STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Ovation Housing, LLLP

FHFC Case No.: 2019-001VW

_____/

ORDER GRANTING WAIVER OF RULE 67-21.003(8)(J)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on February 1, 2019, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on January 4, 2019, from Ovation Housing, LLLP ("Petitioner"). Petitioner filed an Amended Petition on January 11, 2019. Notice of the Petition was published on January 8, 2019, in Volume 45, Number 05, 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. Petitioner was selected to receive an award of non-competitive housing credits to assist in financing the rehabilitation of a development in Orange County, Florida known as Citrus Square Apartments (the "Development").

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/DATE: 2/1/19

3. Petitioner currently requests a waiver of Rule 67-21.003(8)(J), Fla. Admin. Code, to permit it to decrease the Total Set-Aside Percentage from 100% to 85%.

4. Rule 67-21.003(8)(J), Fla. Admin. Code, provides as follows:

> (8) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application is deemed complete. Those items are as follows:
>
> ...
>
> (j) The Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application; notwithstanding the foregoing, the Total Set-Aside Percentage may be increased after the Applicant has been invited to enter Credit Underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development;

5. In support of its request, Petitioner asserts that in the Set-Aside Commitment section of its Application, Petitioner committed to set aside 100% of the residential units at or below 60% of Area Median Income ("AMI") level. However, in the Addenda section of the Application, Petitioner noted that 82% of the residential units were at or below 60% AMI, but Petitioner anticipated that the Development would reach 100% through attrition based on the history of attrition

for the Development. The Petitioner asserts that turnover has slowed significantly, and the Development did not reach 100% as expected.

6. Petitioner, separate from this petition, has submitted a request to Florida Housing staff to change their minimum set-aside commitment from 40% at 60% AMI to the Average Income Test, which if granted, will allow the Petitioner to include some tenants at 80% AMI. In Resolution 2018-036A, the Board temporarily delegated authority to designated staff to consider requests to utilize income averaging. Petitioner's request is currently under review by staff and First Housing and will include among other items an updated market study and update to the credit underwriting report.

7. Additionally, Petitioner asserts that all 87 residential units receive assistance under the U.S. Department of Housing and Urban Development ("HUD") Rental Assistance Demonstration ("RAD") program. According to Petitioner, under the RAD program, new tenants must have incomes at or below 80% AMI at the time of admission, but current tenants on-site at the time of conversion to the RAD program have the right to remain at the Development regardless of income eligibility. Currently 13 households exceed 80% AMI and are grandfathered in under the RAD program. Even under the Income Averaging requirements, Petitioner is unable to meet the 100% Total Set-Aside Percentage due to the grandfathered households, which exceed 80% AMI. Petitioner asserts that without

a waiver of the above Rule, it cannot comply with the housing credit program's requirements and comply with HUD's requirements. If Petitioner's waiver is granted, Petitioner would be committed to set aside 85% of the residential units (i.e. 74 units).

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

9. 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.

10. 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.

11. 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 67-21.003(8)(J), Fla. Admin. Code, is hereby **GRANTED** so that Petitioner may decrease its Total Set-Aside Percentage from 100% to 85%.

DONE and ORDERED this 1st day of February, 2019.

Florida Housing Finance Corporation

By: _____
Chair

Copies furnished to:

Hugh R. Brown, General Counsel,
Hugh.Brown@floridahousing.org

Jesse Leon, Director of Multifamily Development
Jesse.Leon@floridahousing.org

Bernice S. Saxon, Esq.
bsaxon@saxongilmore.com

Yvonne Wood, Joint Administrative Procedures Committee
Wood.Yvonne@leg.state.fl.us

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL 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.