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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

SONATA APARTMENTS, LTD.,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2021-105VW
Application No. 2020-371C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.002(96), F.A.C. (7/11/19) AND THE 2019 QAP

Sonata Apartments, Ltd. (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of the provisions of the 2019 Qualified Allocation Plan ("2019 QAP") as incorporated and adopted by Rule 67-48.002(96), Florida Administrative Code ("F.A.C.") (July 11, 2019), such that Petitioner may return its 2020 Housing Credit Allocation now as opposed to waiting until the last quarter of 2022. While Petitioner has expended approximately $5,000,000 (actual cash paid to third parties) to diligently move the development forward, delays beyond its control have prevented it from obtaining a building permit. Based on the estimated 16-month construction period, and the inability to obtain a permit or commence construction prior to 16 months before the Placed-in-Service Deadline, it is presently known that there is insufficient time to meet the Placed-in-Service Deadline. Petitioner therefore respectfully requests a waiver. In support, Petitioner states as follows:

A. THE PETITIONER

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

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Sonata Apartments, Ltd.
2100 Hollywood Blvd.
Hollywood, FL 33020
Telephone: (305) 443-8288
Fax: N/A
Email: Mara.Mades@CornerstoneGrp.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
Miami, Florida 33130
Telephone: 305-789-3350
Fax: 305-789-3395
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Bridget Smitha
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
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Tallahassee, FL 32301
Telephone: 850-329-4852
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Email: BSmitha@stearnsweaver.com

B. DEVELOPMENT BACKGROUND

3. The following information pertains to the development underlying Petitioner's application:

- Development Name: Sonata
- Development Address: NW 8th St., NW Corner of NW 8th St. and N. Dixie Hwy and NW 8th St., SW corner of NW 8th St., and N. Dixie Hwy, Pompano Beach, FL
- County: Broward
- Developer: Cornerstone Group Partners, LLC and The PCC Community Development, LLC
- Number of Units: 121 new construction

- Type: High Rise
- Set Asides: 15.703% (*i.e.*, 19 units) at 30% AMI; 24.793 (*i.e.*, 30 units) at 60% AMI; 47.107% (*i.e.*, 57 units) at 70%; and 12.397% (*i.e.*, 15 units) at market rate; 50% of the ELI units will be set-aside for Persons with Special Needs.
- Demographics: Family
- Funding: 9% HC request of $2,882,000 annually

C. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

D. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver of Rule 67-48.002(96), effective July 11, 2019, which provides in pertinent part:

> "QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2019 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-10769.

6. Subsection II.K. of the 2019 QAP, provides as follows:

> Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required pursuant to Section 42 of the IRC, or it is apparent that a Development will not be placed in service by the date required pursuant to Section 42 of the IRC, 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 pursuant to Section 42 of the IRC, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may issue a Carryover Allocation Agreement allocating such Housing Credits to the Applicant for either the current year or the year after the year in which the Development was otherwise required to be placed in service pursuant to Section 42 of the IRC, 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. A Development located in a HUD designated DDA or QCT at the time of original allocation may retain its designation as such.

7. The process found in the 2019 QAP requires an applicant to return its allocation of housing tax credits in the last quarter of the year in which it was otherwise required to be placed in service before a tax credit exchange request can be approved by the Executive Director of Florida Housing. Petitioner is requesting a waiver of this limitation on the timing of the tax credit exchange to allow a credit exchange now rather than in the last calendar quarter of 2022. As demonstrated below, the delay was caused by circumstances beyond Petitioner's control, due diligence was employed in an attempt to resolve those circumstances, the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and the Development is still desirable in terms of meeting affordable housing needs.

E. STATUTES IMPLEMENTED BY THE RULE AND THE 2019 QAP.

8. The Rule implements Section 420.5087 (State Apartment Incentive Loan Program), Section 420.5089 (HOME Investment Partnership Program; HOME Investment Partnership Fund), and Section 420.5099 (creating the Housing Credits Program) of the Florida Housing Finance Corporation Act (the "Act").[1] The Act designates FHFC as the State of Florida's housing credit agency within the meaning of Section 42(h)(8)(A) of the Internal Revenue Code of 1986. As the designated agency, FHFC is responsible for and is authorized to

[1] The Act is set forth in Sections 420.50 through 420.55 of the Florida Statutes.

establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). *See* § 420.5099(1) and (2), Fla. Stat. Accordingly, the, Rule implements, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the HC Program. *Id*.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

9. Petitioner timely submitted Application No. 2020-371C for the Development on November 6, 2019 ("Application") in response to RFA 2019-114 (Housing Credit Financing For Affordable Housing Developments Located In Broward, Duval, Hillsborough, Orange, Palm Beach And Pinellas Counties).

10. The Development received an award of the 2020 Housing Credit dollar amount meeting the requirements of Section 42(h)(1)(E) and (F) of the Internal Revenue Code of 1986 as amended ("Tax Credits") and was invited to credit underwriting.

11. For the allocation of the Tax Credits, Florida Housing staff executed a 2020 Carryover Allocation Agreement effective December 8, 2020 and an Amended and Restated 2020 Carryover Allocation Agreement effective September 13, 2021.

12. Pursuant to 26 U.S.C. 42(h)(1)(E)(i), the Development must be placed in service no later than the close of the second calendar year following the calendar year in which the allocation is made; in this case, the federally-mandated placed-in-service date would be December 31, 2022 (the "PIS Deadline").

13. Petitioner requests a waiver of the 2019 QAP to permit Florida Housing to approve the tax credit exchange now as opposed to waiting until the last quarter of 2022. It is not possible for Petitioner to meet the PIS Deadline for reasons that are outside of Petitioner's

control. Petitioner's first major hurdle was that it took the County nearly 14 months[2] to replat the site, both because the platting process takes a long time in Broward County generally and also because of the COVID-related labor shortages at the County and delays to this process for this site specifically. Petitioner's second major hurdles is that it has been attempting to obtain a building permit from the City since March 20, 2021. However, due to the City's staffing problems and other issues related to the COVID pandemic,[3] the City has yet to issue the permit. Petitioner has taken all actions within its power to demonstrate to the City that the permit should be issued, but Petitioner ultimately has no control over how or when the building permit will be granted. Once the permit is issued, Petitioner anticipates a 16-month construction period. Unless or until the permit issues, Petitioner cannot commence development. Because the PIS deadline is more than 16 months away, Petitioner knows now that it will not be able to satisfy the PIS Deadline irrespective of when the permit issues.

14. Petitioner therefore respectfully requests a waiver to allow the credit swap now as opposed to waiting until the last quarter of 2022.

15. As set forth above, this request was not necessitated through any fault of Petitioner. Rather, Petitioner exercised due diligence in attempting to move the Development towards construction. In fact, approximately $5,000,000 has been expended to date in relation to the Development and Petitioner has successfully obtained:

- Fully completed and approved site plan

[2] Petitioner began the County platting process the day after the City plat was approved and took all available steps to move this process forward expeditiously. Nonetheless, Petitioner only received the final recorded plat a couple of weeks ago.

[3] For example, since COVID began, the City has only been open four days a week. Additionally, Petitioner discovered county and city title problems that it had to resolve and that were complicated by the lack of governmental employees available in person or by phone. Additionally, the City recently hired a new reviewer in the building department, which is in the process of being trained and which is not yet as efficient or timely in conducting reviews.

- Fully completed soils tests
- County Environmental Resource Permit
- County Development Review certificates
- A contract with the general contractor
- Cleaned many old title issues on the site, expending nearly $200,000 in legal fees for the title alone
- Purchased the Site as the seller lost patience with the County's and City's delays.

16. Petitioner has also taken the following actions in an attempt to comply with the PIS Deadline:

- Expedited Permit Reviews
- Several discussions with the City Review staff in an attempt to resolve the remaining comments with the City's new reviewer.

17. Despite these attempts, Petitioner knows now that it will not be able to satisfy the PIS Deadline because it cannot begin the 16-month construction period within 16 months of the PIS Deadline. Unfortunately, the tax credit investors will not close without the building permits being issued or the uncertainty of whether a credit swap will be granted in the final quarter of 2022. If the Petition is denied, the closing will not occur and the Development will not be able to proceed absent this funding source.

18. Similarly, if the Petition is denied, the Development cannot move forward because Petitioner will not have sufficient time to satisfy the PIS Deadline and will lose the allocated Housing Credits. Without this funding source, the Development likewise will not be able to be constructed, and Broward County will thus be denied these 121 affordable housing units.

19. This Petition should be granted, as opposed to de-obligating the award, because Broward County is currently experiencing a severe shortage of affordable housing units for persons with special needs and 50% of the ELI units will be set-aside for Persons with Special Needs. Granting the Petition will result in the delivery of 121 affordable housing units much faster than would reallocating the funding to a new development.

20. 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,[4] and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Fla. Stat.

21. In this instance, Petitioner meets the standards for a waiver of the Rule and the 2019 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 121 affordable housing units will be preserved and made available for the target population in Broward County, Florida. The strict application of the 2019 QAP would prevent Petitioner from completing the swap now and will create a substantial hardship for Petitioner because it cannot – due to no fault of its own – complete construction in the timeframe necessary to meet the current PIS Deadline.

[4] "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. *See* § 120.542(2), Fla. Stat.

22. As mentioned above, the requested waiver serves the purpose of the Statute and the Act because one of the primary goals is to facilitate the availability of decent, safe, and sanitary housing in the State for low-income households. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, and further ensuring the construction of 121 affordable housing units in Broward County, Florida Housing would achieve the goal of increasing the supply of affordable housing through private investment in persons of low-income, and of recognizing the economic realities and principles of fundamental fairness in developing affordable housing. *See* § 420.5099(2), Fla. Stat.

23. The foregoing demonstrates the hardship and other circumstances justifying this Petition.

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

G. <u>ACTION REQUESTED</u>

25. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested waiver to permit the requested credit exchange, immediate return of Petitioner's 2020 Housing Credit Allocation, and an immediate allocation of new Housing Credits; (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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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 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 28th day of December, 2021.

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