STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

CARDINAL OAKS, LLC,
a Florida Limited Liability Company,

Petitioner,

FHFC CASE NO. 2025-048VW
Application No. 2024-073C

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.002(96), F.A.C. (6/28/23) AND THE 2023 QAP

Cardinal Oaks, LLC (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 2023 Qualified Allocation Plan ("2023 QAP") as incorporated and adopted by Rule 67-48.002(96), Florida Administrative Code ("F.A.C.") (6/28/23), such that Petitioner may return its 2024 Housing Credit Allocation now as opposed to waiting until after the end of the second calendar quarter of 2026. The development received a Local Government Area of Opportunity commitment from Citrus County for which this petition pertains to the first of two phases. Due to forces outside of Petitioner's control, Petitioner believes it will be unable to incur the costs necessary to meet the 10% Test by the November 8, 2025, deadline. Thus, in an abundance of caution, and in an effort to remain at all times in compliance with Florida Housing's requirements, Petitioner respectfully requests a Rule 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:

Paula McDonald Rhodes
InVictus Development, LLC
600 S. Magnolia Avenue, Suite 390
Tampa, Florida 33606
Telephone: 813-448-7868
Email: prhodes@invictusdev.com

2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel is:

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B. DEVELOPMENT BACKGROUND

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

- Development Name: Cardinal Oaks
- Development Address: Lewdingar Drive, NW of the intersection of Cardinal Street and Lewdingar Drive, Citrus County
- County: Citrus
- Developers: InVictus Development, LLC; Urban Affordable Development, LLC; ADC Communities II, LLC
- Number of Units: 80 units
- Type: Garden Apartments

- Set Asides: 12 units (15%) at or below 30%, 25 units (31.250%) at or below 40%, and 43 units (53.750%) at or below 80%
- Demographics: Family
- Funding: $2,142,000 Competitive HC funding request (annual amount)[1]

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 June 28, 2023, which provides in pertinent part:

> "QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2023 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-15419.

6. Subsection II.J. of the 2023 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 the Applicant has returned its Housing Credit Allocation after the end of the second 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 will reserve allocation in an amount not to exceed the amount of Housing Credits returned, and will 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)

[1] A Preliminary Allocation Certificate was issued on May 1, 2024.

A site inspection reflecting the percentage of Development completion must be completed. If the Development is at least fifty (50) percent completed, as reflected in the site inspection, the approval may be made by Corporation staff. If the Development is less than fifty (50) percent completed, as reflected in the site inspection, the approval must be made by the Board. In making such determination, the Board must find and determine that the delay was caused by circumstances beyond the Applicant's control, and that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay; and (iii) The Corporation or Board, as applicable, must find 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.

E. STATUTES IMPLEMENTED BY THE RULE AND THE 2023 QAP.

7. The Rule implements Section 420.5087 (State Apartment Incentive Loan Program), and Section 420.5089 (HOME Investment Partnership Program; HOME Investment Partnership Fund) of the Florida Housing Finance Corporation Act (the "Act").[2] The Act designates Florida Housing 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, Florida Housing is responsible for and is authorized to 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.

8. Petitioner timely submitted Application No. 2024-073C (the "Application") on September 12, 2023 in response to Request for Applications 2023-201 Housing Credit Financing for Affordable Housing Developments Located in Small and Medium Counties (the "RFA"),

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

9. The Development was invited to credit underwriting on January 19, 2024, which invitation was accepted on January 22, 2024.

10. The Development received an allocation of the 2024 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").

11. Florida Housing staff executed a 2024 Carryover Allocation Agreement ("CAA") on or about May 8, 2024 for the allocation of its Tax Credits. The CAA required Petitioner to incur at least ten percent of the reasonably expected basis of the Development (the "10% Test") on or before November 30, 2024 (the "CAA Deadline"). By letter dated November 18, 2024, updated on December 17, 2024, in response to the request of Florida Housing staff, Petitioner requested an extension of the CAA Deadline for meeting the 10% Test. On December 26, 2024, Florida Housing granted that request and extended the CAA Deadline for the 10% Test to November 8, 2025.[3]

12. Failure to comply with the CAA Deadline will cause the Housing Credits allocated within the CAA to be deemed returned to Florida Housing under 26 U.S.C. § 42(h)(3)(C).

13. 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, 2026.

[3] The request to extend the 10% Test deadline to November 8, 2025, was made and granted in conjunction with a request for extension of the placed-in-service date from December 31, 2026, to December 31, 2027. These extensions were both granted under IRS Revenue Procedure 2014-49 which permits Housing Credit allocating agencies to grant extensions of these deadlines to developments delayed by reason of a major disaster for which a disaster declaration has been issued.

14. After being selected for funding and invited to credit underwriting, Petitioner took all steps within its power to move the Development forward toward a successful groundbreaking. Petitioner began predevelopment activities immediately upon accepting its invitation to enter credit underwriting. Since that time, Petitioner has been engaged in the pursuit of all necessary development approvals; specifically:

- Petitioner received Final Site Plan approval on July 18, 2024
- Petitioner applied for Southwest Florida Water Management District ("SWFWMD") wetlands permit 8/19/2024.
- Petitioner received final wetlands approval on 1/29/2025.
- Petitioner submitted for SWFWMD, Florida Department of Environmental Protection ("FDEP"), Florida Department of Transportation ("FLDOT"), and Citrus County site approvals on 2/16/2025.
- Petitioner submitted for building permits on 7/17/2025.
- Petitioner received building comments and the project architect, McKean & Associates, Architects, LLC, submitted all responses on 10/6/2025.
- Petitioner received civil engineering comments from Citrus County, SWFWMD, and FDOT, and the project engineer, Universal Engineering, Inc. ("UEI"), /is working on responses. A biological study has been completed per the comments from Citrus County. All civil engineering responses are being gathered over the next two weeks for an October 20, 2025 submission to the appropriate reviewing agency/local government department.
- Petitioner expects to have all development permits on or before 11/30/2025.

Petitioner worked with the architect and engineers to develop a set of building plans and specifications and, once 90% complete, submitted them to four general contractors for bidding. Three of the four contractors responded by the bid deadline of January 15, 2025. All three bids were substantially higher than estimates obtained in connection with Petitioner's September 2023 Application. At the time of application, Total Actual Construction Costs were anticipated to be $16,077,129. The bids ranged from $22,911,212 to $23,905,825. Among the factors contributing to the large increase include substantial increases in the cost of construction materials and labor, increases in costs to contractors resulting from the fact that construction projects are now taking longer to complete, the uncertainty of construction start dates due to protracted periods between accepted bids and commencement of construction and the need to include an escalation assumption factor of two percent or more to account for price increases occurring between the time of bidding and the issuance of a Notice to Proceed with construction.

15. The rising construction materials cost issue was compounded by other significant factors beyond Petitioner's control. One significant factor was the recent occurrence of two major hurricanes, Helene and Milton, severely impacting the Gulf Coast of Florida. FEMA issued a Major Disaster Declaration for Helene on September 28, 2024 (FEMA DR-4828-FL), and for Milton on October 11, 2024 (FEMA DR-4834-FL). Because of the short period between the hurricanes (just thirteen days), communities in Citrus County did not have sufficient time to recover from Helene or to prepare for Milton before again being impacted. Due to the high demand for labor and materials, construction costs in that area increased even more than average. Indeed, the cost of concrete alone increased by 60%. Additionally, the Development incurred costs related to uprooted trees, broken branches, knocked down fencing, and abundant debris to clear. Not only were there the direct costs of recovery and cleanup, there also were indirect costs associated with

delay. County officials were preoccupied with disaster preparation and recovery, causing reviews and approvals to take a back seat. Delays such as this had a ripple effect both on the project timeline and on the project budget.

16. In addition to general increases in the cost of construction materials and the specific cost increases as well as delays (with attendant costs in the form of increased predevelopment loan interest, extension fees, and the like) brought about by Hurricane Helene and Hurricane Milton, the Development's sources and uses experienced an increasing gap due to additional factors that became evident over the past 18 months. Construction projects are now taking longer to complete, resulting in increased costs incurred (*e.g.*, construction period interest exceeding reserves, extension fees, and other consequential costs). These costs had to be estimated and added to the budget. In addition, the industry is experiencing a decrease in the demand for Housing Credits that has markedly depressed equity investor credit pricing. A project that would have attracted equity in the low $0.90s per Housing Credit dollar now struggles to attract $0.80. The drop in pricing alone – without any increase in pricing is significant enough to create a funding gap that cannot be covered by deferral of developer fee repayable within the Compliance Period.

17. To address the funding gap created by a combination of high construction materials costs, increased predevelopment and construction period costs, and depressed Housing Credit investor interest and pricing, Petitioner looked first to reducing costs. Petitioner implemented several cost reduction strategies, including changing its plans for Phase I. Multiple Value Engineering discussions took place with the full Development Team, including McKean & Associates, Architects, LLC, the Project architect, as well as meetings with the County regarding changes to the site plan, building design modifications, and substitution of materials, all of which reduced construction costs. However, such efforts have been undermined by events beyond

Petitioner's control, including additional tariffs, which continued to push the cost of construction materials up, and the renewal of the 2017 income tax cuts, which reduced the demand for Housing Credits. Another factor at work with respect to equity pricing is an increase in the yield Housing Credit investors are now demanding from their investments. One of the principal means to produce a higher yield is reduction in the price per Housing Credit and another is to stretch out the timing of when the investor must contribute capital. Both strategies are self-defeating as they reduce the main source of funding and increase the amount of construction loan that has to cover construction period costs.

18. Another factor impacting investor interest and equity pricing is the Community Reinvestment Act obligations of financial institutions who make up by far the largest segment of Housing Credit investors. Many of the reliable investor banks are starting a new CRA reporting cycle in 2026 and have filled their need for equity investments for the current cycle. Petitioner has contacted syndicators for those banks with a presence in the Homosassa/Citrus County MSA and even spoke to some banks directly without success. Unfortunately, investors who are not CRA driven are instead yield driven and attracted to larger urban areas. After working with investors to determine the best way to increase yield other than cutting the price and delaying the contributions, Petitioner has come to understand the most significant increase in pricing would come from an increase in the size of the equity investment. Unfortunately, Petitioner's Application was submitted in the one RFA for Small and Medium Counties that both post-dated the Construction Housing Inflation Response Program and pre-dated a substantial increase in the maximum amount of Housing Credits permitted to be requested for Medium County applications. In recognition that Medium County Developments were struggling due to the request limit, the Corporation increased it from $2,142,000 to $3,200,000. Per the September 16, 2025 draft of RFA 2025-201, the

Corporation is reducing the request limit to $2,800,000. Regardless of whether the amount is $3.2 million or $2.8 million, a difference of $348,000 in allocation would increase total equity for the Development – even at current depressed pricing – sufficiently to increase the yield for an investor and simultaneously, with the deferral of over 35% of the fee, render the project financially feasible. Another $348,000 in allocation would have raised our Housing Credit request amount to $2,490,000 without causing the Development to fall into the B Leveraging Group thereby not providing a competitive advantage to Petitioner. The equity generated from the additional credit allocation would have increased our total equity past the $20 million mark that attracts greater investor interest.

19. Unable to get equity pricing in an amount sufficient to reduce the funding gap, Petitioner sought sources other than equity. While Citrus County has committed Local Government Area of Opportunity funding in the amount of $340,000 – something that was part of Petitioner's Application budget and continues to be a source – the County is not able to provide any further funds. Petitioner has also researched Federal Home Loan Bank programs and other sources of funding such as CDBG and HOME to no avail.

20. Presently, Petitioner is awaiting a response from the Federal Home Loan Mortgage Corporation ("Freddie Mac" or "Freddie"), which Petitioner has been advised will be forthcoming in November. Freddie has expressed strong interest in the Development because it is located in one of its "Duty to Serve" areas. Petitioner is working with a syndicator, who has had direct conversations with Freddie. In addition, another syndicator has approached Petitioner about Bank of America ("BOA"), which also has an interest in providing Housing Credit equity for the Development. Should either Freddie or BOA provide a commitment for equity (subject to credit underwriting) the transaction can move full speed ahead. The indications Petitioner has received

are that either of the potential investors (Freddie and BOA) will provide higher Housing Credit pricing than any Petitioner has been quoted and that will allow the Development to proceed. Below is a Development timeline based upon the assumption that by the end of November 2025 either Freddie or Bank of America issues its letter of interest confirming the terms on which it is willing to purchase 99.99% of the Development's Housing Credits. The timeframes established are based upon our experience in two prior developments that Freddie provided equity for as well as our experience working with the syndicator for Freddie in those transactions who is also working on the syndication of the Development's Housing Credits. Freddie is expected to take a little longer than BOA, so those timeframes have been used.

Florida Housing has reviewed and approved our request for an extension to submit the Credit Underwriting Report, as referenced in our letter dated August 21, 2025. The new deadline for the above-mentioned documentation is now February 28, 2026. Petitioner anticipate submitting the credit underwriting report in December and finalizing it in January of 2026. Recently, First Housing received an extremely positive appraisal from Novogradac for the land and the market in general. Petitioner will have all the building permits in place and ready to be issued upon payment of the impact and final permit fees which will occur immediately following the Closing. Closing is expected to take place in mid-March with construction to start immediately following Closing. The schedule from the contractor shows a 16-month construction period with completion and placed in service scheduled for mid-July 2027. Lease-up is proposed to be four months with stabilization to follow 90 days later.

21. While Petitioner believes it has a path forward to resolving the funding gap issue, and will have the project permit ready by the end of November 2025, getting to this point has caused a significant amount of delay. Petitioner seeks this waiver in an abundance of caution

because, although resolution of the funding gap issues appears to be in sight, Petitioner believes that it will be unable to move forward in sufficient time to allow Petitioner to incur the costs necessary to meet the 10% Test by the CAA Deadline. In addition, failure to obtain this waiver would result in a loss of the credit allocation, resulting in substantial harm to Petitioner who applied for Housing Credits three times over a four-year period (RFA 2029-113, RFA 2022-201, and RFA 2023-201) before receiving an award, and since being invited into credit underwriting in May 2024, has worked hard and incurred significant costs in diligently pursuing all items required to close on financing and commence construction. Furthermore, families residing in south Citrus County currently have no affordable housing options available to them and none under construction. To date, all FHFC-funded developments in Citrus County have been located in the north end of the County. Citrus County is vested in seeing this Development completed and is holding its $340,000 commitment in anticipation of its construction.

22. Petitioner therefore respectfully requests a waiver of the 2023 QAP to permit Florida Housing to approve the tax credit exchange now as opposed to waiting until after the end of the second calendar quarter of 2026.

23. 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.

24. If the Petition is denied, and Petitioner loses the allocated Housing Credits as a result of insufficient time to satisfy the 10% Test, Petitioner will be forced to abandon the Development. Stated differently, losing this funding source will cause Citrus County to lose the Development's 80 affordable housing units.

25. This Petition should be granted, as opposed to de-obligating the award, because

Citrus County is currently experiencing a shortage of affordable housing units. Granting the Petition will result in the delivery of 80 new affordable housing units much faster than would reallocating the funding to a new development.

26. 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.

27. Strict adherence to Subsection II.J. of the QAP would violate principles of fairness, as Florida Housing has granted waivers to other Developments similarly facing unforeseen delays beyond their control (*e.g.,* Arbor Village- granted credit swap in November 2019; Georgian Gardens- granted credit swap in November 2019; Luna Trails- granted credit swap in 2019; Northside Transit Village- granted credit swap in November 2019; Residences at Dr. King Boulevard, Ltd.- granted credit swap in 2019).[5]

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[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.

[5] The reasons that precipitated the credit swaps include, but are not limited to: need for off-site improvements, which required negotiation with neighboring property owners; revision to construction plans due to increased construction costs, which required the securing of additional funds; redesign requirements due to a fire code violation in the design of a staircase; post-Hurricane clean up; and title issues, which only became known after the design process.

28. In this instance, Petitioner meets the standards for a waiver of the Rule and the 2023 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 80 affordable housing units will be made available for the target population in Citrus County, Florida. The strict application of the 2023 QAP would prevent Petitioner from completing the swap now and will create a substantial hardship for Petitioner because it likely cannot – due to no fault of its own – meet the 10% Test by the CAA deadline. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State. 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 development of 80 affordable housing units in Citrus County, Florida Housing would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable housing. *See* § 420.5099(2), Fla. Stat.

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

30. The requested waiver should be granted because, as demonstrated above, 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 timing, 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.

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

G. ACTION REQUESTED

32. 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 2024 Housing Credit Allocation, and an immediate allocation of new Housing Credits; (ii) grant a corresponding extension of deadlines relative to those credits; (iii) grant this Petition and all of the relief requested herein; and (iv) grant such further relief as it may deem appropriate.

Respectfully submitted,

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By: */s/ Brian J. McDonough*
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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 7th day of October, 2025.

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