STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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Beachwood Preservation LP,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2024-005VW
Application No. 2021-501C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-21.003(1)(b), F.A.C. (05/18/21) AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS (03/2021)

Petitioner, Beachwood Preservation LP, a Florida limited partnership (the "Petitioner") pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code ("F.A.C."), submits this petition to Respondent, Florida Housing Finance Corporation (the "Corporation"), for a waiver of Rule 67-21.003(1)(b), F.A.C., effective 05/18/21 (the "Rule") and the Non-competitive Application Instructions (03/2021) ("NCA"). The Corporation is in the process of completing the final evaluation and determination of the Housing Credit Allocation. Petitioner respectfully seeks a waiver of the Rule and NCA such that the Corporation may release the IRS Form 8609 prior to final resolution of certain issues that have arisen regarding the current principals of Petitioner. In support of this Petition for Rule Waiver, Petitioner states as follows:

A. Petitioner.

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

Jeffrey Goldberg
Beachwood Preservation LP

250 W 55th Street, 35th Floor
New York, NY 10019
Telephone: (212) 798-4081
Fax: N/A
Email: Jeffrey.Goldberg@Fairstead.com

2. The name, address, telephone, and facsimile numbers of Petitioner's counsel are:

Brian J. McDonough
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B. The Development.

3. This Petition is submitted on behalf of the following development ("Development"):

- Development Name: Beachwood Apartments
- Developer: Beachwood Developer LLC
- Address: 2901 Beachwood Boulevard
- County: Duval
- Number of Units: 148 (Acquisition and Rehabilitation)
- Type: Garden Apartments
- Set Asides: 41 units at or below 40% AMI; 70 units at or below 60% AMI; 37 units at or below 80% AMI
- Demographics: Family
- Funding Request: $1,414,380 annual 4% non-competitive LIHTC

C. Rule from which Waiver is Sought.

4. Petitioner requests a waiver of Rule 67-21.003(1)(b), F.A.C. (05/18/21) which provides in pertinent part:

> If the NC Award will not be in conjunction with other Corporation funding made available through the competitive solicitation funding process outlined in rule Chapter 67-60, F.A.C., the Applicant shall utilize the Non-Competitive Application Package in effect at the time the Applicant submits the Application. The Non-Competitive Application Package or NCA (Rev. 03-2021) is adopted and incorporated herein by reference and consists of the forms and instructions available, without charge, on the Corporation's website under the Multifamily Programs link labeled Non-Competitive Programs or from http://www.flrules.org/Gateway/reference.asp?No=Ref-13093, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

Id. The Rule incorporates by reference the Non-Competitive Application Package (Rev. 03-2021) ("NCA"). The NCA includes the following requirement:

> The name of the Applicant entity stated in the Application may be changed only by written request of an Applicant to Corporation staff and approval of the Corporation after the Applicant has been invited to enter Credit Underwriting.
>
> For purposes of (I) and (2) below, a material change shall mean 33.3 percent or more of the Applicant, a general partner of the Applicant, or a non-investor member of the Applicant, and a non-material change shall mean less than 33.3 percent of the Applicant, a general partner of the Applicant, or a non-investor member of the Applicant.
>
> (1) For Applicants requesting Non-Competitive Housing Credits only:
>
> The Applicant entity shall be the recipient of the Housing Credits and the ownership structure of the Applicant entity as set forth in the Principal Disclosure Form and cannot be changed in any way (materially or non-materially) until after the Preliminary Determination is issued. Once the Preliminary Determination has been issued, (a) any material change in the ownership structure of the named Applicant will require Board approval prior to the change, and (b) any non-material change in the ownership structure of the named Applicant will require Corporation approval prior to the change. The ownership structure of the Applicant entity may be changed without Corporation or Board approval after a Final Housing Credit Allocation Agreement has been approved and the IRS Forms 8609 have been issued; however, the Corporation must still be notified in writing of the change. The Applicant must comply with Principal disclosure requirements outlined in Rule Chapter 67-21, F.A.C. for the duration of the Compliance Period. Changes to the ownership structure of the Applicant entity prior to the issuance of the Preliminary Determination or without Board approval or Corporation approval, as applicable,

> prior to the approval of the Final Housing Credit Allocation and issuance of the IRS Forms 8609 shall result in a disqualification from receiving funding and shall be deemed a material misrepresentation. Changes prior to the issuance of the Preliminary Determination to the officers or directors of a Public Housing Authority, officers or directors of a Non-Profit entity, or the limited partner of an investor limited partnership or an investor member of a limited liability company owning the syndicating interest therein will not result in disqualification, however, the Corporation must be notified of the change. Changes to the officers or directors of a Non-Profit entity shall require Corporation approval.

Id. at Part A. 6. b. (1).

D. Statute Implemented.

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"):

- Section 420.502, Legislative findings.
- Section 420.507, Powers of the corporation.
- Section 420.508, Special powers; multifamily and single-family projects.
- Section 420.509, Revenue bonds.
- Section 420.5099, Allocation of the low-income housing tax credit.

Per Section 420.5099(1),(2), Florida Housing acts as the State's housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

E. Justification for the Requested Waiver

6. Petitioner submitted to the Corporation Non-Competitive Application No. (2021-501C (the "Application") related to the Development.

7. The renovation of the Development is now complete.

8. The Corporation is in the process of completing the final evaluation and determination of the Housing Credit Allocation amount.

9. The Extended Use Agreement has been executed.

10. The next step is for Petitioner to complete Form 8609.

11. Issues have arisen related to two of Petitioner's principals. Petitioner cannot change its ownership structure until this dispute is resolved. To avoid any impact to the financial stability of the transaction, Petitioner respectfully requests that the Corporation release the Form 8609s before any material change to Petitioner's ownership structure is approved by the Corporation's Board subject to the condition that the ownership structure will be approved once the issues are resolved. Because the proposed change involves two minority non-controlling principals, whether the change occurs before or after issuance of the Form 8609 is inconsequential and will not prejudice the Development, nor the Corporation.

12. Petitioner would suffer a substantial hardship if this Petition is denied. Specifically, delays in the issuance of Form 8609 will cause a significant reduction in the tax credit equity financing available to the Development if the Petition is not granted. Further, the tax credit investor could require the Petitioner to repay all of the capital contributions previously made by the tax credit investor, with interest and penalties, thus causing the Development to fail and for the lenders to likely foreclose their security interests in the Development.

13. By granting this waiver, the Corporation would recognize the goal of increasing private investment and participation in increasing the supply of affordable housing and promote the principles of fundamental fairness in developing affordable rental housing. The purpose of the underlying statute, which is to "encourage development of low-income housing in the state" as identified in Section 420.5099(2), Fla. Stat., would still be achieved if the variance is granted. The requested waiver serves the purpose of the Statutes that are implemented by the Rule. The Florida Housing Finance Corporation Act, Section 420.501, *et seq*. ("Act") was passed in order to

encourage private and public investment in facilities for persons of low-income. The purpose of the creation of the Housing Tax Credit Program is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver, the Corporation would recognize the principles of fundamental fairness in the development of affordable housing.

14. The Corporation has jurisdiction to grant a waiver of the Rule and Petitioner meets the standard for a waiver of the Rule.

15. As demonstrated above, the requested waiver serves the purposes of Section 420.5099, Florida Statutes, and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to low income persons and households.

16. A representative of Petitioner is available to answer any questions should the Corporation require additional information.

F. Type of Waiver.

17. The waiver being sought is permanent in nature.

G. Action Requested.

18. Petitioner respectfully requests that the Corporation:

a. Grant this Petition and all the relief requested therein;

b. Grant a waiver of Rule 67-21.003(1)(b), F.A.C., effective 05/18/21 (the "Rule") and the Non-competitive Application Instructions (03/2021) such that the Corporation may release the IRS Form 8609 prior to final resolution of certain issues that have arisen regarding the current principals of Petitioner; and

c. Award such further relief as may be deemed 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 copies 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 February, 2024.

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