

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

RIVER OAKS PARTNERS, LTD.,  
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2017-070VW

v.

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**PETITION FOR WAIVER OF RULES 67-48.0072(17)(h) AND 67-48.002(5)**

Pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code, Petitioner River Oaks Partners, LTD, (the “Petitioner”) by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation (“Florida Housing”) for a waiver of the requirement in Rule 67-48.0072(17)(h) that a general contractor may not subcontract to an “affiliated” entity as that term is defined by Rule 67-48.002(5), Florida Administrative Code (“F.A.C.”) (the “Rules”). 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:

River Oaks Partners, LTD, a Florida limited partnership  
2100 Hollywood Boulevard  
Hollywood, FL 33020  
Telephone: (786)709-2300  
Fax: (305)443-9339  
Email: Lenny.Wolfe@CornerstoneGrp.com

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

Brian J. McDonough, Esq.  
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.  
150 West Flagler Street  
Suite 2200  
Miami, Florida 33130  
Telephone: 305-789-3350  
Fax: 305-789-3395  
Email: [Bmcdonough@stearnsweaver.com](mailto:Bmcdonough@stearnsweaver.com)

**B. THE RULE FROM WHICH WAIVER IS REQUESTED**

3. Petitioner requests a waiver of Rule 67-48.0072(17)(g), F.A.C. (2016):

The General Contractor must meet the following conditions: . . . Ensure that no construction cost is subcontracted to any entity that has common ownership or is **affiliated**<sup>1</sup> with the General Contractor unless otherwise approved by the Board for a specific Development. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of construction costs and ownership interest in the Development.

(emphasis added).

4. Petitioner also requests a waiver of Rule 67-48.002(5), F.A.C. (2016):

"Affiliate" means any person that:

(a) Directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Applicant or Developer;

(b) Serves as an officer or director of the Applicant or Developer or of any Affiliate of the Applicant or Developer;

(c) Directly or indirectly receives or will receive a financial benefit from a Development except as further described in Rule 67-48.0075, F.A.C., or

(d) Is the spouse, parent, child, sibling, or relative by marriage of a person described in paragraph (a), (b) or (c), above.

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<sup>1</sup> Rule 67-48.0072(17) has since been amended to capitalize "affiliate" and to expressly provide: "For purposes of this paragraph, 'Affiliate' has the meaning given it in subsection 67-48.002(5), F.A.C., except that the term 'Applicant' therein shall mean 'General Contractor.'" See Rule 67-48.0072(17)(h) (2017).

**C. STATUTES IMPLEMENTED BY THE RULES**

5. The Rules implement, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statutes relating to the State Apartment Incentive Loan Program contained in Section 420.5087 of the Florida Statutes, the HOME Investment Partnership Program and HOME Investment Partnership Fund, contained in Section 420.5089 of the Florida Statutes, and the allocation of the Low-Income Housing Tax Credits contained in Section 420.5099 of the Florida Statutes. *See* §§ 420.5087, 420.5089, and 420.5099, Fla. Stat. (2017) (the “Statutes”).

**D. JUSTIFICATION FOR GRANTING WAIVER OF THE RULES AND REASONS THE WAIVER WOULD SERVE THE PURPOSES OF THE UNDERLYING STATUTE**

6. In July 2015, Petitioner acquired and began rehabilitating a 160-unit development in Miami-Dade County known as River Oaks (the “Project”). The financing included tax-exempt bond financing from the local bond issuer in Miami-Dade County. In October 2016, Petitioner submitted a non-competitive application for the allocation of four percent low-income housing tax credits, in connection with which it must provide a cost certification in support of its final tax credit allocation. The project has no subsidy from the Florida Housing Finance Corporation.

7. In the course of the cost certification process, Florida Housing determined that the general contractor for the rehabilitation at the Project utilized an affiliated subcontractor to install the flooring.

8. At the time the subcontractor was retained, Rule 67-48.0072(17) provided: “The General Contractor must meet the following conditions: . . . Ensure that no construction cost is subcontracted to any entity that has common ownership or is **affiliated** with the General Contractor unless otherwise approved by the Board for a specific Development. With regard to

said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of construction costs and ownership interest in the Development." See Rule 67-48.0072, F.A.C. (2015) (emphasis added).

9. Because the term "affiliated" was not capitalized – and because Rule 67-48.0072(17) did not, at that time, contain an express reference to Rule 67-48.002 – neither the Petitioner nor the general contractor was aware that Florida Housing interpreted "affiliated" to include siblings.

10. Based on the general contractor's interpretation of "affiliated," which differed from Florida Housing's, it subcontracted an entity to install the flooring at the Project that employed a relative of the general contractor's owner.

11. Because Petitioner was unaware that the subcontracted party was "affiliated" for purposes of Rule 67-48.0072(17), F.A.C., and because the work has already been completed, Petitioner respectfully requests a waiver of the Rules.

12. 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 rules demonstrates that the application of the rules would: (1) create a substantial hardship or, violate principles of fairness,<sup>2</sup> 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. (2017).

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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. 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. § 120.542(2), Fla. Stat. (2017).

13. In this instance, Petitioner meets the standards for a waiver of the Rules. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 160 affordable housing units will be preserved and made available for the target population in Miami-Dade County, Florida. The strict application of the Rules will create substantial hardship for Petitioner because the work by the affiliated subcontractor has already been completed. If the requested waiver is denied, Petitioner would have to incur the cost of tearing out the floors installed by the affiliated subcontractor and replacing same. Avoiding this unnecessary cost would ensure the housing costs at the Project are as low as possible. The waiver will therefore serve the purposes of the Statutes and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary low-cost housing in the State.

14. As mentioned above, the requested waiver serves the purpose of the Statutes because one of the primary goals of the Statutes is to facilitate the availability of decent, safe, and sanitary housing in the State for low-income households. By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing to persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable rental housing. *See* § 420.5099(2), Fla. Stat. (2017).

**E. WAIVER IS PERMANENT**

15. The waiver being sought is permanent in nature.

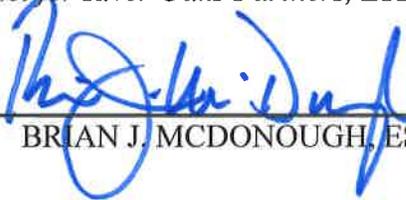
F. ACTION REQUESTED

16. For the reasons set forth herein, Petitioner respectfully requests Florida Housing:  
(i) grant the requested waiver of the Rules and approve of the use of the aforescribed subcontractor; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
150 West Flagler Street, 22<sup>nd</sup> Floor  
Miami, Florida 33131  
Tel: (305) 789-3350  
Fax: (305) 789-3395  
E-mail: [bmcdonough@stearnsweaver.com](mailto:bmcdonough@stearnsweaver.com)

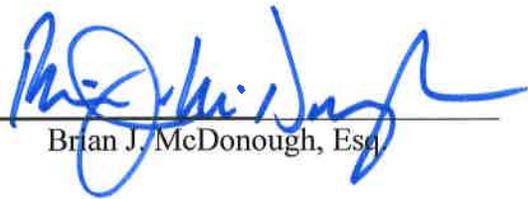
*Counsel for River Oaks Partners, LTD*

By:   
BRIAN J. MCDONOUGH, ESQ.

**CERTIFICATE OF SERVICE**

The Petition For Rule Waiver is being served by hand delivery, with a copy served by electronic transmission for filing with the Florida Housing Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by hand delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 5<sup>th</sup> day of October, 2017.

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

  
Brian J. McDonough, Esq