STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: 2021-068VW **APPLICATION NO.:** 2021-___HB

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FLORIDA HOUSING
FINANCE CORPORATION

IN RE: WM at the River, LP

AMENDED PETITION FOR WAIVER OF RULE 67-21.0025(7)(d)

WM at the River, LP, a Florida limited partnership (the "Petitioner"), by and through its undersigned counsel, hereby amends its petition made to the Florida Housing Finance Corporation (the "Corporation") on August 25, 2021 ("Petition"). The Petition seeks a waiver of Rule 67-21.0025(7)(d), Florida Administrative Code (May 18, 2021)("Rule" or "Fla. Admin. Code"), which limits the disclosure of entities to three principal disclosure levels with respect to (a) the applicant of four (4%) low income housing tax credits ("LIHTC"). This Amended Petition does not seek any additional remedies or waivers in addition to those set forth in the Petition. Petitioner seeks the Board's approval to undertake the allocation of 4% LIHTC and the Developer notwithstanding the provisions in the Regulations for the reasons set forth herein. This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code. In support, the Petitioner states as follows:

A. THE PETITIONER

1. The mailing address, telephone number and email of the Petitioner WM at the River, LP, a Florida limited partnership ("Petitioner") is:

Petitioner's General Partner

WM at the River, LP

c/o: The WM GP, LLC, a Florida limited liability company, The WM GP I, LLC, Attn: Holly Knight, Manager
1910 Farmsville Highway
Ruston, Louisiana 71270
Telephone: (318) 513.3312
E-mail: holly@bgcadvantage.com

2. The Petitioner's counsel is:

Orlando J. Cabrera
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Washington, D.C. 20006
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3. Petitioner is the Applicant in connection with a private activity multifamily housing bond issuance ("Bonds") undertaken by the Housing Authority of the City of Daytona Beach organized under Chapter 421, Fla. Stat. (2020, as amended) and body corporate and politic of the State of Florida ("DBHA"). The Bonds will be issued pursuant to 42 U.S.C. §§ 142 (all references to 42 U.S.C. §§1, et seq. will be referred to as the "Code. For purposes of compliance with C. 67-21, Fla. Admin. Code, DBHA is not the Corporation or a County, is the source of the private activity bonds, and has reserved the requisite volume cap for the Petitioner to undertake the tax-exempt bond transaction.

4. Petitioner is applying for non-competitive 30% present value low income housing tax credits ("4% LIHTC") allocated by the Corporation pursuant to §§ 42 and 142 of the Code and the Corporation's 2021 Qualified Allocation Plan ("2021 QAP").

5. Petitioner's general partner is The WM GP, LLC, a Florida limited liability company ("WMGP").

6. Petitioner is rehabilitating a public housing property consisting of two towers known as the Windsor Tower and Maley Tower owned by DBHA that is undergoing a conversion under the Rental Assistance Demonstration ("RAD") program authorized under 42 U.S.C. §1437v, the United States Housing Act of 1937. Windsor and Maley Towers (a) are classified as one (1) property that serve existing elderly and elderly/disabled residents, (b) is public housing owned by DBHA subject to a Declaration of Trust with the United States Department of Housing and Urban Development ("HUD"), and (c) is located at 524 South Beach Street, Daytona Beach, Florida 32114 ("Windsor") and 600 South Beach Street, Daytona Beach, Florida 32114 ("Maley") (interchangeably referred to as the "Property" or "Windsor-Maley"). The Windsor and Maley Towers are currently public housing units subsidized under §1437g of the Housing Act of 1937 and are public housing. After RAD conversion, Windsor and Maley Towers will be subsidized as project based rental housing under HUD's project based voucher program ("PBV") and serve residents that are compelled to be served under the provisions of and compliance with §1437f(o)(13) of the Housing Act of 1937 ("PBV")

7. The Property is "federally-assisted" as that term is defined under 24 CFR § 5.100.

8. Petitioner's Property will remain federally encumbered by covenants with HUD, and further, will be deemed federally-assisted after closing.

9. Petitioner's general partner is The WM GP, LLC, a Florida limited liability company ("GP").

10. The GP's co-members are The WM GP I, LLC, a Florida limited liability company ("Manager and Member") and The WM GP II, LLC, a Florida limited liability company ("Member").

11. The Manager's members is BGC Advantage, LLC, a Mississippi limited liability company ("BGC").

12. BGC's manager is Knight Advantage, LLC, a Mississipi limited liability company ("Knight") whose sole principal is Holly Knight. Knight Advantage, LLC holds 50% of BGC's membership units. Ms. Knight holds 100% of Knight Advantage, LLC's units.

13. BGC's member holding 50% of BGC's membership units is MT Resources Group, LLC. MT has two members: KPL LLC, a Louisiana limited liability company ("KPL") and McConnell Southeast Holdings, LLC, a Louisiana limited liability company ("MSH").

14. KPL's members are Patrick M. Temple (KPL Manager and Member), Kelsey Temple Philips, and Leslie Temple Horvath.

15. MSH's members are Clay K. McConnell, Melissa M. Merritt, Wesley W. McConnell, the Clay K. McConnell Family Trust ("CKM"), the Melissa M. Merritt Family Trust ("MMM"), and the Wesley W. McConnell Family Trust ("WWM").

16. The beneficiaries of MMM who are of the age of majority are Melissa M. Merritt and Austin Merritt. The remaining (2) beneficiaries are minors under the age of 18.

17. The beneficiaries of CKM who are of the age of majority are Clay K. McConnell, Rhonda Gail McConnell, and Alexandra Baskin McConnell. The remaining two (2) beneficiaries are minors under the age of 18.

18. The beneficiaries of WWM who are of the age of majority are Wesley W. McConnell, Elise Rabowin McConnell, and Alexandra Baskin McConnell. The remaining three (3) beneficiaries are minors under the age of 18.

19. No business entity or natural person who is a participant in the transaction being undertaken by the Petitioner has been sanctioned by HUD, the Corporation or any other state housing finance agency.

20. The WM GP II, LLC, a Florida limited liability company ("WMGP II"), is a member in WM is a wholly owned affiliate of the Daytona Beach Housing Development Corporation, a Florida non-profit corporation ("DBHDC").

21. DBHCD is an instrumentality of the DBHA as defined under §1437a(b)(6) of the Housing Act of 1937. The Housing Act of 1937 requires that all RAD developments receiving project based voucher under housing assistance payment contracts ("PBV HAP") be undertaken under single purpose entities acting as public housing agency instrumentalities under the Housing Act of 1937 and its appurtenant federal regulations.

22. DBHA's and DBHCD's Board of Directors are Kelvin Daniels, Chairman of DBHA and DBHDC, Kim Brown-Crawford, Commissioner and Vice Chairwoman of DBHA and DBHDC, Sally L. Jass, Commissioner of DBHA and Director of DBHDC, Irma Browne Jamison, Commissioner of DBHA and Director of DBHDC, and Hemis N. Ivey, Jr., Commissioner of DBHA and Director of DBHDC (together, the "Board").

23. Natalie Smith-Wells is the Interim Chief Executive Officer and Executive Director of DBHA ("Executive Director") and the President and Secretary of DBHDC.

24. The Housing Act of 1937, RAD guidelines, and HUD require that the real property undergoing RAD conversion remain in the public housing agency's ownership.

25. The Housing Act of 1937, RAD guidelines, and HUD require that the public housing agency remain a participant in the development of units to be undertaken on the property, in this case both Windsor and Maley Towers.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

The Petitioner requests a waiver of or variance from Rule 67-21.0025 (7)(c), Florida Administrative Code (effective May 18, 2021) (the "Rule"), which provides in part: **67-21.0025(7)(c) – Miscellaneous Criteria.**

> (d) The Applicant must disclose all of the Principals of all the entities identified in paragraph (b) above (third principal disclosure level). Unless the entity is a trust, all of the Principals **must be natural persons**;
>
> [...]
>
> Ellipse and emphasis added.

C. STATUTES IMPLEMENTED BY THE RULES

The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statute that designated the Corporation pursuant to §§420.507, 420.5093, and 420.5099, Fla. Stat (2021, as amended).

D. JUSTIFICATION FOR PETITIONER'S REQUESTED WAIVER

1. The Petitioner is requesting to disclose through the sixth (6^{th}) principal disclosure level, for the following reasons:

a. Petitioner's general partner, WMGP (first disclosure level) is composed of two members, The WM GP I, LLC, the Manager ("WMGP I") and The WM GP II, LLC ("WMGP II"), both Florida limited liability companies and WMGP's members (second level disclosure).

b. WMGP I's members is BGC (third level disclosure).

c. BGC's members are Knight and MT (fourth level disclosure).

(i). Knight's sole member and manager is Holly Knight.

(ii). MT's members are KPL and MSH (fourth disclosure level).

(iii). Please see paragraph 13 for the individual members of KPL (sixth disclosure level).

(iv). MSH's members are MMM, WWM, and CKM (sixth disclosure level).

(v). Please see paragraphs 15-17 for the individual beneficiaries of MMM, WWM, and CKM who are of the age of majority ('seventh' level disclosure level).[1]

(vi.) Melissa M. Merritt is the co-Trustee with authority for MMM, WWM, and CKM ('seventh' disclosure level).

d. The WM GP II has one member, DBHDC (third disclosure level).

e. DBHDC is a wholly owned affiliate of DBHA and an instrumentality of DBHA for purposes of the Housing Act of 1937 (fourth disclosure level).

[1] 'Seventh' level disclosure correlates to the fourth level on the Applicant/Developer Disclosure form. 'Seventh' level is used herein to avoid confusion solely within the context of this Amended Petition.

f. DBHDC is composed of its Board and the Executive Director who acts as DBHDC's President and Secretary.

g. DBHA is composed of the Board and the Executive Director (fifth disclosure level).

2. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, Fla. Admin. Code, the Corporation has the power and 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. A waiver shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (a) create a substantial hardship[1] *or* violate principles of fairness, and (b) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Fla. Stat.[2]

3. Compliance with the Rule would undermine the preservation and rehabilitation of affordable housing by denying the Petitioner's application for non-competitive 4% LIHTC that would be a critical resource for the Petitioner's efforts to undertake the rehabilitation of the Property, rehabilitate obsolete public housing units under HUD's RAD program, and preserve existing affordable housing. The disclosure of natural persons on the "third disclosure level" instead of subsequent levels defeats the purpose of allocating 4% LIHTC and assist in the preservation of units encouraged federally (by HUD) and the Corporation. Moreover, requiring compliance with the "third disclosure level" instead of subsequent levels accurately reflects the actual structure of the transaction and to restructure and disclose the transaction in any other way

[2] "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. Further, "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* Fla. Stat. § 120.542.

in order to comply with the Rule would make the Bond transaction legally and economically non-viable. Finally, compliance would create a substantial economic hardship to the Petitioner by altering its transaction structure in a manner that would terminate the transaction because current significant economic participants that are indispensable to the transaction would no longer be able to participate.

4. Additionally, compliance would cause a legal hardship by forcing the entities that compose the Petitioner's general partner to breach federal requirements relating to the Housing Act of 1937 and its appurtenant federal regulations, HUD's RAD program, and various executed agreements. See, 42 U.SC. §1437f(o)(13), 24 CFR §983.59, and Question 27, HUD, Office of Public and Indian Housing (July 2021) at https://www.hud.gov/sites/dfiles/documents/PBV_FAQs.pdf.[3] Moreover, compliance would cause Petitioner to incur considerable costs in obtaining financing. Furthermore, it would deprive the City of Daytona Beach and Volusia County of the preservation and renovation of much needed affordable housing serving the elderly and disabled and violate principles of fairness given the circumstances surrounding the delays are outside of the Petitioner's control.

[3] RAD is a demonstration program created under an appropriation act, not a federal program undertaken under an authorization act, such as the Housing Act of 1937. As such, RAD functions under non-regulatory guidelines outside the federal Administrative Procedures Act. No federal regulations have been promulgated with respect to RAD and all RAD transactions receiving project based voucher assistance must meet the requirements of 42 U.S.C. §1437f(o)(13) of the Housing Act of 1937 and 24 CFR Part 983. A "PHA-owned unit" means "a dwelling unit owned by the PHA or its officers, employees, or agents that hold a direct or indirect interest in the building in which the unit is located, including an interest in the titleholder or lessee, or as a stockholder, member or general or limited partner, or member of a limited liability corporation, or any entity that holds such a direct or indirect interest." 24 CFR §983.3(a). Public housing agencies are federally prohibited from acting as both owner in a project and an administrator of a PBV HAP when the PBV HAP covers a unit that is PHA-owned, as such, those public housing agencies undertaking RAD and using PBV must have an owner (in this case, WM at the River, LP) that is not the public housing agency and would not be deemed to have a "PHA-owned Unit." 24 CFR §983.59. Accordingly, like many public housing agencies nationally, DBHA created a separate non-profit entity, Daytona Beach Housing Development Corporation, as authorized by the Housing Act of 1937, known as an "instrumentality," in order to undertake development activities. DBHDC participates in a variety of development activities, and from time to time, creates single purpose entities that are instrumentalities owned by DBHDC in order to undertake those activities (like The WM GP II, LLC, the member in the Petitioner's general partner entity, The WM GP, LLC). Since DBHA is undertaking a PBV HAP and acting as administrator, the instrumentality federal law permits the instrumentality to participate in the general partnership structure of the Petitioner as a matter of federal law and regulation subject to HUD approval but not DBHA. Ibid. HUD approved the involvement of The WM GP II, LLC as the DBHA/DBHCD entity within the Petitioner entity under the RAD Conversion Commitment and the use of the PBV HAP ("RCC").

5. Consequently, permitting disclosure of natural persons at the disclosure level beyond the third level is necessary, accurate, preserves much needed affordable housing, and avoids unfairness and substantial hardship on the Petitioner and the Property. By granting the requested extension, the Property will be able to proceed to reach completion in the future, which will assure that 298 much needed affordable housing units remain affordable. Such a result assists the Corporation with fulfilling its statutory mandate to provide safe, sanitary, and affordable housing to the citizens of Florida.

6. Further, a waiver of this Rule will serve the purposes of Section 420.5089 and the Act that are implemented by Chapter 67-21 of the Fla. Admin. Code, because one of the goals is for the federal and state allocated resources of Corporation be used to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. The Act (Section 420.501, *et seq.*) was passed in order to create inducements and opportunities for private and public investment in rental housing to increase and preserve the supply of affordable housing for low-income persons and households. Denial of the waiver would deprive the City of Daytona Beach and Volusia County, Florida of essential and affordable housing units. By granting the Petition as amended by the Amended Petition, the Corporation would recognize the goal.

7. The requested waiver will not adversely affect Petitioner, the Property, any other party or the Corporation.

E. TYPE OF WAIVER

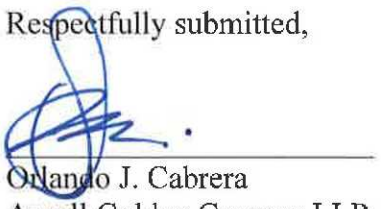
The waiver being sought is permanent in nature.

F. ACTION REQUESTED

1. For the reasons set forth herein, the Petitioner respectfully requests the Corporation (i) grant a waiver of the Rule to allow for a full disclosure of all relevant participants beyond the Rule required "third disclosure level" and allow the Petitioner to disclose the relevant "natural persons" through a "eighth" disclosure level, (ii) grant the Petition as amended by this Amended Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

2. Granting this waiver furthers a more accurate disclosure of the structure of the transaction and all natural persons involved in the transaction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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

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

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

Filed and date September 1, 2021

By: _____
Orlando J. Cabrera
Fla. Bar No. 0894151