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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

OHG FL Lee III Colonial LP,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2025-020VW
Application No. 2024-563BC

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-21.003 (1)(b) (eff. 08/27/2024) AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS (REV. 06-2024)

Petitioner OHG FL Lee III Colonial LP (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of the prohibition under Rule 67-21.003(1)(b), Florida Administrative Code ("F.A.C.") (08/27/2024) and the incorporated Non-Competitive Application Instructions (collectively, the "Rules") against exceeding 300 units for developments requesting Corporation-issued MMRB with 4 percent HC. As discussed in more detail below, Petitioner has already been awarded $20 million Community Development Block Grant Disaster Recovery ("CDBG-DR") from Lee County and the award is tied to a unit count of 358 units. If this waiver request is denied, and Petitioner is required to reduce the number of affordable housing units provided through this development, Petitioner would be at risk of losing the CDBG-DR award from Lee County. Petitioner therefore respectfully seeks a waiver of the Rule. In support of this request, 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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999 Vanderbilt Beach Road
Ste 300
Naples, FL 34108
Email : acribbs@ondagrp.com
Phone: 239-372-5807

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: Wave at Colonial
- Development Address: 11800 FL-82, Fort Myers, FL 33913
- County: Lee
- Developer: OHG FL Lee III Colonial Developer LLC
- Number of Units: 358 (new construction)
- Type: Mid-Rise 4-stories

- Set Asides: 100% at or below 60% AMI (MMRB commitment: 40% at or below 60% AMI)
- Demographics: Family
- Funding: $69,660,000.00 (Corporation issued MMRB); $5,673,365.00 (4% HC)

D. THE RULE FROM WHICH WAIVER IS REQUESTED.

6. Petitioner also requests a waiver of Rule 67-21.003(1)(b), F.A.C. (8/27/24) which provides in pertinent part:

> (1) Unless otherwise set forth in a competitive solicitation pursuant to rule Chapter 67-60, F.A.C., Applicants shall apply for 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 Non-Competitive HC or a combination of MMRB and Non-Competitive HC, and funding from the Predevelopment Loan Program (PLP) will not be considered to be other Corporation funding.
>
> ***
>
> (b) If the NC Award will not be 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. The Non-Competitive Application Package or NCA (Rev. 06-2024) 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-16897, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

Id. Rule 67-21.003(1)(b), F.A.C. (8/27/24) incorporates by reference the Non-Competitive Application Package (Rev. 06-2024) ("NCA"). The NCA includes the following requirement:

> 9. Units and Buildings;
>
> a. State the total number of units in the proposed Development.
>
> Note: the following unit limit applies only to Applications requesting Corporation-issued MMRB with 4 percent HC:
>
> - Proposed Developments with a Development Category of new construction, Redevelopment, or

acquisition and Redevelopment **may not exceed 300 total units**.

Id. at page 8 (emphasis added).

E. STATUTES IMPLEMENTED BY THE RULE.

7. Rules 67-21.003(1)(b) 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.

8. 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 RULES.

9. Petitioner submitted a non-competitive application for the Development on April 02, 2025.

10. The Development has already been awarded $20 million of CDBG-DR from Lee County, which funding is contingent upon the number of units identified, which exceeds the 300 unit maximum imposed by the Rule. If this Petition is denied, the number of affordable housing units provided by this Development must be decreased, and Petitioner is at risk of losing its funding.

11. If the Petition is granted, Petitioner would be able to recognize greater economies of scale by developing at a higher number of units,[1] which is critical due to the separate requirements of the funding. Specifically, Davis Bacon wages will be required and, to offset that increase in cost, Petitioner needs a greater amount of units. Petitioner also needs the additional units to allow for additional permanent loan proceeds on each unit.

12. Petitioner tried to find other means for satisfying the Rule while maintaining the financial feasibility of the Development. However, had Petitioner limited the Development to less than 300 units, Petitioner would have jeopardized its ability to successfully be awarded CDBG-DR, which is the key component of soft funding needed in order to close and begin construction on the Development.

13. If the Petition is denied, the project will lose $20 million and Lee County would have to move extremely quickly to possibly place that money with another project, or it would expire due to CDBG-DR requirements. Put simply, granting this Petition is safest and fastest way to ensure that 358 affordable housing units become available in Lee County. The Development is not feasible without these funds and would prohibit 358 units from coming to the market and assisting with people who were displaced due to the Hurricanes in Lee County. This is extremely important due to the fact that there is an ~80% difference in the spread to market of surrounding market rate product.

14. 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

[1] The greater unit count allows Petitioner to spread its fixed construction costs over more units, and the additional revenue from the added units offsets increased fixed operating expenses, thereby reducing the per-unit costs and expenses.

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,[2] 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.

15. If the unit cap under the Rule is imposed, Petitioner will suffer a substantial hardship as the result of circumstances beyond its control.

16. Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state," would still be achieved if the waiver is granted. §420.5099, Fla. Stat.

17. For the foregoing reasons, Petitioner meets the standards for the requested waiver.

18. The waiver will not adversely impact the Florida Housing, Development, nor other participants in funding programs administered by Florida Housing.

G. ACTION REQUESTED.

19. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver and allow Petitioner to exceed 300 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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150 West Flagler Street, 22nd Floor
Miami, Florida 33131

[2] "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.

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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 a copy served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 23rd day of April, 2025.

By: */s/ Brian J. McDonough*