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.

PETITION FOR WAIVER OF RULE 67-21.003(8)(J), F.A.C. AND RULE 67-21.027, F.A.C.

Petitioner Ovation Housing, LLLP, a Florida limited liability limited partnership ("Petitioner"), submits its 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, and Rule 67-21.027, 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. The Development is currently being rehabilitated, and has not yet received its IRS Form 8609, Low-Income Housing Credit Allocation and Certification ("8609").

4. The equity generated by the Housing Credits is a critical part of the financing for the rehabilitation of the Development.

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. RULES FROM WHICH WAIVER IS SOUGHT

7. Petitioner requests a waiver from Rule 67-21.003(8)(j), Florida Administrative Code, and Rule 67-21.027, Florida Administrative Code (collectively, the "Rules"). Specifically, Petitioner is requesting a decrease in the Total Set-Aside Percentage set forth in the Application from 100% to 85%.

[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.

8. The Rules provide, 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.

> **"(1) ... Further, each Housing Credit Development shall comply with any additional Housing Credit Set-Aside chosen by the Applicant in the Application."**

Rule 67-21.027(1), F.A.C.

D. STATUTE IMPLEMENTED BY THE RULES

9. The Rules are 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 Low-Income Housing Tax Credits. See Section 450.5099, Florida Statutes.

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

10. Petitioner requests a waiver from the Rules, allowing it to decrease the Total Set-Aside Percentage from 100% to 85%. 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%, 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. While this means stable occupancy, the Development did not reach 100% as expected. If Petitioner's waiver is granted, Petitioner would be committed to set aside 85% of the residential units (i.e. 74 units) at or below 60% of the AMI level. Under Section 120.542(1), 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. On March 23, 2018, H.R. 1625 Consolidated Appropriations Act, 2018 was signed into law, creating a new provision of the Internal Revenue Code (the "Code"), permitting Housing Credit developments to average the imputed income limitations of tenants for purposes of compliance with the Code.

b. The Corporation published its final policy on income averaging (the "Policy"), which is applicable for developments currently under construction or that have recently completed construction and, with respect to 4% developments, applied under the 2018 or prior year version of the rule and have not received their 8609s. Under the Policy, the applicable developments can request a waiver to average all units at 80% AMI or below so long as the combined average is 60% AMI or below.

c. As set forth in the Average Income Test Election attached hereto as Exhibit A, Petitioner's proposed new set-aside election averages 60% AMI or below.

12. A waiver of the Rules' 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, 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 Rules, 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.
Counsel for Petitioner
201 E. Kennedy Boulevard, Suite 600
Tampa, FL 33602
Telephone: (813) 314-4501
Facsimile: (813) 314-4555
E-mail: bsaxon@saxongilmore.com

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 4th day of January, 2019.

By: _____
Bernice S. Saxon, Esq.

EXHIBIT A
AVERAGE INCOME TEST ELECTION

Average Income Test Election Worksheet

If you wish to change your minimum set-aside election, please fill this form out and send it to Melissa.Levy@floridahousing.org. Upon receipt, Florida Housing will begin its review of your request. Program Staff will reach out to you with any deficiences. Based on staff's initial review, if your Development is eligible to change its minimum set-aside election, your Underwriter will be contacted to begin the next steps.

Name of Development	Citrus Square
FHFC Development #	
Total Number of Units in Development	87
Total Initial HC Set Aside Units	87
Total Final HC Set Aside Units*	74
Does the Development have SAIL ELI Funding?	No
Has the ELI Loan Closed?	N/A
If not, do you plan to keep ELI funding?	N/A
Does the Development have Bonds?	Yes
What are the Bond Set-Asides?	$0
Number of NHTF Units	0
Are any of your units currently occupied?	Yes
How many of your occupied units are Income Qualified at or below the 50% AMI level?	42
Is there an exising EUA on the property?	No

**Final HC Set-Aside Units must be equal to or greater than Initial HC Set Aside Units*

Please include a brief description of your proposal under the Income Averaging Election.

OHA is converting all 87 apartments from public housing (previously existing PIC Development Number FL004000012) to project-based vouchers under HUD's Rental Housing Demonstration (RAD) program and leveraging 4% LIHTC with tax-exempt bonds.

Please use the chart below to present your current and proposed new Housing Credit set-aside elections. The new set-aside election must average 60% or below.

	Current HC Set-Asides		Proposed HC Set-Asides	
Income Band	**% of Units**	**Number of Units**	**% of Units**	**Number of Units**
20%			0.000%	0
25%	0%	0		
28%	0.0000%	0		
30%	0%	0	25.287%	22
33%	0%	0		
35%	0%	0		
40%	0%	0	4.598%	4
45%	0%	0		
50%	0%	0	18.391%	16
60%	100%	87	16.092%	14
70%			0.000%	0
80%			20.690%	18
Non-HC Units	0%	0	14.942%	13
Totals	100%	87	100%	87
	Overall Avg AMI	60.00%	**Overall Avg AMI**	52.70%