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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In re: Southward Village Phase 2, L.P.

Petitioner.
_____/

FHFC File Nos: 2023-103B/2023-546C
FHFC Case # 2025-033VW

PETITION FOR VARIANCE FROM RULE 67-21.003(8)(i) TO REDUCE THE TOTAL SET-ASIDE PERCENTAGE

Petitioner, Southward Village Phase 2, L.P. ("Petitioner" or "Southward 2"), a Florida limited partnership, hereby submits this Petition to the Florida Housing Finance Corporation ("FHFC" or "Florida Housing") for a variance from FHFC Rule 67-21.003(8)(i), Fla. Admin. Code in order to allow Petitioner to reduce the Total Set-Aside Percentage as stated in the Southward 2 Non-Competitive Application for MMRB and Non-Competitive ("4%") Housing Credits for the proposed Development Southward Village CNI Phase 2.

A. NATURE OF REQUEST

1. Pursuant to Section 120.542, Fla. Stat. (2024), and Rules 28-104.001 through 28-104.006, Fla. Admin. Code, Petitioner requests a waiver of provisions of Rule 67-21.003(8)(i), Fla. Admin. Code. Rule 67-21.003(8)(i) prohibits an Applicant from reducing the Total Set-Aside Percentage as stated in the total set-aside breakdown chart for the programs applied for. The rule allows an Applicant to request an increase in the set-aside percentage after being invited into credit underwriting, but does not allow a decrease in the percentage.

2. The original Southward 2 Application relied on the Average Income Test, and proposed 115 Total Set-Aside Units (68 at 50% AMI and 43 at 60% AMI, plus 4 units at 80% AMI), and 36 unrestricted market rate units, for a total of 151 units. Southward 2 seeks to revise its Set-Aside Percentage to instead rely on the Federal set-aside commitment of 40% of the units at 60% AMI instead of Average Income Test, and the total 151 total units would consist of 57 units

(37.5% of the total) at 50% AMI, 41 units (27%) at 60% AMI, 4 units at 80% AMI, and 49 unrestricted market rate units. The percentage of units occupied by Families which are defined as "Low Income" by Rule 67-21.002(69) (i.e., whose adjusted income does not exceed 80% of AMI) would change from 76.2% (115 of the total 151 units) to 67.5% (102 of 151 units). However, because Petitioner would no longer rely on the Average Income Test, the four 80% AMI units will presumably not be considered Set-Aside Units for FHFC's purposes, and the Total Set-Aside Percentage would be 64.5% (57 units at 50% AMI, and 41 units at 60% AMI for a total of 98 of 151 units). This change in the Total Set-Aside Percentage requires a waiver of the rule.

3. On March 21, 2025, Petitioner submitted a letter to Florida Housing requesting to change the Set-Aside Commitment basis from Average Income Test to 40% of units at 60% AMI. Petitioner proposed 57 units at 50% AMI, which equals 37.75% of the total 151 units; Petitioner erroneously rounded up the 50% AMI unit commitment to 38%. Petitioner submitted a revised letter to Florida Housing on May 28 still committing to 57 units at 50% AMI, but correcting the description of the percentage of units that will be at that 50% AMI level to 37.5% of total units. A copy of this letter is attached hereto as Exhibit A. This Petition seeks a rule waiver to reduce the Total Set-Aside Percentage to 64.5% and to match the complement of units set forth in that letter: 57 units at 50% AMI, 41 units at 60% AMI; 4 units at 80% AMI; and 49 unrestricted market rate units.

B. THE PETITIONER

4. Southward 2 was the recipient of $39 million in MMRB and $2,760,462 in annual non-competitive Housing Credits from FHFC for a new construction development in Lee County through Florida Housing's Non-Competitive application process. The development will also receive construction and permanent loan financing from the Housing Authority of the City of Fort

Myers in the amount of $26,305,428. For purposes of this petition, Petitioner's address is that of its undersigned attorney, M. Christopher Bryant, Oertel, Fernandez, Bryant & Atkinson, P.A., 2060 Delta Way, Tallahassee, Florida 32303 (telephone (850) 521-0700, fax (850) 521-0720, E-mail: cbryant@ohfc.com).

5. The Applicant Entity for Southward 2 is Southward Village Phase 2, LP, a Florida limited partnership. Its general partners are Fort Myers Redevelopment Manager, LLC, which is an Affiliate of McCormack Baron Salazar, Inc; and SWV Phase 2 A, LLC, which is an instrumentality of the Housing Authority of the City of Fort Myers.

6. The two Co-Developers of Southward 2 are Fort Myers Developer, LLC, which is an Affiliate of McCormack Baron Salazar Inc; and Southwest Florida Affordable Development, LLC, which is an instrumentality of the Housing Authority of the City of Fort Myers.

C. THE SOUTHWARD VILLAGE DEVELOPMENT

7. The Southward Village development is a development in four phases that will consist of 467 units. The Housing Authority of the City of Fort Myers ("HACFM") and the City of Fort Myers sought and were awarded substantial funding through HUD's Choice Neighborhood Initiatives (CNI) program for Southward Village, one of only three CNI designees in Florida. A condition of the HUD CNI designation for Southward Village is that over 20% of the units across all phases must be market rate units. As approved and recently modified by HUD, the complement of units across all four phases of Southward Village will be 369 Low-Income units, 361 of which will be financed in part with Housing Credits (including 191 of the Project Based Voucher units) and 8 of which will be 80% AMI Project Based Voucher units; and 98 market rate units.

8. Phase 1 of Southward Village, applying as a development to be known as 3611/3621 Cleveland Avenue, was already awarded funding by Florida Housing in RFA 2023-

205, for 92 units, consisting of 83 Set-Aside Units (ranging from 22% to 60% AMI) and 9 market rate units. As noted above, Southward 2, through its Non-Competitive Application, was awarded MMRB and 4% Housing Credits for 115 Set-Aside Units and 36 market rate units. Of the 243 units already funded as Phases 1 and 2, 198 (including 4 units at 80% AMI) are currently designated as affordable, and 45 are market rate.

9. Subsequent to the submission of the Southward 2 Application, Phase 4 of Southward Village was awarded funding in RFA 2024-214, Live Local SAIL for Developing and Reconstructing Affordable Multifamily Housing. That Application, Number 2025-123BS/2025-504C, will consist of 143 units, originally planned to consist of 119 Set-Aside Units under the Average Income Test (including 4 units at 80% AMI) and 24 market rate units. In late 2024 Florida Housing approved the Applicant's request to change Southward Village CNI Phase 4 from the Average Income Test to 40% of the units at 60% AMI. In the course of preparing this rule waiver petition, the Principals of the Southward 2 Applicant and Developer realize that the request for modification of the affiliated Southward Phase 4 development contained an error. Specifically, Southward Phase 4 inadvertently omitted from its modification request the intent to retain market rate and 80% AMI units that had been initially approved in the Southward Phase 4 competitive application.

10. Southward Phase 4 will submit a rule waiver petition for consideration at a later Board meeting to correct the inadvertent error. The intended allocation would still have the original 115 affordable units, of which 20% (22 units) would be at 40% AMI and 80% (93 units) would be at 60% AMI or below. Southward Phase 4 will retain the four 80% AMI units and 24 Market Rate units from its initial application. For purposes of this Southward 2 rule waiver petition, the Southward Phase 4 allocation of units will be considered as if the corrected change is made to 115

affordable units, four (4) 80% AMI units, and 24 market rate units.

11. The correction of the allocation of units in Phase 4 will result in the funding of 317 Low-Income Units (311 "Set-Aside" and eight 80% AMI units) and 69 market rate units across three Southward Village phases (Phases 1, 2, and 4). The remaining 81 units in the HUD CNI designation for Phase 3 would consist of 52 Set-Aside Units and 29 market rate units. As explained in this Petition, the allocation of affordable and market rate units to all four phases of Southward Village is significant to the Southward 2 rule waiver request because of the HUD CNI designation and funding, that is based on a specific market rate unit and affordable unit allocation by phase and as a unified development.

12. HACFM and the City of Fort Myers recently received approval from HUD to change the total number of units to 467, and to change the allocation of affordable and market rate units among the four phases in Southward Village, in order to accommodate site layout, building, and unit design, and financing issues. HUD approved the changes by letter dated April 17, 2025, copy attached hereto as Exhibit B. The request to HUD was submitted in anticipation of a decrease in the number of Set-Aside Units and an increase in the number of market rate units in Phase 2, as requested in this Petition, and it relied upon the intended allocation of Phase 4 units. If the correct Phase 2 rule waiver and future Phase 4 rule waiver are approved by Florida Housing, the allocation of units would be as follows:

Phase	**Set-Aside Units (< 40%, 50%, or 60% AMI)**	**80% AMI Units**	**Market**	**Total**
Phase 1	83	0	9	**92**
Phase 2	98	4	49	**151**
Phase 3	65	0	16	**81**
Phase 4	115	4	24	**143**
Total	**361**	**8**	**98**	**467**

13. A waiver is necessary for Southward Village to satisfy Florida Housing's

requirements and to maintain compliance with the HUD grant on unit mix between affordable and market rate units, for both the three phases already funded by Florida Housing and the final phase 3 when it applies to Florida Housing for funding.

D. RULE PROVISIONS

14. The Non-Competitive MMRB and Housing Credit Application process is governed in part by portions of Rule Chapter 67-21, Fla. Admin. Code. Of relevance to this request is Rule 67-21.003(8), Fla. Admin. Code, which reads, in pertinent part:

> **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:
>
> ***
>
> (i) The Total Set-Aside Percentage as stated in the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application; notwithstanding the foregoing, the Total Set-Aside Percentage 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;

15. Petitioner seeks a rule waiver in order to increase the number of market rate units and decrease the number of affordable units in Phase 2 of Southward Village, as explained in paragraph 2 above. Because the Southward 2 application was funded as a Non-Competitive application, it gained no advantage over other applicants by its original Set-Aside Commitment, and it would gain no advantage over other applicants by modifying that commitment now.

E. JUSTIFICATION FOR REQUESTED VARIANCE

16. The three phases of the overall Southward Village CNI development that have already been awarded funding by Florida Housing currently account for 386 units: 317 for Low-Income Families (including 8 units at 80% AMI) and 69 market rate. The remaining 81 units under the CNI designation would consist of 52 affordable units and 29 market rate units, making Phase 3 approximately 64% affordable and 36% market rate, which is not a desirable unit mix and would not be competitive in a Florida Housing RFA. Allowing the Non-Competitively funded Phase 2 application to be restructured to consist of 98 affordable units (plus 4 80% AMI units) and 49 market rate would leave 65 affordable units and 16 market rate units (an 80/20 split) for a Phase 3 application.

F. RELIEF REQUESTED

17. Southward 2 seeks to have a variance from Rule 67-21.003(8)(i) to allow it to decrease the total number and total percentage of Set-Aside Units. As explained above, the Total Set-Aside Percentage for Southward 2 will decrease from 76.2% to 64.5%, and the number of market rate units will increase from 36 units to 49 units. Southward 2 seeks both the waiver from the rule and the approval of the resulting number of set aside units.

18. Because Southward 2 was funded as a Non-Competitive Application, granting the requested variance would not adversely affect any preferences or points considered by Florida Housing in the scoring of the application, and would not alter the evaluation of the application by Florida Housing. The change would also not provide Southward 2 with an unfair competitive advantage over any other applicants.

19. The requested Rule variance will not adversely impact the development or the interests of Florida Housing, future residents, or the public; and will serve the statutory purposes

of the Florida Housing process. A denial of this Petition, however, would result in substantial economic hardship to Southward Village.

G. STATUTORY PURPOSE SERVED

20. Sections 420.5099 and 420.509(1), Fla. Stat., and assigns Florida Housing the responsibility to allocate and distribute Multifamily Mortgage Revenue Bonds low-income housing tax credits. The statute also instructs Florida Housing to adopt procedures to ensure the maximum use of housing credits to encourage the development of low-income housing.

21. In furtherance of these statutory purposes, Florida Housing established the Non-Competitive Request for Application process to allocate MMRB to assist with development of affordable housing.

22. Section 420.509(1) authorizes Florida Housing to issue revenue bonds "to provide sufficient funds to achieve the purposes of" Part V of Chapter 420, Fla. Stat.

23. Section 420.508(3)(a) and (b) authorize Florida Housing to make and participate in making mortgage loans for the purpose of financing development costs of projects, and in so doing to make determinations as to the ability of "low-income, moderate-income, or middle-income persons" to find adequate, safe and sanitary housing.

24. Approval of Petitioner's change in its Total Set-Aside Percentage would serve Florida Housing's statutory purpose of promoting the development of housing for low-income and moderate income persons. It would also leverage other funding sources, most notably HUD CNI grant funds awarded to HACFM and CDBG-DR funds awarded to Lee County, to bring new and replacement rental housing stock to Fort Myers.

H. SUBSTANTIAL ECONOMIC HARDSHIP

25. The rule at issue has an apparent purpose in the competitive application process to

prevent an applicant from relying on a particular number of affordable units in the competitive application selection process, and then later seeking to change that number after it has been selected for funding. Such actions would open the door to manipulation of a competitive application process. With the Non-Competitive application, there was no competitive advantage gained by Petitioner's original Set-Aside designations, and no advantage would be gained by altering the number and mix of Set-Aside Units.

26. Petitioner and its Principals would suffer substantial economic hardship if it could not modify the Phase 2 Set-Aside Percentages and number of Set-Aside Units. If the number of Phase 2 Set-Aside Units are not decreased, and the number of Phase 2 market rate units are not increased, would render it difficult if not impossible to submit a reasonably competitive and acceptable application for Phase 3 that serves the remaining number of affordable and market rate units approved by HUD as part of the CNI grant.

27. The waiver and variance being sought are permanent in nature, in that the total number of Set-Aside Units within Southward 2 will be operated as affordable housing and market rate housing for the duration of the affordability periods set forth in the application.

28. If Florida Housing has questions or requires additional information, Petitioner is available to provide any information necessary for consideration of this Petition.

WHEREFORE, Petitioner Southward Village Phase 2, L.P. respectfully requests that the Florida Housing Finance Corporation provide the following relief:

A. Grant the Petition for Variance and all the relief requested herein;

B. Enter an order granting a variance of Rule 67-21.003(8)(i), to allow Southward 2 to decrease the total number of affordable units and Total Set-Aside Percentage in the Southward 2 development;

C. Approve the decrease in the Total Set-Aside Percentage; and

D. Approve the decrease in the total number of affordable units in Southward 2 from 115 units to 98 units, consisting of 57 units at 50% or less Area Median Income and 41 units at 60% or less AMI; maintain the 4 units at 80% or less AMI; and increase the number of market rate units from 36 to 49.

RESPECTFULLY SUBMITTED this 28th day of May, 2025.

/s/ M. Christopher Bryant
M. Christopher Bryant
Fla. Bar Number 434450
OERTEL, FERNANDEZ,
BRYANT & ATKINSON, P.A.
P.O. Box 1110
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Secondary: bpetty@ohfc.com

Counsel for *Southward Village Phase 2, L.P.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition for Variance is being filed by electronic filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301, CorporationClerk@floridahousing.org, and the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, Joint.admin.procedures@leg.state.fl.us, and by electronic transmission to Ethan Katz, Assistant General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301, Ethan.Katz@floridahousing.org, this 28th day of May, 2025.

/s/ M. Christopher Bryant
Attorney

May 28, 2025

Melissa Levy
Florida Housing Finance Corporation
227 N Bronough Street #5000
Tallahassee, FL 32301

RE: Southward Village CNI Phase 2 (2023-103B)

Dear Ms. Levy,

This letter is to request approval from the Florida Housing Finance Corporation (FHFC) to change the Minimum Set-Aside Commitment and revise the Unit Mix Affordability for Southward Village CNI Phase 2.

Southward Village CNI Phase 2 is currently progressing towards a summer financial closing and to remain on this path toward closing and continue the other phases of the Southward Village CNI site, we are requesting to change the Set-Aside commitment from originally selected "Average Income Test" to a "40/60" Set-Aside Commitment. This request is to accommodate the changes in the unit mix and ensure the project remains in compliance with funding requirements.

Additionally, Southward Village CNI Phase 2 is requesting to adjust the unit mix affordability for Phase 2. While the total number of units in Phase 2 remains 151, Southward Village CNI Phase 2 requests that FHFC allow a change in the unit-mix to include 60 1-BR, 58 2-BR, 28 3-BR, and 5 4-BR units. Of the 151 total units, fifty-seven of the units will be PBV/LIHTC units at 50% AMI or below, four of the units will be PBV/non-LIHTC units at 80% AMI or below, 41 units will be 60% AMI LIHTC-only (non-PBV), and the remaining 49 units will be unrestricted/market rate units.

In the current application, Section 10.b.(2), Southward Village CNI Phase 2 selected the Average Income Test, as indicated here:

Number of Residential Units	Percentage of Units	AMI Level, at or below:	
0	0.000%	20%	
0	0.000%	30%	
0	0.000%	40%	
68	59.130%	50%	
43	37.391%	60%	
0	0.000%	70%	
4	3.478%	80%	
36		Market Rate	
115			Total Qualifying HC Units
36			Total Market Rate Units
151			Total Units
	54.783%		Average AMI of the Qualifying HC Units**

Southward Village CNI Phase 2 requests approval to change the commitment to 40/60, shown here:

Percentage of Residential Units				
Commitment for MMRB		Commitment for Non-Competitive HC		AMI Level
			%	At or below 20%
			%	At or below 30%
			%	At or below 40%
37.5	%	38%	%	At or below 50%
27	%	27%	%	At or below 60%
64.5	%	65%	%	Total Set-Aside

The commitment for MMRB and Non-Competitive HC is 37.5% at or below 50% AMI and 27% at or below 60% AMI for 64.5% Total Set-Aside. The table above for the commitment for Non-Competitive HC is incorrectly rounding to 38%.

The Unit Mix and Total Units remain the same, reflected here:

Number of Bedrooms/Bathrooms per Unit	Number of Units per Bedroom/Bathroom Type
0 Bedroom/1 bathroom	
1 Bedroom/1 bathroom	60
2 Bedrooms/1	58
2 Bedrooms/1.5	
2 Bedrooms/2	
3 Bedrooms/1	
3 Bedrooms/1.5	
3 Bedrooms/2	2
3 Bedrooms/2.5	26
3 Bedrooms/3	
4 Bedrooms/1	
4 Bedrooms/1.5	
4 Bedrooms/2	
4 Bedrooms/2.5	5
4 Bedrooms/3	
4 Bedrooms/3.5	
4 Bedrooms/4	
Total Units	151

We appreciate your consideration of this request. Please feel free to contact me if you require any further information or clarification.

Sincerely,

Vincent R. Bennett
Authorized Principal Representative
Southward Village Phase 2, LP

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

April 17, 2025

Ms. Marcia Davis
Executive Director
Housing Authority of the City of Fort Myers
4224 Renaissance Preserve Way
Fort Myers, FL 33916

Mr. Marty Lawing
City Manager
City of Fort Myers
2200 Second Street
Fort Myers, FL 33901

SUBJECT: Housing Plan Revision #3 Approval
Southward Village Choice Neighborhoods Implementation Grant
Grant Number: FL4D047CNG120

Dear Ms. Davis and Mr. Lawing:

The Housing Authority of the City of Fort Myers (HACFM) and City of Fort Myers (City) have submitted a request to the Department of Housing and Urban Development (HUD) to revise the Housing Plan for the Southward Village Choice Neighborhoods Implementation Grant by modifying the overall unit mix of the housing plan. Pursuant to Article 5 of the Implementation Grant Agreement, HUD approval is required for substantive changes to the Housing Plan. HUD hereby approves the requested revisions, as identified below.

Current Housing Plan

The Current Housing Plan includes 470 units to be developed in four phases as shown in Chart #2, Current Overall Mix, below.

Chart #2: Revision #2 Overall Mix

Phase	PBV CNI	Affordable	Market	Total
Phase 1	50	33	9	92
Phase 2	73	31	43	147
Phase 3	24	56	0	80
Phase 4	57	48	46	151
Total	204	168	98	470

Requested Revision #3

Revision #3 will make the following changes to the Housing Plan, as reflected on Chart #3, below. Overall, the percentage of market rate units remains at 21%. There is an increase of 2 affordable units and a reduction of 5 replacement units that returns the total number of replacement units to the same as in the application.

Phase 1:
- increase the number of replacement units by 3
- decrease the number of affordable units by 3

Phase 2:
- decrease the number of replacement units by 12
- increase the number of affordable units by 10
- increase the number of unrestricted units by 6
- increase the total number of units by 4

Phase 3:
- decrease the number of affordable units by 15
- increase the number of unrestricted units by 16
- increase the total number of units by 1

Phase 4:
- increase the number of replacement units by 4
- increase the number of affordable units by 10
- decrease the number of unrestricted units by 22
- decrease the total number of units by 8

Chart #3: Revision #3 Overall Mix

Phase	PBV CNI Replacement	Affordable	Market	Total
Phase 1	53	30	9	92
Phase 2	61	41	49	151
Phase 3	24	41	16	81
Phase 4	61	58	24	143
Total	199	170	98	467

Justification

The changes in Revision #3 have been requested because of a necessary modification to the site layout, building, and unit design, along with consideration of other financing issues, which warrant a modest change in the composition of the housing plan.

Approval

Based on the above, HUD hereby approves Revision #3 to the Housing Plan, as reflected on Chart #3, above, and on the enclosed Housing Plan Revision #3 workbook. This approved change must be reflected in the CN Inform System as soon as possible. Please coordinate with your HUD Team Coordinator, along with your ICF contact, to ensure that changes are appropriately made.

Should you have any questions, please contact your Team Coordinator, Nathan Mishler, at nathan.e.mishler@hud.gov.

Sincerely,

Luci Ann Blackburn

Luci Blackburn
Director, Choice Neighborhoods Program
Office of Public Housing Investments

Enclosure