

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

Jordan Park, LLC,
a Florida limited liability company,

Petitioner,

FHFC CASE NO. 2019-088VW
Application No. 2018-101B

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

**AMENDED PETITION FOR WAIVER OF RULE 67-21.003(1)(b), F.A.C. (2018) AND
THE NON-COMPETITIVE APPLICATION INSTRUCTIONS**

Petitioner Jordan Park, LLC, (the “Petitioner”) by and through 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.”) (2018) (the “Rule”) and the Non-Competitive Application Instructions against changing the principals of the Applicant identified in the Application. Petitioner also seeks Board approval to change the Principals of the Developer pursuant to Rule 67-21.003(8)(b). Three members of the Board of Commissioners and the Chief Executive Officer of the Housing Authority of the City of St. Petersburg, Florida were recently changed, causing the principals of the co-Developer and Applicant to change, necessitating this Petition. In support of this Petition, 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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ATTN: Brian Evjen

Address: 3629 Madaca Lane
Tampa, FL 33618
Telephone: (813) 933-0629 Ext: 212
Fax: N/A
Email: bevjen@norstarus.com

2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel is:

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Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
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B. WAIVER IS PERMANENT

3. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

4. To change the Principals of the Applicant, Petitioner requests a waiver of Rule 67-21.003(1)(b), F.A.C. (2018) which provides in pertinent part:

(1) Applicants shall apply for MMRB, 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 MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC, and funding from the following Corporation programs will not be considered to be other Corporation funding: Predevelopment Loan Program (PLP) and Elderly Housing Community Loan (EHCL) Program.

(b) If the NC Award will not be in conjunction with other Corporation funding 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. 05-2018) 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-09576>, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

Rule 67-21.003(1)(b), F.A.C. (2018) incorporates by reference the Non-Competitive Application Package ("NCA"). The NCA includes the following requirement:

(2) For Applicants requesting MMRB, with or without Non-Competitive Housing Credits: The **Applicant entity** shall be the recipient of the Non-Competitive Housing Credits and the borrowing entity for the MMRB Loan and **cannot be changed in any way** (materially or non-materially) **until after the MMRB Loan closing**. After loan closing, any change (materially or non-materially) will require Board approval prior to the change. Changes to the Applicant entity prior to the loan closing or without Board approval after the loan closing shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes to the limited partner of an investor limited partnership or an investor member of a limited liability company owning the syndicating interest therein will not result in disqualification.

Id. at Part A. 5. b. (2). Applicant is also asking for Board approval to change the Developer's Principals pursuant to Rule 67-21.003(8)(b), which provides in pertinent part:

(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:

(b) **Principals of each Developer**, including all co-Developers; notwithstanding the foregoing, the Principals of the Developer(s) may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter Credit Underwriting. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application documentation

(emphasis added).

5. Certain Applicant and Co-Developer principals identified in Petitioner’s Non-Competitive Application package, submitted on November 9, 2018 have since been terminated and replaced. Petitioner is therefore in need of a waiver and Board approval to change these principals.

D. STATUTES IMPLEMENTED BY THE RULE.

6. Rule 67-21.003, F.A.C., implements, among other sections of the Florida Housing Finance Corporation Act (the “Act”):

- Section 420.507, Powers of the corporation;
- Section 420.508, Special powers; multifamily and single-family projects;
- Section 420.509, Revenue bonds; and
- Section 420.5099, Allocation of the low-income housing tax credit.

7. 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.

E. JUSTIFICATION FOR GRANTING THE REQUESTED WAIVER.

8. Petitioner timely submitted the Non-Competitive Application package on November 9, 2018, requesting and receiving tax exempt MMRN in the amount of \$23,500,000 and non-competitive 4% Housing Credits in the amount of \$1,530,385. The Applicant subsequently requested to increase the MMRN request amount to \$27,400,000. The request pertains to the acquisition and rehabilitation of 266 Family garden-style apartment units in a development named Jordan Park in Pinellas County (the “Development”). The set asides will be 40% at 60% AMI (MMRN), 15% at 30% AMI (4% HC) and 85% at 60% AMI (4% HC).

9. FHFC staff received a final credit underwriting report with a positive recommendation for a MMRN loan on July 18, 2019. The FHFC Board approved the final credit underwriting report at its meeting on August 2, 2019 and directed staff to proceed with the closing activities, subject to further approvals and verifications.

10. Since Florida Housing approved Petitioner's NCA package on April 26, 2019, which included the Applicant and co-Developer principal disclosures, three members of the Board of Commissioners of the Housing Authority of the City of St. Petersburg, Florida ("Housing Authority") were removed from their positions by the Mayor of the City of St. Petersburg, Florida (the "City") pursuant to Chapter 421, Florida Statutes; specifically: (1) Commissioner Delphinia Davis, (2) Commissioner Harry Harvey, and (3) Commissioner Ann Sherman-White. The vacancies created by the removals were filled by the City Mayor through the appointment of: (1) Commissioner Roxanne Amoroso; (2) Commissioner C. Knox LaSister; and (3) Commissioner James Dates. Similarly, the principals of RISE Development Corporation also changed to reflect the replacement of the Commissioners because the board of directors of RISE Development Corporation are identical (and ex officio) to the Board of Commissioners of the Housing Authority pursuant to the Articles of Incorporation of RISE Development Corporation.¹ The Housing Authority serves as the controlling entity for Petitioner and RISE Development is the sole member of Petitioner's managing member. The Housing Authority also serves as the co-Developer.

Additionally, the Board of Commissioners of the Housing Authority voted on August 30, 2019 to terminate the employment of the Housing Authority CEO, Tony L. Love, who was

¹ The appointment of Ms. Battle as the interim CEO of the Housing Authority did not automatically appoint her as the President of RISE Development.

also the President of RISE Development Corporation.² The Board of Commissioners of the Housing Authority appointed LaShunda Battle as interim CEO of the Housing Authority until it could locate an acting CEO experienced with Low Income Housing Tax Credit closings. On September 26, 2019, the Board of Commissioners elected Jerome Ryans³ to serve as the acting CEO of the Housing Authority. RISE Development also elected Mr. Ryans to serve as its acting President.

The following charts reflect this change in principals:

Requested Change in Applicant’s Principals

	Principals Identified in Application	Principals as of 8/30/19
Applicant	Jordan Park, LLC	Jordan Park, LLC
Managing Member of Jordan Park, LLC	RISE Jordan Park, LLC (.00900%)	RISE Jordan Park, LLC (.00900%)
Sole Member of RISE Jordan Park, LLC	RISE Development Corporation (non-profit, non-stock) (100%) <ul style="list-style-type: none"> • <u>President: Tony Love</u> • Lashunda Battle, Officer • Owens, Stephanie M., Director • <u>Delphinia Davis, Officer</u> • <u>Delphinia Davis, Director</u> • <u>Harry Harvey, Director</u> • Terri Lipsey Scott, Director • Evans, Jerrilyn, Director • <u>Ann Sherman-White, Director</u> 	RISE Development Corporation (non-profit, non-stock) (100%) <ul style="list-style-type: none"> • <u>President: Jerome Ryans</u> • LaShunda Battle, Officer • Owens, Stephanie M., Director • <u>C. Knox LaSister, Officer</u> • <u>Roxanne Amoroso, Director</u> • <u>C. Knox LaSister, Director</u> • Terri Lipsey Scott, Director • Evans, Jerrilyn, Director • <u>James Dates, Director</u>

² The Board also voted to authorize the Board Chair (Stephanie Owens) to conduct a search for a permanent replacement CEO, which search remains ongoing.

³ Mr. Ryans is the President and CEO of the Housing Authority of the City of Tampa (“Tampa Housing Authority”). The Tampa Housing Authority and the St. Petersburg Housing Authority entered into an Interlocal Agreement pursuant to the authority granted by Section 421.11, Florida Statutes. Per to the Interlocal Agreement, the Tampa Housing Authority and/or its contractors will manage and provide applicable services for St. Petersburg Housing Authority properties pursuant to Section 421.08, Florida Statutes, for a period of six months, unless terminated earlier or extended per the terms of the Interlocal Agreement.

	<ul style="list-style-type: none"> • Davis, Sharlene Gambrell, Director 	<ul style="list-style-type: none"> • Davis, Sharlene Gambrell, Director
Controlling Entity	Housing Authority of the City of St. Petersburg (N/A) <ul style="list-style-type: none"> • <u>Tony Love, CEO</u> • Lashunda Battle, Officer • Owens, Stephanie M., Director • <u>Delphinia Davis, Officer</u> • <u>Delphinia Davis, Director</u> • <u>Harry Harvey, Director</u> • Terri Lipsey Scott, Director • Evans, Jerrilyn, Director • <u>Ann Sherman-White, Director</u> • Davis, Sharlene Gambrell, Director 	Housing Authority of the City of St. Petersburg (N/A) <ul style="list-style-type: none"> • <u>Jerome Ryans, Acting CEO</u> • Lashunda Battle, Officer • Owens, Stephanie M., Director • <u>Owens, Stephanie M., Officer</u> • <u>Roxanne Amoroso, Director</u> • <u>C. Knox LaSister, Director</u> • Terri Lipsey Scott, Director • Evans, Jerrilyn, Director • <u>James Dates, Director</u> • Davis, Sharlene Gambrell, Director

Requested Change in Developer’s Principals

	Principals Identified in Application	Principals as of 8/30/19
Co-Developer	Housing Authority of the City of St. Petersburg <ul style="list-style-type: none"> • <u>Tony Love, CEO</u> • Lashunda Battle, Officer • Owens, Stephanie M., Director • <u>Delphinia Davis, Officer</u> • <u>Delphinia Davis, Director</u> • <u>Harry Harvey, Director</u> • Terri Lipsey Scott, Director • Evans, Jerrilyn, Director • <u>Ann Sherman-White, Director</u> • Davis, Sharlene Gambrell, Director 	Housing Authority of the City of St. Petersburg <ul style="list-style-type: none"> • <u>Jerome Ryans, Acting CEO</u> • Lashunda Battle, Officer • Owens, Stephanie M., Director • <u>Owens, Stephanie M., Officer</u> • <u>Roxanne Amoroso, Director</u> • <u>C. Knox LaSister, Director</u> • Terri Lipsey Scott, Director • Evans, Jerrilyn, Director • <u>James Dates, Director</u> • Davis, Sharlene Gambrell, Director

The foregoing changes necessitated this Petition.

11. Petitioner did not request the Commissioner changes. Rather, the former Commissioners were removed by, and the new Commissioners appointed by, the Mayor and confirmed by the City Council of the City of St. Petersburg pursuant to the Mayor’s statutory

authority contained in Chapter 421, Florida Statutes. Thus, Petitioner cannot be faulted for the circumstances that created the need for this Petition.

12. If this Rule waiver and request for Board approval is denied, the Applicant will have no alternative but to withdraw the Application as it would be impossible for RISE Development Corporation and the Housing Authority of the City of St. Petersburg to maintain governing boards as described in the Application. A withdrawal of the Application would unnecessarily burden the Applicant and delay needed rehabilitation and construction of low-income housing in the City.

13. 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 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,⁴ 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.

14. For the reasons discussed above, the waiver should be granted to prevent economic and operational hardship to Petitioner. The strict application of the Rule will create a substantial hardship for Petitioner because it would be forced to withdraw its Application. The waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes

⁴ “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. *See* § 120.542(2), Fla. Stat.

is to facilitate the availability of decent, safe and sanitary housing in the State. The requested waiver will ensure that 266 affordable housing units will be made available for the target population in the City. Denying the waiver would deny the City these much-needed affordable housing units.

15. The need for the waiver was requested early in the process and will not prejudice the Development, Florida Housing, nor any other applicant.

F. ACTION REQUESTED

16. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver of the Rule and provide Board approval such that Petitioner is able to change the Developer and Applicant principals that were terminated and replaced; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

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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 copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 15th day of October, 2019.

By: /s/ Brian J. McDonough
Brian J. McDonough, Esq.