the standards for the requested waiver. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 300 affordable housing units will be preserved and made available for the target population in Orange County, Florida. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State.

19. Should Florida Housing require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

G. ACTION REQUESTED

20. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver and allow Petitioner to withdraw from the Florida Housing-issued bonds (to instead utilize the OCHFA allocation) without withdrawing from the CIRVF award; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

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Miami, Florida 33131
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Counsel for Petitioner

By: */s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Florida Housing Clerk for the Florida Housing Finance Corporation, CorporationClerk@floridahousing.org, with a copy served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 30th day of June, 2023.

By: */s/ Brian J. McDonough*
Brian J. McDonough, Esq.