

STEARNS WEAVER MILLER  
WEISSLER ALHADEFF & SITTERSON, P.A.

Patricia K. Green  
150 West Flagler Street, Suite 2200  
Miami, FL 33130  
Direct: (305) 789-3345  
Fax: (305) 789-2621  
Email: pgreen@stearnsweaver.com

April 7, 2015

**Via FedEx**

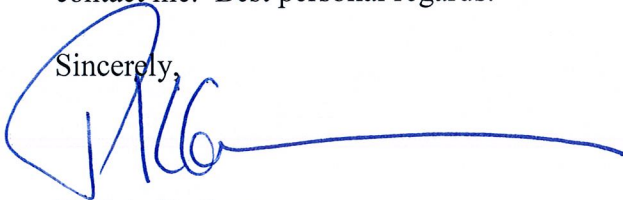
Ms. Ashley Black  
Corporation Clerk  
Florida Housing Finance Corporation  
227 N. Bronough St.  
Suite 5000  
Tallahassee, Florida 32301

**RE: Petition for Rule Waiver**

Dear Ms. Black:

Enclosed is a Petition for Rule Waiver, submitted on behalf of River Oaks Partners, Ltd., for consideration by the Board at its next meeting. I have sent a duplicate copy to the Joint Administrative Procedures Committee. Should you have any questions, please do not hesitate to contact me. Best personal regards.

Sincerely,



Patricia K. Green

PKG/zs  
Enclosures

cc: Joint Administrative Procedures Committee (with Enclosure)

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FLORIDA HOUSING  
FINANCE CORPORATION

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2015-015VW  
Non-Competitive HC; Application Not Yet Submitted

RIVER OAKS PARTNERS, LTD.

Petitioner,  
vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.  
\_\_\_\_\_ /

**PETITION FOR WAIVER OF RULE 67-21.027(3)  
PERTAINING TO ALTERATIONS OF DWELLING UNITS**

Petitioner, River Oaks Partners, Ltd., a Florida limited partnership (“Petitioner”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of Florida Administrative Code Section 67-21.027(3) (the “Rule”), which provides that, to the extent that a Housing Credit Development is not otherwise subject to Section 504 of the Rehabilitation Act of 1973 and its related regulations (“Section 504 and its related regulations”), as implemented by 24 CFR, Part 8 (“Part 8”), the Housing Credit Development shall nevertheless comply with Section 504 and its related regulations as requirements of the Housing Credit Program, to the same extent as if the Housing Credit Development were subject to Section 504 and its related regulations.

**A. THE PETITIONER**

1. The name, address, telephone and facsimile numbers, and email address for Petitioner and its qualified representative for Petitioner are:

River Oaks Partners, Ltd.  
Attention: Mara S. Mades  
2100 Hollywood Boulevard  
Hollywood, FL 33020  
Telephone: 305-443-8288  
Facsimile: 305-443-9339  
E-mail: mara.mades@cornerstonegrp.com

2. The name, address, telephone and facsimile numbers, and e-mail address of Petitioner's attorney, for purposes of this Petition, are:

Brian J. McDonough, Esquire  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
150 West Flagler Street  
Miami, Florida 33130  
Telephone: 305-789-3350  
Facsimile: 305-789-3395  
E-mail: bmcdonough@stearnsweaver.com

## **B. THE DEVELOPMENT**

3. Petitioner intends to acquire and renovate an existing 160-unit multifamily affordable housing complex, including a clubhouse and related amenities, known as River Oaks Apartments (the "Development") located in Miami-Dade County, Florida.

4. The Housing Credits to be awarded to Petitioner, together with other sources which include a loan from the Housing Finance Authority of Miami-Dade County (Florida) the "HFA"), sourced by the HFA from the issuance of its multifamily mortgage revenue bonds, will provide funds for the acquisition and renovation of the Development.

5. The requested waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in a substantial economic hardship to Petitioner; (b) could result in delay in completing renovations to, or possibly a complete failure to acquire and renovate, the Development; (c) could deprive Miami-Dade County, Florida of essential

affordable housing units in a timely and efficient manner and (d) would violate principles of fairness<sup>1</sup>. § 120.542(2), F.S.

6. The waiver being sought is permanent in nature.

**C. Rule from Which Relief is Requested and Statute Implemented by the Rule**

7. Petitioner realleges and incorporates Paragraphs 1 through 6 as though fully set forth herein.

8. Petitioner requests a waiver of the Rule, which provides, in relevant part, as follows:

**All Housing Credit Developments must comply with the Fair Housing Act as implemented by 24 CFR Part 100, Section 504 of the Rehabilitation Act of 1973 as implemented by 24 CFR Part 8 (“Section 504 and its related regulations”), and Titles II and III of the Americans with Disabilities Act of 1990 as implemented by 28 CFR Part 35. To the extent that a Housing Credit Development is not otherwise subject to Section 504 and its related regulations, the Housing Credit Development shall nevertheless comply with Section 504 and its related regulations as requirements of the Housing Credit Program to the same extent as if the Housing Credit Development were subject to Section 504 and its related regulations in all respects. To that end, for purposes of the Housing Credit Program, a Housing Credit Allocation shall be deemed “Federal financial assistance” within the meaning of that term as used in Section 504 and its related regulations for all Housing Credit Developments.**

Section 504 and its related regulations require that five percent (5%) of the units in a multifamily housing project be readily accessible to and usable by individuals with mobility impairments, to the maximum extent feasible. However, the phrase “to the maximum extent feasible” shall not be interpreted as requiring that a HUD recipient make a dwelling unit accessible if doing so would impose undue financial burdens on the project. *See* 24 CFR Part 8, Section 8.23(b).

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<sup>1</sup>“Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. “Principles of Fairness” are violated when 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. Section 120.542(2), Florida Statutes.

9. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that designates Florida Housing as the agency responsible for the allocation and distribution of low-income housing tax credits. *See* Section 420.5099, F.S. (the “Statute”).

10. Section 8.2 of Part 8 provides that it applies to all applicants for, and recipients of, HUD assistance. Because Petitioner is not receiving HUD assistance in the operation of programs or activities at the Development, Section 504 and its related regulations are not applicable to Petitioner. However, under the Rule, compliance with Section 504 and its related regulations is nevertheless required, as if Section 504 were applicable to the Development. Petitioner is seeking a waiver of that aspect of the Rule. If a recipient of HUD assistance, to whom Section 504 would be federally applicable, would be exempted due to the “undue financial burden” placed on the project, Florida Housing should also recognize and grant an exemption from its Rule, for the same reasons.

**D. Justification for Petitioner’s Requested Waiver**

11. Petitioner realleges and incorporates Paragraphs 1 through 10 as though fully set forth herein.

12. 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 these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when (1) the person who is subject to the rule demonstrates that the application of the rule would 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. § 120.542(2), Fla. Stat. (2011).

13. In this instance, Petitioner meets the standards for a waiver.

14. Petitioner's planned renovations to the Development include new roofs, windows, doors, cabinetry and appliances, as well as improvements to the HVAC and other building systems, and substantial improvements to the clubhouse. Petitioner requests a waiver from the Rule, in order to allow for such renovations to the Development, without the requirement that additional structural, electrical and plumbing alterations be effected in order to retrofit at least five percent (i.e., eight) of the residential units in accordance with the Uniform Federal Accessibility Standards ("UFAS") that are incorporated into Rule 504 and its related regulations.

15. The alterations that would be required to render the kitchens in eight (8) units accessible in accordance with UFAS would necessitate the relocation of water lines and electrical panels, resulting in the breaking-out of the building slab and the enlargement of interior walls to accommodate the relocated lines, and the relocation of all appliances and their electrical connections. Since the lines are run vertically through the building, square footage of additional units on the second floor would be reduced as a result of the enlargement of interior walls to accommodate the relocated lines, even though those units would not be included in the count of UFAS-compliant apartments. Further, the existing bathroom design in the Development does not accommodate the UFAS-required radius turn for wheelchairs and such space cannot be created without similarly relocating all of the water, sanitary and electrical lines, repositioning the bathtub and other fixtures, and enlarging the walls by invading the master bedroom and its closet area, also affecting the second story units and making those apartments smaller and less attractive. The Petitioner is constrained by the original design and location of the Development and its existing building systems. It should be noted that the Petitioner is providing four (4) units designed for residents with visual or auditory disabilities in the Development.

16. Section 504 and its related regulations recognize the limitations inherent in alterations of existing facilities, and provide an exemption from compliance when performance is not feasible. 24 CFR Part 8, Section 8.23 (b), pertaining to alterations of existing housing facilities, provides that compliance with the five-percent accessibility standard may be exempted when doing so would impose undue financial burdens on the project. In this instance, doing so makes the Development financially unfeasible.

17. The cost of breaking through the building slab, relocating electrical panels, rerouting water and sewer lines, redesigning the location of appliances and fixtures and enlarging walls to accommodate rerouted systems, together with other alterations not enumerated herein that would be necessary to render any of the units in the Development compliant with UFAS as it is incorporated into Section 504 and its related regulations, is prohibitive. The Petitioner cannot feasibly renovate an existing property with its inherent space and design limitations and stay within the Development's construction budget.

18. If the relief sought pursuant to this Petition is not granted, Petitioner will suffer substantial hardship. Imposing the design and construction changes required by Section 504 and its related regulations will result in the the inability of the Petitioner to acquire and renovate the Development as planned, causing the Development to fail for lack of sufficient construction funding sources and depriving Miami-Dade County of essential affordable housing units in a timely and efficient manner.

**E. Conclusion**

19. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be

granted when (a) the applicant subject to the rule demonstrates that strict application would create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. §120.542(2), Fla. Stat. (2011).

20. The requested waiver will not adversely impact Petitioner, the Development, any other party that may apply to receive an allocation of non-competitive 2015 Housing Credits, or Florida Housing.

21. A denial of the requested waiver could result in a substantial hardship for Petitioner which would be unable to acquire and renovate the Development.

22. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing. The goal of providing one hundred sixty units of affordable housing in Miami-Dade County, Florida will be achieved through the waiver requested in this Petition, with no detriment to any party. Granting of the requested waiver will serve the underlying purpose of Chapter 420, Part V, Florida Statutes by facilitating the development of multifamily housing that is affordable to households of limited means.

24. Should Florida Housing require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

WHEREFORE, Petitioner, River Oaks Partners, Ltd., respectfully requests that the Florida Housing Finance Corporation provide the following relief:

- A. Grant the Petition and all relief requested herein; and



B. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

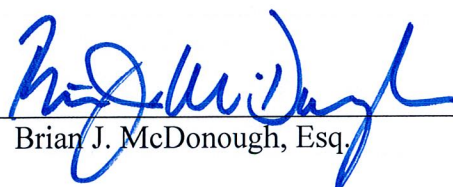
STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
Counsel for River Oaks Partners, Ltd.  
150 West Flagler Street, Suite 150  
Miami, Florida 33131  
Tel: (305) 789-3350  
Fax: (305) 789-3395  
E-mail: [bmcdonough@swmwas.com](mailto:bmcdonough@swmwas.com)

By: \_\_\_\_\_

  
BRIAN J. MCDONOUGH, ESQ.

**CERTIFICATE OF SERVICE**

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 7<sup>th</sup> day of April, 2015.

By:  \_\_\_\_\_  
Brian J. McDonough, Esq.