STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2022-036VW
APPLICATION NO. 2021-102B

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FLORIDA HOUSING FINANCE CORPORATION

CANAL GROVE SIDE APARTMENTS, LTD.,

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-21.003(8)(h), F.A.C. (2021)

CANAL GROVE SIDE APARTMENTS, LTD., a Florida limited partnership, (the "Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver or variance of Rule 67-21.003(8)(h), Florida Administrative Code ("F.A.C") (2021) to decrease the Total Number of Units from 261 to 226. This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code. In support, Petitioner states as follows:

A. THE PETITIONER

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

CANAL GROVE SIDE APARTMENTS, LTD.
477 South Rosemary Avenue, Suite 301
West Palm Beach, Florida 33401
Attention: William Todd Fabbri
Telephone: (561) 832-1114
Email: fabbrit@richmancapital.com

2. For purposes of this petition, the address, telephone number, facsimile number, and email address of Petitioner's counsel is:

Yisell Rodriguez, Esq.
Nelson Mullins Riley and Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4290
Facsimile: (407) 425-8377
Email: yisell.rodriguez@nelsonmullins.com

B. THE DEVELOPMENT

3. Petitioner is the owner of that certain real property located in Miami-Dade County, Florida, on which Petitioner intends to construct a multifamily residential development to be commonly known as Canal Side (the "Development"). To finance a portion of the Petitioner's construction of the Development, Petitioner has applied for Corporation-issued MMRB (the "Bonds") in the amount of $50,120,000 and four percent (4%) housing credits annual amount of $2,873,905 (the "Housing Credits"). Petitioner submitted the Non-Competitive Application Package (Rev. 03-21) (the "Application") to the Corporation on June 21, 2021, and was invited to enter credit underwriting on November 18, 2021.

4. In Section 9 of the Application, Petitioner indicated that the Total Number of Units in the Development would be 261. However, due to the increased cost of construction, Petitioner has to reduce the Total Number of Units to 226 for the reason set forth below.

C. THE RULE FROM WHICH WAIVER IS SOUGHT

5. Petitioner requests a waiver from Rule 67-21.003(8)(h), F.A.C. (2021) (the "Rule"), which provides:

> **67-21.003 – Application and Selection Process for Developments.**
>
> * * *
>
> (8) Notwithstanding any other provision of these rules, **there are certain items that must be included in the Application and**

cannot be revised, corrected or supplemented after the Application is deemed complete. Those items are as follows:

* * *

> (h) **Total number of units**; notwithstanding the foregoing, the total number of units may be increased after the Applicant has been invited to enter Credit Underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation. With regard to said approval, the Corporation shall consider the facts and circumstances, inclusive of each Applicant's request, in evaluating whether the changes made are prejudicial to the Development or to the market to be served by the Development;

(Emphasis added.)

D. STATUTES IMPLEMENTED BY THE RULES

6. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. See §§ 420.509, 420.5099, Fla. Stat.

E. WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

7. Petitioner requests a waiver of the Rule to decrease the Total Number of Units in the Development from 261 units to 226 units. The Rules does not permit Petitioner to reduce the total number units after the Application has been deemed complete by the Corporation. At this time, the Application has been deemed complete and therefore Petitioner needs a waiver of the Rule to decrease the Total Number of Units.

7. Since Petitioner submitted the Application almost a year ago, construction costs have increased substantially making the Development, as originally anticipated, no longer feasible. Petitioner is able to mitigate the higher construction costs by reducing the total number of units

slightly. A decrease of 35 units will allow Petitioner to move forward with construction of 226 much-needed affordable units in Miami-Dade County.

8. Pursuant to Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the power and authority to grant waivers or variances to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences in particular instances. A waiver or variance 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, 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.

9. Here, Petitioner meets the requirements for the waiver or variance. The requested waiver will not adversely impact the Development or the Corporation and will ensure that the 226 affordable housing units of the Development will be constructed and made available for low-income families in Miami-Dade County. Strict application of the Rule will result in substantial hardship to the Petitioner as the Development could not be constructed.

10. The requested waiver or variance serves the purpose of the Statute that is implemented by the rules. The Florida Housing Finance Corporation Act (Section 420.501, *et seq*.) was passed in order to encourage private and public investment in facilities for persons of low-income. The purpose of the creation of the Housing Tax Credit Program and Multifamily Mortgage Revenue Bonds Program is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting these waivers, Petitioner will be able to obtain the needed Housing Credits and Bonds and avoid suffering financial and administrative hardship, and the Corporation would recognize the goal of providing persons of low-income with of affordable housing through private investment.

E. TYPE OF WAIVER

11. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

12. For the reasons set forth herein, Petitioner respectfully requests the Corporation (*i*) grant the requested waiver of the Rule reducing the total number of units from 261 to 226, (*ii*) grant the Petition and all the relief requested herein, and (*iii*) grant such further relief as it may deem appropriate.

Respectfully submitted the 1st day of June, 2022.

Respectfully submitted,

/s/ Yisell Rodriguez

Yisell Rodriguez, Esq.
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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org,

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

The 1st day of June, 2022.

By: *__/s/ Yisell Rodriguez_____*
Yisell Rodriguez, Esq.
Fla. Bar No. 117915