

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

FHFC CASE NO.: 2026-047VW
APPLICATION NO.: **2023-125SN; 2022-537C**

BURLINGTON POST 2, LTD.

Petitioner,
vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-48.0072 (12) & RULE 67-21.026(10)
(EFFECTIVE JULY 6, 2022)

Burlington Post 2, 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 of Rule 67-48.0072(12), Florida Administrative Code (“F.A.C.”) (effective July 6, 2022) and Rule 67-21.026(10) F.A.C. (effective July 6, 2022) (collectively, the “Rules”), to permit solar panel installation and the installation of a lightning protection system for the Development (as defined below) to be contracted outside of the required guaranteed maximum price (“GMP”) contract (“GC Contract”), as further described herein. This Petition is filed pursuant to Section 120.542, Fla. Stat., and Chapter 28-104, Florida Administrative Code. In support thereof, Petitioner states as follows:

A. THE PETITIONER AND THE DEVELOPMENT

1. The address, telephone number and email address of the Petitioner are:

Burlington Post 2, Ltd.
Attn: Oscar Sol
3323 W. Commercial Blvd., Suite E220
Fort Lauderdale, Florida 33309
Telephone: (954) 507-6222
Email: osol@greenmillsgroup.com

2. The address and telephone number of Petitioner's counsel are:

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

3. On December 29, 2022, Petitioner submitted Application No. 2023-125SN; 2022-537C (the "Application") in response to Request for Applications 2022-205 SAIL Financing of Affordable Multifamily Housing Developments to be used in Conjunction with Tax Exempt Bonds and Non-Competitive Housing Credits (the "RFA") for Corporation financing to assist in the construction of a 75 unit development serving Elderly Non-ALF individuals and households in Pinellas County, Florida to be known as Burlington Post II (the "Development").

4. Petitioner's application was selected for Corporate financing and it was awarded \$2,500,000 in State Apartment Incentive Loan ("SAIL"); \$636,000 in Extremely Low Income ("ELI") program funds; and \$1,450,000 in National Housing Trust Fund program funds ("NHTF," together with the SAIL and ELI funds, are referred to herein as the "Loans"), and \$1,438,912 in Non-Competitive Housing Credits in order to partly finance the construction, operation and development of the elderly Development.

5. The Petitioner selected the Average Income Test set-aside, in which 16% of the units (12 Units) are to be rented to persons whose incomes are at or below 30% of area median income ("AMI"); 52% of the total units (39 Units) are to be rented to persons whose incomes are

at or below 60% AMI, 16% of the total units (12 Units) are to be rented to persons whose incomes are at or below 70% AMI and the remaining 16% of the total units (12 Units) are to be rented to persons whose incomes are at or below 80% AMI. Additionally, 50% of the extremely low income (“ELI”) units will be set-aside for Persons with Special Needs and not less than 6.67% of the total units (5 Units) within the Development shall be NHTF Link Units to be rented to households who have a household income less than or equal to 22% AMI. All units in the Development are income-restricted and there are no unrestricted market-rate units.

6. On August 6, 2024, Petitioner closed on the Loans and its other construction and equity financing and shortly thereafter began construction of the Development. As of the date hereof, the Development is substantially complete, and the Petitioner expects to receive the Development’s certificate of occupancy within the month.

B. THE RULES FROM WHICH WAIVER IS SOUGHT

7. The Petitioner requests a waiver of, or variance from, Rule Chapter 67-48.0072(12), F.A.C. (2022), which provides in part:

Rule 67-48.0072(12)

“For Competitive HC, SAIL, and HOME, the Corporation’s assigned Credit Underwriter shall require a guaranteed maximum price construction contract, which may include change orders for changes in cost or changes in the scope of work, or both, if all parties agree, and shall order, at the Applicant’s sole expense, and review a pre-construction analysis for all new construction units and a CNA for rehabilitation units and review the Development’s costs.”

8. The Petitioner requests a waiver of, or variance from, Rule Chapter 67-21.026(10), F.A.C. (2022), which provides in part:

Rule 67-21.026(10)

“The Corporation’s assigned Credit Underwriter shall require a guaranteed maximum price construction contract, acceptable to the Corporation, which may include change orders for changes in cost or changes in the scope of work, or both, if all parties agree, and shall order, at the Applicant’s sole expense, and review a pre-construction analysis for all new construction units or a CNA for rehabilitation units and review the Development’s costs..”

C. STATUTES IMPLEMENTED BY THE RULES

9. The Rules are implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statute that designates the Corporation to administer the SAIL program in accordance with the State Apartment Incentive Loan program. See Fla. Stat. § 420.5087.

D. JUSTIFICATION FOR PETITIONER’S REQUESTED WAIVER

10. Petitioners seeks a waiver of the Rules to allow Petitioner to directly engage two qualified specialty contractors – Advanced Green Technologies (rooftop solar photovoltaic system) (“Solar Contractor”) and Bonded Lightning Protection Systems, Inc. (lightning protection system) (“Lightning Contractor”) – outside of the GC Contract, and to funded with hard cost contingency funds (estimated to be approximately \$680,000 at completion) (“HCC Funds”).

11. Petitioner wishes to directly contract with Solar Contractor to install A 90.34 kW DC rooftop photovoltaic system consisting of 203 Trina Solar 445W modules engineered to meet ASCE 7-22 wind load requirements. Solar Contractor is a NABCEP-certified contractor (License #CVC56792) with over 17 years of commercial solar installation experience, 450+ megawatts installed statewide, and \$12 million in general liability insurance with \$150 million in bonding capacity. The system is projected to generate approximately 146,356 kWh of clean energy annually

— offsetting 8.41% of the property's total annual consumption and delivering estimated electricity savings of \$12,254 per year, with total projected savings exceeding \$751,000 over the life of the system. Equipment warranties include a 25-year power guarantee from Trina Solar and a 25-year inverter warranty from Enphase. The total proposed cost for the installation of the solar panels is \$251,495.04.

12. Moreover, Petitioner wishes to directly contract with Lightning Contractor to complete, UL96A-compliant Class II aluminum lightning protection system. Lightning Contractor (Electrical License #EC13011392) was established in 1973 and will furnish and install the system. This system is not a precautionary measure, but a necessary measure as Petitioner's other development, Burlington Post Phase I, experienced a lightning surge that destroyed the development's elevator system. This surge resulted in costly replacement and an extended period of significant inconvenience to elderly residents who depend on elevator access for their daily mobility and quality of life. Since the Development is also an elderly development and Florida consistently ranks among the highest-risk states in the nation for lightning strikes, Petitioner wishes to install a lightning protection system to safeguard the building's structural integrity, electrical infrastructure, and most importantly, the safety and well-being of its residents. The total proposed cost of the installation is \$52,700.00 (including \$2,000 for testing).

13. The total amount requested is \$304,195.04, representing less than half of the estimated \$680,000 HC Funds remaining at project completion, in which after payment of the above installation would leave a substantial amount of funds in the contingency reserve. Routing the solar installation and lightening protection installation through the GC Contract would require payment of an additional 12% overhead and management fee on top of each contractor's proposal price. For a combined costs of \$304,195.04, this would increase the total installation cost to

approximately \$36,500, in which such additional costs would add no additional benefit to the Development or its residents. Direct engagement eliminates that expense entirely and ensures every available HCC Funds go toward the improvements themselves.

14. Moreover, executing a change order under the GC Contract would not be appropriate or the practical path for the above scope of work, as the solar installation and lightning protection system work are post-construction improvements to be installed following lien-free completion of the Development. Executing change orders with the general contractor whose contractor would be substantially or fully complete is operationally cumbersome and economically inefficient, which could result in delays to completing construction of the Development.

15. 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 such rules would lead to unreasonable, unfair and unintended results in particular instances. A waiver shall be granted when the person 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. § 120.542(2), Fla. Stat.

16. If Petitioner is not granted a waiver of the Rules, Petitioner will suffer substantial economic hardship, as strict application of the Rules would require all hard construction costs for the Development, including the solar panel installation and lightening system installation, to be incurred under the GC Contract, resulting in increased Development costs by approximately \$36,500 without advancing the purpose of the Rules. Granting the requested waiver will avoid

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* Section 120.542, *Fla. Stat.*

these unnecessary costs while allowing Petitioner to provide its tenants reduced energy costs and additional protection from lightning damage. Moreover, requiring the above solar panel installation and lightning protection system installation to be added to the GC Contract via a change order with the general contractor whose GC Contract will be substantially or fully complete would add administrative complexity to the work and potentially lead to unexpected delays to the Development.

17. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed to encourage private and public investment in facilities for persons of low-income. One of the goals of the Act is for 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. Additionally, the Act was passed in order to stimulate and prioritize initiatives to increase the supply of affordable housing. By granting the requested waivers, the Corporation would promote the goal of providing persons of low-income with affordable housing through private investment. The solar photovoltaic system will reduce energy costs at the Development, extend the long-term financial viability and lower the costs of utilities for its elderly residents. The lightning protection system directly protects the physical integrity of the Development and the safety and quality of life of residents, particularly elderly residents who depend on critical building systems such as elevators that are vulnerable to unprotected lightning strikes (as demonstrated by the incident at Phase I). Allowing Petitioner to directly engage the qualified, licensed, and fully insured specialty contractors would ensure all work is completed to code, within budget, and in compliance with applicable lien requirements and program guidelines. The requested waivers or variances will not adversely impact the Development or the Corporation, and will ensure that the 75 affordable

elderly housing units of the Development will be made available for the target population in Pinellas County to obtain decent, safe, and sanitary housing.

E. TYPE OF WAIVER

18. The waiver or variance being sought is permanent in nature.

F. ACTION REQUESTED

19. For the reasons set forth herein, Petitioner respectfully requests the Corporation (i) grant the requested waiver of Rule 67-48.0072(12), F.A.C. (2022) and Rule 67-21.026(10), F.A.C. (2022), to engage the Solar Contractor and Lightning Contractor directly and to permit the solar panel installation and installation of the lightning protection system for the Development to be performed outside of the guaranteed maximum price contract with the general contractor; (ii) grant the Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

RESPECTFULLY SUBMITTED this 22nd day of July 2026



Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356
Nelson Mullins Riley & Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: 407-669-4241
Email: nick.heckman@nelsonmullins.com

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 22nd day of July 2026.

By: _____



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