

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**FHFC CASE NO.: 2026-021VW
APPLICATION NO.: 2025-372SH**

NDA GROVE PHASE 1, LLC

Petitioner,
vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

**PETITION FOR WAIVER OF RULE 67-48.004(3)(d), 67-48.020(2)(b) FLORIDA
ADMINISTRATIVE CODE (August 27, 2024) AND SECTION FOUR A.3.c.(3) OF
RFA 2025-206**

NDA Grove Phase 1, LLC, a Florida limited liability company (the “**Petitioner**”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “**Corporation**”) for a waiver of Rule 67-48.004(3)(d), F.A.C. (Effective August 27, 2024), Rule 67-48.020(2)(b), F.A.C. (August 27, 2024) (collectively the “**FAC Rules**”) and Section Four A.3.c.(3) of the RFA, as defined below, (the “**RFA Rule**,” and together with FAC Rules shall be referred to herein as the “**Rules**”) so that Petitioner may (i) admit Fuller Center for Housing Hardee County, Inc., a Florida not for profit corporation (“**FCH Manager**”), as a member and sole manager of Petitioner, and (ii) in addition to being added as the sole manager and member of the Applicant, add FCH Manager as a co-developer of the Development, as defined below, before loan closing. Petitioner seeks a waiver of, or variance from, the Rules in order to admit FCH Manager as a member and the sole manager entity and a co-developer of Petitioner prior to loan closing to

allow Petitioner to change its for-profit applicant status to a Non-profit applicant; and to receive a zero percent (0%) interest rate for its HOME loan, as defined below, for reasons set forth below.

This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code. In connection with this request for the rule waiver or variance, Petitioner also requests that the Corporation's Board of Directors (the "**Board**") approve changes in Petitioner's ownership and developer structure (as more fully described below) pursuant to rule 67-48.004(3)(a) and (b) and Section Four A.3.c.(3) of the RFA, as defined below. In support, the Petitioner states as follows:

A. THE PETITIONER

1. The mailing address, telephone number and email of the Petitioner is as follows:

NDA Grove Phase 1, LLC
Attn: Matthew Miller
12629 New Brittany Boulevard, Building 16
Fort Myers, Florida 33907
Telephone: (239) 691-5559
Email: mmiller@national-development.com

2. The mailing address, telephone number and email of the Petitioner's legal counsel is as follows:

Nicholas W. Heckman, Esq.
Nelson Mullins Riley and Scarborough, LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 669-4241
Email: nick.heckman@nelsonmullins.com

3. On February 18, 2025, the Petitioner timely submitted an application (the "**Application**") in response to RFA 2025-206 HOME and Live Local SAIL Financing to be used for Rental Developments in Certain Hurricane Impacted Rural Areas of Opportunity (the "**RFA**") and requested the following financing from the Corporation: (1) \$1,750,000 in State Apartment

Incentive Loan Program (“**SAIL**”) funds (“**SAIL Loan**”); and (2) \$6,025,000 in HOME Investment Partnerships Program (“**HOME**”) funds in to finance the construction, development and operation of a 24-unit multifamily apartment complex to be known as Grove at Theater Road located in Hardee County, Florida (the “**Development**”).

4. On March 28, 2025, the Board selected Petitioner for funding, and Petitioner was subsequently invited to enter credit underwriting on April 9, 2025. Petitioner accepted that invitation on April 10, 2025 and has subsequently been working with one of the Corporation’s designated credit underwriters.

5. Petitioner’s sources of funding include first mortgage proceeds, SAIL Loan proceeds and HOME loan proceeds, and deferred developer fees. During the course of the credit underwriting process, it became apparent that the proposed Development would struggle to meet the first mortgage debt sizing requirements for HOME Developments in rule 67-48.0072(11), F.A.C. (“**HOME Debt Sizing**”). That rule requires that the minimum debt service coverage be 1.10x on HOME interest plus all superior debt service (1.0x if deferring 35% or more developer fee). Petitioner is considered a for-profit Applicant and is thus subject to a 1.5 percent per annum interest rate on the HOME loan principal under Section 67-48.020(2)(a), F.A.C. (8/2024). During credit underwriting, Petitioner became it would struggle to be able to achieve the required HOME Debt Sizing, with a 1.5 percent per annum HOME interest rate, even after deferring 100% of developer fees, and could potentially render the Development financially infeasible.

6. To ensure that the Development is financially feasible, Petitioner worked with credit underwriter and with the Corporation’s staff to restructure the Applicant entity in a way that would allow the proposed Development to move forward with a 0% interest rate for the HOME Loan. This proposed restructuring is based on (i) the admittance of FCH Manager, a not for profit

corporation, as a member and sole manager of Petitioner, and (ii) to add FCH Manager as a Co-developer receiving 25% of the Development's Development Fee. FCH Manager is a Section 501(c)(3) entity under the Internal Revenue Code and was organized as a Florida not for profit corporation under Section 617, F.S., which provides decent and safe rental housing to eligible low-income families, the elderly, and persons for Hardee County. Not only will the addition of FCH Manager allow for the Petitioner to receive a reduced interest rate, but will also add tremendous value to the Development by adding a member to the Petitioner that is heavily involved in the Community and to be involved with all aspects of the Development moving forward through construction as well as during the Development's permanent operations.

7. Under the proposed restructuring, FCH Manager will own a 51 percent equity interest in Petitioner and serve as Petitioner's sole manager. NDA Hardee County, LLC, the Petitioner's current manager and member, will no longer serve as a manager of Petitioner and will continue to serve as a member but now own a 49% percent equity interest in Petitioner. Moreover, FCH Manager will serve as a co-developer of the Development, alongside NDA Developer, LLC, a Florida limited liability company ("**NDA Developer**"), as co-developer and will be entitled to 25 percent of the developer's fees earned by the developers. Attached as Exhibit A is Petitioner's original structure of the Applicant (i.e., the Petitioner) entity and its developer structure reflecting the original developer, as stated in Petitioner's original application. Attached as Exhibit B is Petitioner's proposed Applicant (i.e., the Petitioner) entity structure and the proposed co-developer structure reflecting the three separate co-developers.

8. Approval of Petitioner's proposed restructuring would mean that Petitioner would now have a Non-profit entity included within its structure, which would in turn own all of the manager's interest in the Development held by the managing member of the Petitioner and a

co-developer of Petitioner. In abundance of caution, since FCH Manager will actually serve as the sole manager entity, opposed to the a wholly owned limited liability company serving as manager, the Petitioner requests waiver of Rule 67-48.020(2)(d) in order for the HOME loan to receive a 0% interest rate.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

9. Petitioner requests a waiver of, or variance from, Rule 67-48.004(3)(d) and 67-48.020(2)(b) F.A.C. (Effective August 27, 2024), which provides, in relevant part, as follows:

Rule 67-48.004(3)(d):

“(3) For the SAIL, HOME and Housing Credit programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:

(d) Applicant that applied as a Non-Profit or for-profit organization, unless provided otherwise in a competitive solicitation;”

Rule 67-48.020(2)(b):

(2) The annual interest rate will be determined by the following:

(b) All qualified non-profit Applicants that own 100 percent of the ownership interest in the Development held by the general partner or managing member entity will receive a 0 percent interest rate loan. For purposes of determining the annual HOME interest rate, the definition of Non-Profit found at Rules 67-48.002 and 67-48.0075, F.A.C., shall not apply; instead, qualified non-profit Applicants shall be those entities defined in 24 CFR Part 92, Section 42(h)(5)(c), subsection 501(c)(3) or 501(c)(4) of the IRC and organized under Chapter 617, F.S., if a Florida corporation, or organized under similar state law if organized in a jurisdiction other than Florida.

10. Petitioner requests a waiver of, or variance from, Section Four A.3.c.(3) of RFA 2025-206 in order to make the changes to the Applicant entity and for the addition of FCH Manager as a co-developer. Section Four A.3.c.(3) of RFA 2025-206, provides in relevant part:

“The Applicant entity shall be the borrowing entity and cannot be changed in any way (materially or non-materially) until after loan closing...Changes to the

Applicant entity (material or non-material) prior to the loan closing...may result in disqualification from receiving funding and may be deemed a material misrepresentation.

11. The Principals of each Developer identified in the Application, including all co-Developers, may be changed only by written request of an Applicant to Corporation staff and approval of the Corporation after the Applicant has been invited to enter credit underwriting as outlined in Rule Chapter 67-48, F.A.C. In addition, any allowable replacement of an experienced Principal of a Developer entity must meet the experience requirements that were met by the original Principal.” Although Petitioner does not need a formal waiver of Rule 67-48.004(3)(a) or (b) to add a co-developer, Petitioner does need to make the request to the Corporation’s Staff and does need approval of the Board to make such change. Thus, Petitioner respectfully requests the Board’s approval of the addition of FCH Manager as a co-developer pursuant to Subsection (3)(a) and (b) of Rule 67-48.004 F.A.C. (Effective August 27, 2024) which provide in relevant part:

Rule 67-48.004(3)(a) and (b)

“(3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below: (a) Name of Applicant or Developer entity(s); notwithstanding the foregoing, the name of the Applicant or Developer entity(s) may be changed only by written request of an Applicant to Corporation staff and approval of the Corporation after the Applicant has been invited to enter credit underwriting. With regard to said approval, the Corporation shall consider the facts and circumstances of each Applicant’s request, inclusive of validity and consistency of Application documentation

(b) Principals of each Developer, including all co-Developers; notwithstanding the foregoing, the Principals of the Developer(s) may be changed only by written request of an Applicant to Corporation staff and approval of the Corporation after the Applicant has been invited to enter credit underwriting. With regard to said approval, the Corporation shall consider the facts and circumstances of each Applicant’s request, inclusive of validity and consistency of Application documentation. Any allowable change to the natural person Principals of a Public Housing Authority or officers and/or directors of a non-profit entity will apply to

all preliminarily awarded Applications and Applications pending final Board action that include the Public Housing Authority or non-profit entity. Any allowable replacement of a Principal that was identified as the experienced Developer in a competitive solicitation must meet the experience requirements met by the original Principal;”

C. STATUTES IMPLEMENTED BY THE RULES

12. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the “**Act**”), the statutes that designate the Corporation to administer the SAIL and HOME programs in accordance with the State Apartment Incentive Loan Program and HOME Investment Partnerships Program. See Fla. Stat. §§ 420.5087 & 420.5089.

D. JUSTIFICATION FOR PETITIONER’S REQUESTED WAIVER

13. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the power and 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. A waiver shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship¹ 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.

14. Strict adherence to Rules would impose a hardship on Petitioner because the proposed Development would struggle to be financially feasible if the Applicant did not receive a 0 percent HOME interest rate, which it will not qualify for unless it can be restructured to include the FCH Manager. Moreover, A waiver of the Rule is required to avoid the economic hardship of

¹ “Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. Further, “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. See Fla. Stat. § 120.542.

limited sources to build the Development. Hardee County is in dire need of affordable housing, and the proposed restructuring of Petitioner's Applicant entity and the addition of a co-developer entity, as proposed, would allow the proposed Development to move forward and ensure its success.

15. The Petitioner believes that a waiver will serve the purposes of Sections 420.5087 and 420.5089 and the Act that are implemented by Chapter 67-48 F.A.C., because one of the goals is for the proceeds of Corporation financing to be used to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. The Act (Section 420.501, et seq.) was passed in order to create inducements and opportunities for private and public investment in rental housing to increase the supply of affordable housing for low-income persons and households. By granting this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing units via the construction of new developments throughout Florida, particularly in Hardee County.

16. The requested waiver will not adversely affect Petitioner, the Development, or any other party that applied to receive funding in the RFA or the Corporation.

E. TYPE OF WAIVER

17. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

18. For the reasons set forth herein, the Petitioner respectfully requests the Corporation (i) grant a waiver of Rule 67-48.004(3)(d) F.A.C. (Effective August 27, 2024), Rule 67-48.020(2)(b)(Effective August 27, 2024) and Section Four A.3.c.(3) of RFA 2025-206 and approve the requested changes to the Petitioner's ownership structure and developer structure pursuant to Rule 67-48.004(3)(a) and (b) F.A.C. (Effective August 27, 2024); (ii) grant this Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,



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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
Email: corporationclerk@floridahousing.org

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

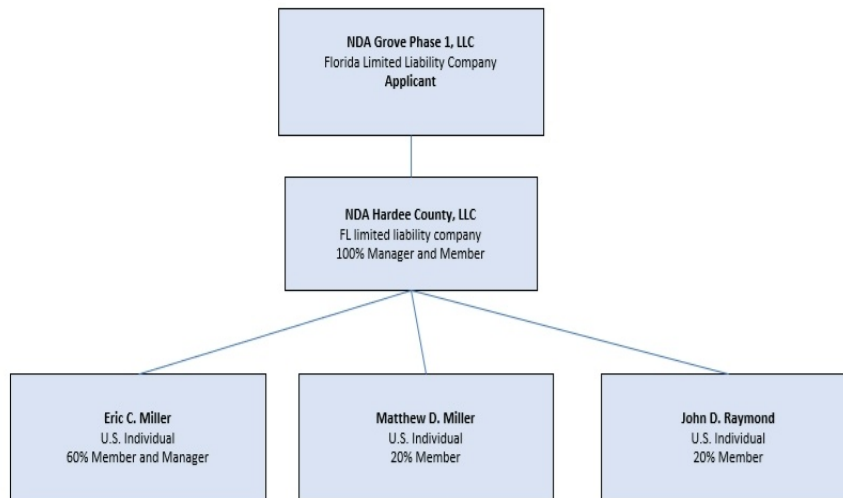
This 3rd day of April, 2026.

By: 

Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356

Exhibit A

Current Applicant Structure



Current Developer Structure

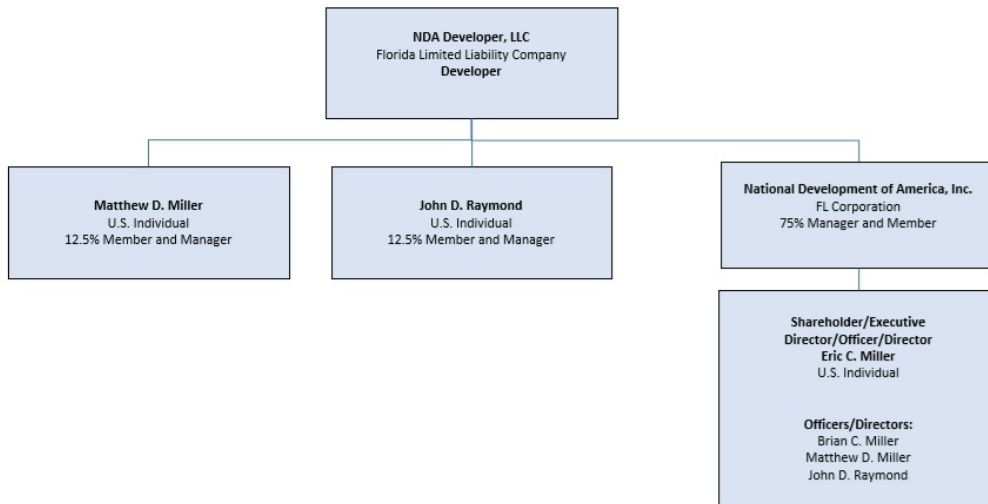
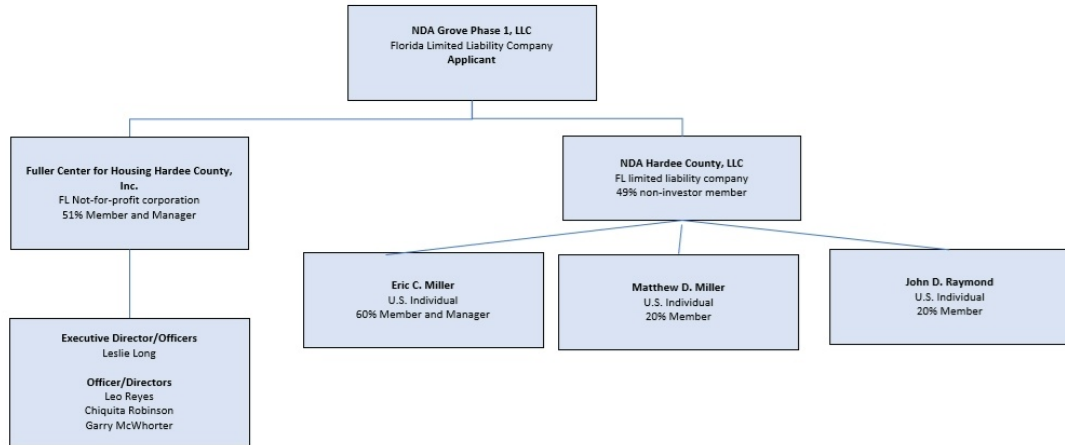


Exhibit B

Proposed Applicant



Proposed Developer

