STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

OVATION HOUSING, LLLP
Petitioner,

vs.

FHFC Case No.: 2019-001VW
FHFC APPLICATION: 2016-517C

FLORIDA HOUSING FINANCE CORPORATION,
Respondent.

AMENDED PETITION FOR WAIVER OF RULE 67-21.003(8)(J), F.A.C.

Petitioner Ovation Housing, LLLP, a Florida limited liability limited partnership ("Petitioner"), submits its Amended Petition to Respondent Florida Housing Finance Corporation (the "Corporation") for waiver or variance of the Corporation's prohibition on changes in the "Total Set-Aside Percentage" as stated in Petitioner's Non-Competitive Application Form (the "Application"). See Rule 67-21.003(8)(j), Florida Administrative Code.

In support of its Petition, Petitioner states:

A. THE PETITIONER

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

Ovation Housing, LLLP
390 N. Bumby Ave
Orlando, Florida 32803
Telephone: (407) 895-3300
Facsimile: (407) 895-0820
E-mail: Vivian.bryant@orl-oha.org

2. The name, address, telephone and facsimile numbers, and email address for Petitioner's attorneys are:

Bernice S. Saxon, Esq
Saxon Gilmore & Carraway, P.A.
201 E. Kennedy Boulevard, Suite 600
Tampa, FL 33602
Telephone: (813) 314-4501
Facsimile: (813) 314-4555
E-Mail: bsaxon@saxongilmore.com

B. THE DEVELOPMENT

3. Petitioner submitted the Application, seeking non-competitive low-income housing tax credits ("Housing Credits") in the amount of $328,871 per year for 10 years, to assist in the financing of the rehabilitation of the 87-unit residential development in Orlando, Orange County, Florida known as Citrus Square Apartments (the "Development"), and was assigned Application No. 2016-517C. Petitioner was awarded such Housing Credits. Simultaneously with the equity closing, the Development converted its 87 public housing units to Rental Assistance Demonstration ("RAD") units to receive Section 8 rental assistance from the United States Department of Housing and Urban Development ("HUD"). The Development is currently being rehabilitated, and has not yet received its IRS Form 8609, Low-Income Housing Credit Allocation and Certification.

4. The equity generated by the Housing Credits is a critical part of the financing for the rehabilitation of the Development, together with HUD's rental assistance under its RAD program.

5. The requested waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in a substantial economic hardship to Petitioner; and (b) would violate principles of fairness[1]. § 120.542(2), Fla. Stat. (2015).

6. The waiver being sought is permanent in nature.

C. RULE FROM WHICH WAIVER IS SOUGHT

[1] "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. "Principles of Fairness" are violated when 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. Section 120.542(2), Florida Statutes.

7. Petitioner requests a waiver from Rule 67-21.003(8)(j), Florida Administrative Code (the "Rule"). Specifically, Petitioner is requesting a decrease in the Total Set-Aside Percentage set forth in the Application from 100% to 85%.

8. The Rule provides, in relevant part, 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..."**

Rule 67-21.003(8)(j), F.A.C.

D. STATUTE IMPLEMENTED BY THE RULE

9. The Rule is implementing among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statute that designated the Corporation as the housing credit agency responsible for the allocation and administration of Housing Credits. See Section 450.5099, Florida Statutes.

E. PETITIONER REQUESTS A WAIVER FROM THE RULE FOR THE FOLLOWING REASONS

10. Petitioner requests a waiver from the Rule, allowing it to decrease the Total Set-Aside Percentage from 100% at or below 60% of the Area Median Income ("AMI") level to 85% at or below 80% of the AMI level. As a matter of information, in the Set-Aside Commitment section of the Application, Petitioner committed to set aside 100% of the residential units (i.e. 87 units) at or below 60% of the 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. The assertion of 100% was based on the history of attrition for the Development. Turnover has slowed significantly for unknown reasons, especially with respect to the over-income tenants. While this means stable occupancy, the Development did not reach 100% as expected. Currently, only 64.368% of the residential units (i.e. 56 units) are occupied by tenants at or below 60% AMI, and the over-income tenants have the right to remain at the Development under the RAD program

regardless of income eligibility, as further discussed below. Since 85% of the residential units at the Development are currently occupied by tenants at or below 80% AMI and the combined average is 60% AMI or below, Petitioner will also be separately requesting a waiver to allow income averaging for the Development in order for the Development to meet the Total Set-Aside Percentage of 85% at 80% AMI sought herein. Under Section 120.542(l), Fla. Stat., and Chapter 28-104, F.AC., the Corporation has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Waivers shall be granted when (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship or violate principles of fairness, 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.

11. The following facts demonstrate the circumstances which justify Petitioner's request for waiver:

a. All 87 residential units of the Development are receiving assistance under HUD's RAD program. Under the RAD program, new tenants must have incomes at or below 80% of the AMI at the time of admission. However, tenants on-site at the time of conversion to RAD are grandfathered in and have the right to remain at the Development regardless of income eligibility. Pursuant to PIH Notice 2012-32 REV-3, Section 1.6.C.1:

> *"...current households cannot be excluded from occupancy at the Covered Project based on any rescreening, income eligibility, or income targeting. With respect to occupancy in the Covered Project, current households in the Converting Project will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. Post-conversion, the tenure of all residents of the Covered Project is protected pursuant to PBV requirements regarding continued occupancy unless explicitly modified in this Notice (e.g., rent phase-in provisions). For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR § 982.201, concerning eligibility and targeting of tenants for initial occupancy, will not apply for current households. Once the grandfathered household moves out, the unit must be leased to an eligible family..."*

b. Currently, there are 13 households at the Development that exceed 80% AMI and are grandfathered in under the RAD program, which is 14.942% of the residential units in the Development. As such, even if Petitioner's separate waiver to allow income

averaging is granted by the Corporation, Petitioner cannot meet the current Total Set-Aside Percentage of 100% due to the grandfathered households. However, Petitioner can meet the sought Total Set-Aside Percentage of 85% with income averaging.

c. Without a waiver of the Rule, Petitioner cannot comply with the Housing Credit program's existing requirements for the Development and also comply with HUD's requirements for the Development under the RAD program, thereby creating a substantial hardship for the Petitioner.

12. A waiver of the Rule's restrictions against changing the Total Set-Aside Percentage from the Application would serve the purpose of Section 420.5099, F.S., and the Act as a whole, because one of the Act's primary purposes is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to households of limited means, and would provide the additional benefit of meeting the critical need for mixed-income developments.

13. By granting the waiver and permitting Petitioner to decrease the Total Set-Aside Percentage, the Corporation would recognize the principles of fundamental fairness in developing affordable rental housing by encouraging the development of mixed-income housing projects utilizing HUD's RAD program, particularly in urban areas well-suited to a mixed-income housing project, and enabling developers to meet the needs of both low-income families and households in need of non-Housing Credits subsidized housing.

14. Should the Corporation require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

F. ACTION REQUESTED

Petitioner requests the following:

a. That the Corporation grant Petitioner a waiver from the Rule, allowing it to decrease the Total Set-Aside Percentage from 100% to 85%.

b. That the Corporation grant the Petition and all the relief requested herein; and

c. That the Corporation grant such further relief as may be deemed appropriate.

Respectfully submitted,

SAXON GILMORE & CARRAWAY, P.A.
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Tampa, FL 33602
Telephone: (813) 314-4501
Facsimile: (813) 314-4555
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By: _____
Bernice S. Saxon, Esq.

CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 11th day of January, 2019.

By: _____
Bernice S. Saxon, Esq.