

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**FHFC CASE NO. 2023-060VW_
APPLICATION NO.: 2022-104B**

KISSIMMEE LEASED HOUSING
ASSOCIATES III, LLLP

Petitioner

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

**PETITION FOR WAIVER OF RULE 67-21.003(1)(b) AND NON-COMPETITIVE
APPLICATION PACKAGE (REV. 04-2022)**

Pursuant to section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, KISSIMMEE LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership (“Petitioner”), by and through its undersigned counsel, hereby petitions FLORIDA HOUSING FINANCE CORPORATION (the “Corporation”) for a waiver of the prohibition, pursuant to the Non-Competitive Application Package (REV. 04-2022) (the “Application”), as such is incorporated into Rule 67-21.003(1)(b), F.A.C. (2022), against Applications requesting Corporation-issued MMRB with 4 percent HC from proposed developments exceeding 300 units (the “Unit Restriction”). This Petition is filed pursuant to Section 120.542 of the Florida Statutes and Chapter 28-104, Florida Administrative Code. In support of this Petition, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone number and e-mail address of Petitioner are:

Kissimmee Leased Housing Associates III, LLLP
401 E Jackson St., Suite 3300
Tampa, Florida 33602
Attn: Devon Quist
Telephone: (813) 582-4261
Email: devon.quist@dominiuminc.com

2. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address of Petitioner's counsel are:

David F. Leon, Esq.
Nelson Mullins Riley and Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 669-4276
Facsimile: (407) 650-0979
Email: david.leon@nelsonmullins.com

B. THE DEVELOPMENT

3. The Petitioner requested multifamily mortgage revenue bonds and 4% housing credits for financing to construct a development located in Poinciana, Florida. This application was originally submitted under Dominion Poinciana Family, which was reinstated and the Development Name was subsequently changed to Maison at Solivita Marketplace (the "Development"). The proposed Development would consist of 396 units.

C. THE RULE FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rule 67-21.003(1)(b), F.A.C. (2022) which adopts and incorporates the Non-Competitive Application Package (Rev. 04-2022) (the "Rule"). Specifically, Petitioner is seeking a waiver from Section A.9(a) of the Non-Competitive Application Package, which prohibits proposed developments requesting Corporation-issued

MMRB with 4 percent HC with a development category of new construction from exceeding 300 total units.

5. Rule 67-21.003(1)(b), F.A.C. (2022) provides, in relevant part:

(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 in effect at the time the Applicant submits the Application. The Non-Competitive Application Package or NCA (Rev. 04-2022) 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 *****.flrules.org/Gateway/reference.asp?No=Ref-14387, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

6. Section A.9.(a) of the Non-Competitive Application Package provides, in relevant part:

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**. (emphasis added)

D. STATUTES IMPLEMENTED BY THE RULE

7. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. *See* §§ 420.509, 420.5099, *Fla. Stat.* (the "Statute").

8. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of

such rules would lead to unreasonable, unfair and unintended results in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals 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.*

E. JUSTIFICATION FOR GRANTING THE WAIVER

9. Petitioner is seeking a waiver of the Rule that prohibits them from requesting Corporation-issued Multifamily Mortgage Revenue Bonds (MMRB) with 4 percent Housing Credit (HC) financing for a proposed development that exceeds 300 units. The Petitioner intends to restrict 100% of the units at 60% of the Area Median Income (AMI), and the project is nearly ready for construction, with a planned closing in September of this year, thanks to an existing index lock agreement. The Petitioner acquired the land in July 2022 and has already started the bidding process with local subcontractors for the architectural plans.

10. The current Rule requires developments with over 300 units to seek financing in two separate phases. This necessitates having one owner, two bond issuances, and the accompanying legal documentation, two 42M letters, and one Limited Partner Agreement. Additionally, both phases would need to meet compliance requirements, including unit inspections and tenant file reviews, effectively doubling the project's costs.

11. Due to recent increases in construction prices and a 200 basis points (bp) rise in the 10-year treasury rate over the past few months, having a larger number of units is crucial for the financial feasibility of this Project, based on economies of scale. We can provide a market study to support this claim. Economies of scale play a vital role in the financial viability of the Project due to various fixed costs associated with construction, such as the clubhouse, playground,

maintenance shed, signage, furniture, fixtures, and equipment (FF&E), fitness equipment, etc. Additionally, there are fixed costs related to financing fees and professional services. By spreading these costs over more units, the additional revenue generated from rent and other income offsets the expenses.

12. Enforcing the Unit Restriction would result in substantial excessive costs and lost revenue for the Petitioner. If the Project were reduced from 396 to 300 units, mortgage proceeds would decrease by \$12,540,000. Moreover, development costs per unit would increase. With 396 units, the development costs per unit amount to \$419,131, whereas with 300 units, it would rise to \$433,327. Consequently, the Petitioner would have to bear additional costs of \$14,196 per unit for a 300-unit project. Since this Project is financed solely through bonds and housing credits, subsidy would be required to cover the additional development costs and revenue loss.

13. In this particular case, the Petitioner satisfies the criteria for a waiver of the Rule. The Corporation has the authority, as per Section 120.542(1) of the Florida Statutes, to grant relief from its rules if strict application would lead to unreasonable, unfair, or unintended outcomes in specific instances. Unless the Rule is waived to allow the proposed changes outlined above, the Petitioner and the Development would face significant hardships and encounter unreasonable and unintended consequences. To avoid the logistical and financial challenges mentioned above, the Petitioner requests a waiver to exceed the maximum number of units requirement. Granting this waiver would enable the applicant to provide more affordable housing options to the State of Florida.

14. The requested waiver of the Rule serves the purpose of the Statute that is implemented by the Rule. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in facilities for persons of

low-income. The purpose of the creation of the Housing Tax Credit Program and Multifamily Mortgage Revenue Bonds Program is to stimulate creative private sector initiatives to increase the supply of affordable housing. Within Poinciana, there are only three existing LIHTC projects, one of which is restricted to 55+ residents and another consisting of affordable and market rate units. By granting this waiver and permitting Petitioner to construct a 396-unit development, as requested in this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

E. WAIVER IS PERMANENT

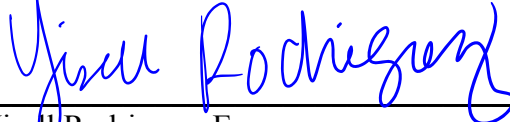
15. The waiver being sought is permanent in nature.

G. ACTION REQUESTED

16. For the reasons set forth herein, Petitioner respectfully requests the Corporation (i) grant the requested waiver of Section A.9(a) of the Application, as such is incorporated by Rule 67-21.003(1)(b), F.A.C., (ii) grant the Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted on the 5th day of July, 2023.

Respectfully submitted,



Yisell Rodriguez, Esq.

Fla. Bar No. 117915

David F. Leon, Esq.

Fla. Bar No. 053929

NELSON MULLINS RILEY & SCARBOROUGH
LLP

390 N. Orange Avenue, Suite 1400

Orlando, Florida 32801

Telephone: (407) 669-4200

Facsimile: (407) 425-8377

Email: yisell.rodriguez@nelsonmullins.com

david.leon@nelsonmullins.com

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

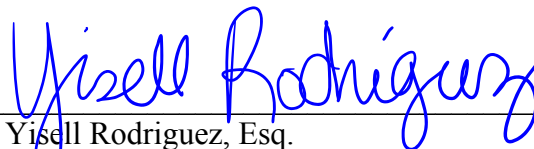
I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org,

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

The 5th day of July, 2023.

By:



Yisell Rodriguez, Esq.
Fla. Bar No. 117915