

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

OVATION HOUSING, LLLP, a Florida limited liability limited partnership,

Petitioner,

CASE NO.: 2018- 036VW

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-21.003(1)(b), F.A.C.

Petitioner Ovation Housing, LLLP, a Florida limited liability limited partnership (the "Petitioner"), submits its Petition to Respondent Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-21.003(1)(b), F.A.C. (the "Rule") in effect at the time Petitioner submitted its Non-Competitive Application Package (the "NCA") for a housing credit allocation for Petitioner's tax-exempt bond financed project known as Citrus Square Apartments, serving low-income persons in Orange County (the "Development"). In support of this Petition for Rule Waiver of Rule 67-21.003(1)(b), F.A.C. (the "Petition"), Petitioner states as follows:

**A. Petitioner and the Development**

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

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

The name, address, telephone, and facsimile numbers of Petitioner's attorneys are:

Bernice S. Saxon, Esq.  
Saxon Gilmore & Carraway, P.A  
201 E. Kennedy Blvd., Suite 600  
Tampa, Florida 33602  
Telephone: (813) 314-4500  
Facsimile: (813) 314-4555  
E-mail: bsaxon@saxongilmore.com

2. In 2017, Petitioner successfully applied for an award of non-competitive housing credits to assist in the rehabilitation of the Development. Petitioner expects to receive an estimated annual allocation amount of \$381,309 for ten (10) years (the "Allocation"). The Allocation is a critical part of the financing for the rehabilitation of the Development.

3. Petitioner also expects to receive \$3,227,455 in equity from its investor, payable in three (3) installments, pursuant to Petitioner's Amended and Restated Limited Partnership Agreement (the "Partnership Agreement"). On December 28, 2017, the closing of construction financing for the Development occurred (the "Closing"), and Petitioner received the first equity installment of \$455,673, which equaled 14.12% of the total equity. The NCA requires that at least fifteen percent (15%) of the total equity be provided at the Closing. The difference amounts to \$28,445.25 in equity, which equity investor will pay by June 14, 2018, to correct the inadvertent error.

4. The Development is in the process of being rehabilitated, and Petitioner has expended significant funds in connection with such rehabilitation.

**B. Rule from Which the Waiver is Sought**

5. The relevant portion of the Rule provides as follows:

The Non-Competitive Application package of NCA (rev. 08-2016) is adopted and incorporated herein by reference...

Rule 67-21.003(1)(b), F.A.C. (2016)

6. The NCA provides, in pertinent part (the “15% Criteria”):

7. **Applicant Certification:**

By completing, executing and submitting this Application form and all applicable exhibits, the Applicant certifies and acknowledges that:

j. The proposed equity amount to be paid prior to or simultaneous with the closing of construction financing is at least 15 percent of the total proposed equity to be provided (the 15 percent criteria) . . . .

7. The waiver being sought is permanent in nature.

**C. Statute Implemented**

8. The Rule for which a waiver is requested implements, among other sections of the Florida Housing Finance Corporation Act (the “Act”),<sup>1</sup> the statute that provides for the allocation of the low-income housing tax credit. *See* § 420.5099, Fla. Stat.

9. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its requirements when strict application of these requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Waivers shall be granted when (a) the person who is subject to the requirement demonstrates that the application of the requirement would create a substantial hardship, and (b) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat.

10. In this instance, Petitioner meets the standards for a waiver.

**D. Justification for Petitioner’s Requested Waiver**

11. Petitioner is requesting a waiver of the 15% Criteria due to an inadvertent error.

12. In the rush to close prior to year-end, last minute changes to the Development

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<sup>1</sup> The Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes.

budget were made, including a minor reduction in the amount of equity to be paid at Closing, which resulted in Petitioner's failure to meet the 15% Criteria by less than 1% (0.88% to be exact). As stated above, the equity investor will pay the difference by June 14, 2018, to correct the inadvertent error.

13. The requested waiver will not adversely affect Petitioner, the Development, the Corporation or any other applicant. A denial of the Petition, however, would (a) deprive Orange County of the improvements to the Development; and (b) result in substantial economic hardship to Petitioner, as it has expended significant funds in connection with the rehabilitation, and will lose the benefits of the tax-exempt financing necessary to complete rehabilitation of the Development<sup>2</sup>. § 120.542(2), F.S.

**E. Conclusion**

14. The facts set forth in Sections 11 through 13 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver, consisting of the permanent waiver of the 15% Criteria.

15. As demonstrated above, the requested waiver serves the purposes of Section 420.5087, Florida Statutes, and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent and safe housing in the State of Florida to low-income persons.

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

WHEREFORE, Petitioner respectfully requests that the Corporation:

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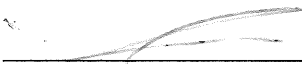
<sup>2</sup> "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver." Section 120.542(2), Florida Statutes.

- A. Grant this Petition and all the relief requested therein; and
- B. Grant the requested permanent waiver of the 15% Criteria; and
- C. Award such further relief as may be deemed appropriate.

Respectfully submitted,

SAXON GILMORE & CARRAWAY, P.A.  
Counsel for Ovation Housing, LLLP

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Tampa, Florida 33602  
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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 18<sup>th</sup> day of May, 2018.

By: \_\_\_\_\_

Bernice S. Saxon, Esq.