

**BEFORE THE FLORIDA HOUSING FINANCE CORPORATION**

PASCO RICHEY WOODS, LTD.  
Petitioner,

APPLICATION NOS. 2011-229C  
2013-006C

vs.

FHFC CASE NO.: 2013-033VW

FLORIDA HOUSING FINANCE CORP.,

Respondent.

**PETITION FOR WAIVER FROM FLORIDA  
ADMINISTRATIVE CODE RULE 67-48.004**

PASCO RICHEY WOODS, LTD (“Richey Woods”) (“Petitioner”), by and through their undersigned attorney, hereby petition the Florida Housing Finance Corporation (“Florida Housing”) for a waiver from Rule 67-48.002, Florida Administrative Code (“FAC”) and a portion of the Universal Cycle Application Instructions. This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

**THE PETITIONER**

1. The address, telephone and facsimile number of Petitioner is:

Pasco Richey Woods, Ltd.  
c/o Atlantic Housing Partners  
200 East Canton Avenue, Suite 102  
Winter Park, FL 32789  
407-741-8500 (telephone)  
(407) 643-2551 (facsimile)

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FINANCE CORPORATION

2. The address, telephone and facsimile number of Petitioner's attorney is:

Kerey Carpenter  
AHG Group, LLC  
700 West Morse Blvd., Suite 220  
Winter Park, FL 32789  
407-691-5605 (direct line)  
407-371-6126 (facsimile)

3. Petitioner successfully applied for financing from the Housing Credits Program in the 2011 Universal Application Cycle that Florida Housing administers pursuant to Chapter 67-48, Florida Administrative Code. Richey Woods's Application Numbers are: 2011-229C and 2013-006C (forward allocation number assigned by Florida Housing) (the "Application"). Richey Woods applied for Housing Credits to finance a portion of the costs to rehabilitate 79 units in a multifamily rental apartment community located in Pasco County, Florida, to be known as Richey Woods (the "Development"). Florida Housing staff later approved an increase in the total number of units from 79 to 95, with 48 rehabilitation units and 47 new construction units in accordance with Rule 67-48-004(14)(i).

**THE RULES FROM WHICH A WAIVER IS SOUGHT**

4. Petitioner requests a waiver from Rule 67-48.002(99), as in effect for the 2011 Universal Application Cycle. Rule 67-48.002(99) provides in relevant part as follows:

(99) "Rehabilitation" means, with respect to the HOME and Housing Credit Program(s), the alteration, improvement or modification of an existing structure where less than 50 percent of the proposed construction work consists of new construction, as further described in Rule 48.0075, F.A.C.

Additionally, Petitioner requests a waiver from a portion of the Universal Cycle Application Instructions, located on page 22 (incorporated by reference into Rule 67-48), as follows:

3. Development Category:
  - a. Applicants must select one Development Category that best describes the

proposed Development:

- New Construction (where 50% or more of the units are new construction)
- ***Rehabilitation (where less than 50% of the units are new construction)***
- Acquisition and Rehabilitation (acquisition plus less than 50% of the units are new construction)
- Redevelopment (where 50% or more of the units are new construction)
- Acquisition and Redevelopment (acquisition plus 50% or more of the units are new construction)
- Preservation (where less than 50% of the units are new construction)
- Acquisition and Preservation (acquisition plus less than 50% of the units are new construction)

### **STATUTES IMPLEMENTED BY THE RULE**

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act<sup>1</sup>, the statute that created the Housing Credits Program. Section 420.5093, Florida Statutes. The Act designates Florida Housing as the State of Florida's housing credit agency within the meaning of Section 42(h)(7)(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"). Section 420.5099(1) and (2), Florida Statutes. Accordingly, the Rule implements, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the Housing Credit Program.

6. Florida Housing has authority pursuant to Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C. to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals of fairness,

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.526, Florida Statutes.

and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes.

### **FACTS DEMONSTRATING ENTITLEMENT TO WAIVER**

7. For the reasons set forth below, compliance with the provisions of the aforementioned Rule would give rise to substantial hardship to Petitioner and would violate principles of fairness.

8. The provisions of the aforementioned Rule provide that rehabilitation projects are those where less than 50% of the units are new construction. Petitioner is seeking to add one additional new construction unit, resulting in exactly 50% of the units being new construction. The final design and layout of the building provided an opportunity to add one additional new construction unit. There are no additional rehabilitation units that can be added to offset the addition of one new construction unit to maintain the "less than 50%" requirement of the Rule. Granting this request for waiver would serve Florida Housing's goal of promoting Rehabilitation Developments.

9. In light of the considerable time that it takes to preserve and rehabilitate multifamily rental housing, Florida Housing's statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances, particularly those that arise through no fault of the Petitioner, which might necessitate a modification in a proposed project. Florida Housing routinely approves such changes when they would not have otherwise affected the scoring of the application, because the Applicant thus derives no unfair advantage over its competitors in an application cycle.

**WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE**

10. Florida Housing's approval of the requested waiver would serve the purpose of the underlying Florida Statute, Section 420.5093, as well as the Housing Credit Program. The purpose of both the Statute and the program is to facilitate and stimulate the development and/or preservation of multifamily rental housing that is affordable to families of limited means. If the requested waiver is granted, the Housing Credit allocation in question will be used to fund a the preservation of an affordable multifamily rental housing community for which there is a desperate need in Pasco County, Florida.

11. The violation of principles of fairness and imposition of a substantial hardship which would result from strict compliance with the provisions of FAC Rule 67-48.004(14), would be as follows. Unless the waiver is granted, Petitioner would not be able to utilize the Housing Credits for the preservation of Richey Woods Apartments, a much needed affordable housing rehabilitation development. The substantial hardship which would result from strict compliance with the foregoing Rule is obvious.

12. By granting a waiver and permitting Petitioner to revise the total number units, Respondent would recognize the economic realities of developing, rehabilitating, preserving and constructing affordable rental housing. This recognition would promote participation by owners and developers such as Petitioner in meeting Respondent's purpose by providing affordable housing, through rehabilitation, in an economical and efficient manner.

**TYPE OF WAIVER**

13. The waiver being sought is permanent in nature.

**ACTION REQUESTED**

14. Petitioners request a waiver from Rule 67-48.002(99) and the Universal Cycle Application Instructions to permit a change in the number of new construction units from 47 to 48 as set forth in Paragraph 8 above.

Respectfully submitted this 12<sup>th</sup> day of November, 2013.



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Florida Bar No. 963781  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that an original and one copy of the foregoing Petition for Waiver have been filed with Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301; and that a true and correct copy of the foregoing has been furnished to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300.



Kerey Carpenter