

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**IN RE: MONTEREY POINTE APARTMENTS 2001-525C
BONITA POINTE APARTMENTS 2003-523C
ALHAMBRA COVE APARTMENTS 2005-502C
HIBISCUS POINTE APARTMENTS 2003-521C
TUSCANY PLACE APARTMENTS 2003-528C
MARBRISA APARTMENTS 2000-536C
DORAL TERRACE APARTMENTS 1999-510C
ST. CROIX APARTMENTS 2002-528C
HERON POINTE APARTMENTS 1998-
LAGUNA POINTE APARTMENTS 2002-526C
EAGLE POINTE APARTMENTS 2002-545C
HARBOUR COVE APARTMENTS 2003-526C
THE POINTE AT BANYAN TRAILS 2000-540C
SANCTUARY COVE APARTMENTS 2003-525C
PORTOFINO APARTMENTS 2002-544C
INDIAN TRACE APARTMENTS 2002-531C
RENAISSANCE APARTMENTS 2003-520C
MARINER'S COVE APARTMENTS 2002-530C
CLIPPER COVE APARTMENTS 2000-539C
BRISTOL BAY APARTMENTS 2003-518C
CLIPPER BAY APARTMENTS 2003-535C
CAROLINA CLUB APARTMENTS 2001-526C**

FHFC Case No 2017-015VW

**PETITION FOR WAIVER OF RULE 67-21.027(1), RULE 67-21.029,
RULE 67-21.031(2) AND RULE 67-48.010(12)
TO PERMIT PETITIONERS TO SUBMIT QUALIFIED CONTRACT PACKAGES
OR, IN THE ALTERNATIVE,
TO MODIFY UNIT AFFORDABILITY SET-ASIDES
UPON THE EXPIRATION OF THE EXTENDED USE PERIOD**

Each of the following entities (each, a "Petitioner", and collectively, the "Petitioners") hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-21.027(1), Rule 67-21.029(1), Rule 67-21.031(2), and Rule 67-48.010(12), Florida Administrative Code, in order to permit Petitioners:

- A. to submit a Qualified Contract Package (a “QCP”) to the Corporation with respect to any of the Developments hereinafter identified; or
- B. in the alternative, if any Petitioner elects not to submit a QCP to the Corporation for a particular Development, to adjust the rental income set-asides which are applicable to said Development at the end of the initial thirty (30)-year period commencing the first day of the first taxable year of the Credit Period (as defined in the Extended Low Income Housing Agreement (“ELIHA”) entered into by each Petitioner).

In support of this petition, the Petitioners state:

A. THE PETITIONERS

- 1. The name, address, telephone and facsimile numbers, and email address for each of the Petitioners and their qualified representative are:

Petitioners’ names:

MONTEREY POINTE ASSOCIATES, LTD.
BONITA POINTE ASSOCIATES, LTD.
HIBISCUS POINTE ASSOCIATES, LTD.
ALHAMBRA COVE ASSOCIATES, LTD.
TUSCANY PLACE ASSOCIATES, LTD.
MARBRISA ASSOCIATES, LTD.
DORAL TERRACE ASSOCIATES, LTD.
ST. CROIX ASSOCIATES, LTD.
HERON POINTE ASSOCIATES, LTD.
LAGUNA POINTE ASSOCIATES, LTD.
EAGLE POINTE ASSOCIATES, LTD.
HARBOUR COVE ASSOCIATES, LTD.
BANYAN POINTE ASSOCIATES, LTD.
SANCTUARY COVE ASSOCIATES, LTD.
PORTOFINO ASSOCIATES, LTD.
INDIAN TRACE ASSOCIATES, LTD.
BEAR LAKES ACQUISITION, LTD.
MARINER’S ASSOCIATES, LTD.
CLIPPER COVE ASSOCIATES, LTD.
BRISTOL BAY ASSOCIATES, LTD.
CLIPPER BAY ASSOCIATES, LTD.
CAROLINA CLUB ASSOCIATES, LTD.

All Petitioners have the following address:

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2. For purposes of this Petition, the address, telephone number and facsimile number of the Petitioners' attorney is:

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Stearns Weaver Miller Weissler
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B. BACKGROUND

3. Each of the respective Petitioners submitted an Application in the relevant year pertaining to their respective properties, pursuant to Rule 67-21.003, Florida Administrative Code, for non-competitive housing tax credits (the "Credits") and Rule 67-48.004, Florida Administrative Code, for State Apartment Incentive Loan funding (the "SAIL") to finance the acquisition and construction of the following developments (each, a "Development" and collectively, the "Developments"):

<u>Petitioner</u>	<u>Development</u>
MONTEREY POINTE ASSOCIATES, LTD.	MONTEREY POINTE APARTMENTS
BONITA POINTE ASSOCIATES, LTD.	BONITA POINTE APARTMENTS
HIBISCUS POINTE ASSOCIATES, LTD.	HIBISCUS POINTE APARTMENTS
TUSCANY PLACE ASSOCIATES, LTD.	TUSCANY PLACE APARTMENTS
ALHAMBRA COVE ASSOCIATES, LTD.	ALHAMBRA COVE APARTMENTS

MARBRISA ASSOCIATES, LTD.
DORAL TERRACE ASSOCIATES, LTD.
ST. CROIX ASSOCIATES, LTD.
HERON POINTE ASSOCIATES, LTD.
LAGUNA POINTE ASSOCIATES, LTD.
EAGLE POINTE ASSOCIATES, LTD.
HARBOUR COVE ASSOCIATES, LTD.
BANYAN POINTE ASSOCIATES, LTD.
SANCTUARY COVE ASSOCIATES, LTD.
PORTOFINO ASSOCIATES, LTD.
INDIAN TRACE ASSOCIATES, LTD.
BEAR LAKES ACQUISITION, LTD.
MARINER'S ASSOCIATES, LTD.
CLIPPER COVE ASSOCIATES, LTD.
BRISTOL BAY ASSOCIATES, LTD.
CLIPPER BAY ASSOCIATES, LTD.
CAROLINA CLUB ASSOCIATES, LTD.

MARBRISA APARTMENTS
DORAL TERRACE APARTMENTS
ST. CROIX APARTMENTS
HERON POINTE APARTMENTS
LAGUNA POINTE APARTMENTS
EAGLE POINTE APARTMENTS
HARBOUR COVE APARTMENTS
THE POINTE AT BANYAN TRAILS
SANCTUARY COVE APARTMENTS
PORTOFINO APARTMENTS
INDIAN TRACE APARTMENTS
RENAISSANCE APARTMENTS
MARINER'S COVE APARTMENTS
CLIPPER COVE APARTMENTS
BRISTOL BAY APARTMENTS
CLIPPER BAY APARTMENTS
CAROLINA CLUB APARTMENTS

4. As noted below, following the issuance of the final Credit allocation for each Development, Petitioners made a commitment to set aside units in the Developments for the affordability period set forth on the chart below (the "Extended Use Period"), as evidenced by the ELIHA for the applicable Development. Additionally, at the time of the closing of the SAIL financing, Petitioners entered into a Land Use Restriction Agreement (the "LURA") for each Development memorializing certain unit set asides and affordability requirements for a period of 50 years.

<u>Development</u>	<u>Current Extended Use Period</u>
MONTEREY POINTE APARTMENTS	50 years
HIBISCUS POINTE APARTMENTS	50 years
TUSCANY PLACE APARTMENTS	50 years
MARBRISA APARTMENTS	50 years
DORAL TERRACE APARTMENTS	40 years
ST. CROIX APARTMENTS	50 years
HERON POINTE APARTMENTS	45 years
LAGUNA POINTE APARTMENTS	50 years
EAGLE POINTE APARTMENTS	50 years

HARBOUR COVE APARTMENTS	50 years
THE POINTE AT BANYAN TRAILS	50 years
SANCTUARY COVE APARTMENTS	50 years
PORTOFINO APARTMENTS	50 years
INDIAN TRACE APARTMENTS	50 years
RENAISSANCE APARTMENTS	50 years
MARINER'S COVE APARTMENTS	50 years
CLIPPER COVE APARTMENTS	50 years
BRISTOL BAY APARTMENTS	50 years
CLIPPER BAY APARTMENTS	50 years
CAROLINA CLUB APARTMENTS	50 years
BONITA POINTE APARTMENTS	30 years
ALHAMBRA COVE APARTMENTS	30 years

5. Petitioners now seek a waiver of the provisions of Rule 67-21.027(1), Rule 67-21.029(1), Rule 67-21.031(2), and Rule 67-48.010(12) F.A.C. (collectively, the "Rule"), in order to be able to (a) submit a QCP to the Corporation in connection with each of the Developments, or, (b) as to those Developments which Petitioners desire to retain and not submit to the QCP process, to modify the income restrictions on the Developments at the end of the initial thirty (30)-year period commencing the first day of the first taxable year of the Credit Period, which restrictions shall remain in place for the remainder of the Extended Use Period for the applicable Development. Petitioners recognize that a grant of this Petition will require an amendment to the recorded ELIHA and LURA for each Development.

6. As noted in Paragraph 12 below, Petitioners are willing to retain at the Adjusted Affordability Limits set forth in Paragraph 12, rather than eliminate, the affordable nature of any Development entered into the QCP process and not sold (because no Qualified Contract is presented).

C. RULES FROM WHICH WAIVER IS SOUGHT

7. Petitioner requests a waiver of Rule 67-21.027(1), Florida Administrative Code, which, in relevant part, provides as follows:

(1) “.....Further, each Housing Credit Development shall comply with any additional Housing Credit Set-Aside chosen by the Applicant in the Application.”

8. Petitioner requests a waiver of Rule 67-21.029(1), Florida Administrative Code, which, in relevant part, provides as follows:

(1).... the Corporation shall enter into an Extended Use Agreement. The purpose of the Extended Use Agreement is to set forth the Housing Credit Extended Use Period, the Compliance Period, and to evidence commitments made by the Applicant in the Application or subsequently agreed to by the Corporation.”

9. Petitioner requests a waiver of Rule 67-21.031(2), Florida Administrative Code, which, in relevant part, provides as follows:

“(2) After the fourteenth year of the Compliance Period, unless otherwise obligated under the Extended Use Agreement, or a Land Use Restriction Agreement under another Corporation program, and provided the right to request a qualified contract for the Development was not waived in exchange for or in connection with the award of Housing Credits, the owner of a Development may submit a qualified contract request to the Corporation.”

10. Petitioner requests a waiver of Rule 67-48.010(12), Florida Administrative Code, which, in relevant part, provides as follows:

(12)The Corporation shall monitor compliance of all terms and conditions of the SAIL loan and shall require that certain terms and conditions be embodied in the Land Use Restriction Agreement...”

D. STATUTES IMPLEMENTED BY THE RULE

11. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that designated the Corporation as the housing credit agency responsible for the allocation and administration of Low-Income Housing Tax Credits. See Section 420.5099, Florida Statutes.

E. PETITIONER REQUESTS A WAIVER FROM THE RULE FOR THE FOLLOWING REASONS

12. Petitioners request a waiver of the Rule in order to be able to submit a QCP to the Corporation, which would typically then provide an opportunity to sell the Development to a

buyer willing to maintain the existing affordability set-asides or failing that, the ability of the Petitioner to transition to market-rate housing over a period of three (3) years; however, notwithstanding applicable laws which permit a property to transition to market-rate rents if the QCP process fails to result in a sale, the Petitioners have agreed to retain certain affordability set-asides on the Developments not sold in the QCP process, such that (other than with respect to the six Developments described in Paragraph 14 below) ten percent (10%) of the units in each Development not sold pursuant to the QCP process would be available to residents earning at or below the applicable Extremely Low Income (“ELI”) Area Median Income as listed in the Corporation’s Request for Application 2016-109, ten percent (10%) of the units in each Development not sold pursuant to the QCP process would be available to residents earning at or below fifty percent (50%) of the applicable Area Median Income and eighty percent (80%) of the units in each Development not sold pursuant to the QCP process would be available to residents earning at or below eighty percent (80%) of the Area Median Income (such adjusted set-asides being hereinafter referred to as the “Adjusted Affordability Limits”).

13. Additionally, regarding any Developments for which a QCP is not submitted to the Corporation, Petitioners also request a waiver of the Rule in order to permit Petitioners to modify the income restriction set-asides to the Adjusted Affordability Limits set forth in Paragraph 12 above, and the Development-specific limits set forth in Paragraph 14 below, at the end of the initial thirty (30)-year period commencing the first day of the first taxable year of the Credit Period, which restrictions shall remain in place for the remainder of the Extended Use Period for the applicable Development.

14. The following six Developments have existing units which are currently set aside for ELI residents. Therefore, the Adjusted Affordability Limits described in Paragraphs 12 and

13 above need to be modified for these Developments. The Petitioners that own the following six Developments are willing to agree to the following modified affordability set-aside limits if said Developments are not sold pursuant to the QCP process, or in the alternative, at the end of the initial thirty (30)-year period commencing the first day of the first taxable year of the Credit Period if the Petitioner elects not to submit a QCP to the Corporation:

a. Clipper Bay Apartments:

- i) 14 ELI units (already existing), with ELI set-asides retained in perpetuity (50 years) despite the fact that ELI restrictions would otherwise expire in accordance with their terms;
- ii) 14 ELI units (5% of the units) available to residents earning at or below forty percent (40%) of the applicable Area Median Income;
- iii) 28 units (i.e., 10% of the units) available to residents earning at or below fifty percent (50%) of the applicable Area Median Income; and
- iv) 220 units (i.e., 80% of the units) available to residents earning at or below eighty percent (80%) of the applicable Area Median Income.

b. Portofino Apartments:

- i) 48 ELI units (already existing), with ELI set-asides retained on 27 units in perpetuity (50 years) despite the fact that ELI restrictions would otherwise expire in accordance with their terms;
- ii) 6 units plus 21 of the ELI units referenced in i), above, upon expiration of the original ELI set-aside period, for a total of 27 units (i.e., 10% of the units) available to residents earning at or below fifty percent (50%) of the applicable Area Median Income; and
- iii) 202 units (i.e., 75% of the units) available to residents earning at or below eighty percent (80%) of the applicable Area Median Income.
- iv) 14 units (already existing) will continue to be available at market rents.

c. Bristol Bay Apartments:

- i) 15 ELI units (already existing), with ELI set-asides retained in perpetuity (50 years) despite the fact that ELI restrictions would otherwise expire in accordance with their terms;

- ii) 15 ELI units (i.e., 5% of the units) available to residents earning at or below forty percent (40%) of the applicable Area Median Income;
- ii) 30 units (i.e., 10% of the units) available to residents earning at or below fifty percent (50%) of the applicable Area Median Income; and
- iii) 240 units (i.e., 80% of the units) available to residents earning at or below eighty percent (80%) of the applicable Area Median Income.

d. Mariner's Cove Apartments:

- i) 45 ELI units (already existing), with ELI set-asides retained on 21 units in perpetuity (50 years) despite the fact that ELI restrictions would otherwise expire in accordance with their terms;
- ii) 21 of the ELI units referenced in i), above, upon expiration of the original ELI set-aside period, (i.e., 10% of the remaining units) available to residents earning at or below fifty percent (50%) of the applicable Area Median Income; and
- iii) 162 units plus 3 of the ELI units referenced in i), above, upon expiration of the original ELI set-aside period, for a total of 166 units (i.e., 80% of the units) available to residents earning at or below eighty percent (80%) of the applicable Area Median Income.

e. Indian Trace Apartments:

- i) 33 ELI units (already existing), with ELI set-asides retained in perpetuity (50 years) despite the fact that ELI restrictions would otherwise expire in accordance with their terms;
- ii) 33 units (i.e., 10% of the remaining units) available to residents earning at or below fifty percent (50%) of the applicable Area Median Income; and
- iii) 264 units (i.e., 80% of the remaining units) available to residents earning at or below eighty percent (80%) of the applicable Area Median Income.

(f) Carolina Club Apartments:

- (i) 33 ELI units (already existing), with ELI set-asides retained on 23 units in perpetuity (50 years) despite the fact that ELI restrictions would otherwise expire in accordance with their terms;
- iv) 12 units plus 10 of the ELI units referenced in i), above, upon expiration of the set-aside period, for a total of 22 units (i.e., 10% of the

remaining units) available to residents earning at or below fifty percent (50%) of the applicable Area Median Income; and

v) 179 units (i.e., 80% of the remaining units) available to residents earning at or below eighty percent (80%) of the applicable Area Median Income.

15. Allowing the changes to the set asides applicable to the Developments as described above does not permit the Petitioners to gain any advantage over other developers.

16. The requested rule waivers will not adversely affect any of the Developments. However, a denial of this Petition (a) will result in substantial economic hardship to Petitioner and (b) would violate principles of fairness¹. Section 120.542(2), Fla. Stat. (2013).

17. The waiver being sought is permanent in nature.

18. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation 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).

19. The following facts demonstrate the economic hardship and other circumstances which justify Petitioner's request for waiver:

- a. The Developments will suffer from deferred maintenance because there will be insufficient revenue from the Developments to perform the capital repairs and replacements that are required to maintain them at the current level of quality affordable housing communities.

¹“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.

- b. Additional debt service for the extensive renovations and repairs that should be made would severely over-burden the Developments, without the increased revenue that would result from rents established at the Adjusted Affordability Limits.
- c. If the Petition is not granted, the Petitioners will not be able to participate in the QCP process, thereby imposing financial and administrative burdens on each Petitioner to continue to own and operate Developments which are not capable of supporting themselves from available rental income, or which, for other reasons, Petitioners no longer desire to own and operate.

20. The requested waiver would serve the purposes of Section 420.5099, F.S., and the Act as a whole, because one of the Act's primary purposes is to stimulate creative private sector initiatives to increase and maintain the supply of affordable housing.

21. Should the Corporation require additional information, a representative of each Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

F. ACTION REQUESTED


Petitioner requests the following:

- a. That the Corporation grant Petitioner a waiver from Rule 67-21.027(1), Rule 67-21.029(1), Rule 67-21.031(2), and Rule 67-48.010(12) Florida Administrative Code, allowing it to
 - i) submit a Qualified Contract Package to the Corporation with respect to any of the Developments identified herein; or
 - ii) in the alternative, if any Petitioner elects not to submit a Qualified Contract Package to the Corporation for a particular Development, to adjust the rental set-asides which are applicable to said Development at the end of the initial thirty (30)-year period commencing the first day of the first taxable year of the Credit Period.
- b. Grant the Petition and all the relief requested therein; and

- c. Grant such further relief as may be deemed appropriate.

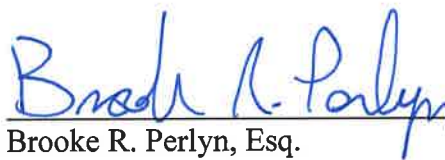
Respectfully submitted,

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By: 
BROOKE R. PERLYN, ESQ. on behalf of
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served overnight delivery on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 27th day of February, 2017.



Brooke R. Perlyn, Esq.