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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

MERRITT PLACE ESTATES, LLC,
a Florida limited liability company,

Petitioner,

FHFC CASE NO. 2021-087VW
Application No. 2021-511C

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-21.003(1)(b) (eff. 5-18-21) AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS

Petitioner Merritt Place Estates, LLC (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of Rule 67-21.003(1)(b), Florida Administrative Code ("F.A.C.") (5-18-21) (the "Rule"), which incorporates by reference the Non-Competitive Application Package (Rev. 03-2021) ("NCA") whose instructions require selection from a group of Development Types that do not include single-family homes. The existing development consists of 159 single-family rental community units that were initially approved in 2003 and that remain subject to a Land Use Restrictive Agreement. Because these units are now in need of rehabilitation, Petitioner must apply for new funding in the form of an allocation of 4% housing credits. However, in the interim, Florida Housing removed single-family homes as a Development Type that may be selected within the NCA. Petitioner therefore respectfully seeks a Rule waiver, and a waiver of the NCA instructions, to allow Petitioner to select "single-family homes" as the Development Type. 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:

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Vancouver BC V6C 3E8
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2. The address, telephone, and facsimile number and e-mail address of Petitioner's counsel is:

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B. WAIVER IS PERMANENT.

3. The waiver being sought is permanent in nature.

C. DEVELOPMENT BACKGROUND.

4. The following information pertains to the development underlying Petitioner's application ("Development"):

- Development Name: Merritt Place Estates
- Development Address: 701 SW 12th Street, Florida City, FL 33034
- County: Miami-Dade
- Developer: Spira MP Development, LP
- Number of Units: 159 acquisition/rehab

- Type: Single Family Rental Community
- Set Asides: 56.6% @ 50% AMI, 43.4% @ 60% AMI
- Demographics: Family
- Funding: an annual allocation of $1,900,897.00 in 4% Housing Credits.

D. THE RULE FROM WHICH WAIVER IS REQUESTED.

4. Petitioner requests a waiver of Rule 67-21.003(1)(b), F.A.C. (5-18-21) which provides in pertinent part:

> (1) Applicants shall apply for MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC as set forth below. For purposes of this subsection only, the term NC Award shall refer to MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC, and funding from the following Corporation programs will not be considered to be other Corporation funding: Predevelopment Loan Program (PLP) and Elderly Housing Community Loan (EHCL) Program.
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> (b) If the NC Award will not be in conjunction with other Corporation funding made available through the competitive solicitation funding process outlined in rule Chapter 67-60, F.A.C., the Applicant shall utilize the Non-Competitive Application Package in effect at the time the Applicant submits the Application. The Non-Competitive Application Package or NCA (Rev. 03-2021) is adopted and incorporated herein by reference and consists of the forms and instructions available, without charge, on the Corporation's website under the Multifamily Programs link labeled Non-Competitive Programs or from http://www.flrules.org/Gateway/reference.asp?No=Ref-13093, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

Id. The Rule incorporates by reference the NCA and its instructions, which provide:

> The Applicant must select the Development Type for the proposed Development. For purposes of determining the number of stories, each floor in the building(s) should be counted regardless of whether it will consist of retail, parking, or residential. For mixed-type Developments, indicate the type that will comprise the majority of the units in the Development.
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> - Garden Apartments (a building comprised of 1, 2, or 3 stories, with or without an elevator)
> - Townhouses

- Duplexes
- Quadraplexes
- Mid-Rise 4-stories (a building comprised of 4 stories and each residential building must have at least one elevator)
- Mid-Rise 5 to 6-stories (a building comprised of 5 or 6 stories and each residential building must have at least one elevator)
- High Rise (a building comprised of 7 or more stories and each residential building must have at least one elevator)

Id. at Part A. 7. c.

E. STATUTES IMPLEMENTED BY THE RULE.

5. Rule 67-21.003, F.A.C., implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"):

- Section 420.502, Legislative findings.
- Section 420.507, Powers of the corporation.
- Section 420.508, Special powers; multifamily and single-family projects.
- Section 420.509, Revenue bonds.
- Section 420.5099, Allocation of the low-income housing tax credit.

6. Per Section 420.5099(1),(2), Florida Housing acts as the State's housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

7. The Development was awarded an annual allocation of 9% Housing Credits in the amount of $1,800,000 in December of 2002 (Application No. 2002-010CS). Florida Housing issued an invitation to credit underwriting on May 2, 2003.

8. The Board approved a credit underwriting report on May 2, 2003 with a recommendation for a SAIL loan in the amount of $2,000,000. The SAIL loan closed on September 18, 2003.

9. Because the Development is now in need of rehabilitation, Petitioner applied for an allocation of 4% Housing Credits on November 5, 2021. However, Florida Housing staff was unable to process the application because the NCA no longer allows "single-family homes" to be selected as the Development Type when applying for funding. Petitioner therefore respectfully requests a waiver from the Rule and the NCA instructions to allow the Development to obtain an allocation of 4% Housing Credits to rehabilitate the Development's single-family homes. Denial of this Petition will impose a substantial hardship because the denial will prevent the Development from being recapitalized and/or rehabilitated.

10. 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,[1] 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. For the foregoing reasons, Petitioner meets the standards for the requested waiver.

12. The waiver will not adversely impact the Development nor Florida Housing.

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[1] "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.

G. ACTION REQUESTED.

13. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver and permit the Development to qualify for an allocation 4% Housing Credits despite comprising single-family units; (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
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Counsel for Petitioner

By: */s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

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 copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 15th day of November, 2021.

By: */s/ Brian J. McDonough*