STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: CASA II VENTURE LP FHFC Case No.: 2022-048VW

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ORDER GRANTING WAIVER OF RULE 67-21.003(1)(b) AND RULE 67-21.003(8)(l), FLORIDA ADMINISTRATIVE CODE (2021) AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS (03/2021)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on August 5, 2022. Florida Housing Finance Corporation ("Florida Housing") received the Petition for Waiver of Rule 67-21.003(1)(b) and 67-21.003(8)(l) ("Petition") on July 20, 2022, from Casa II Venture LP ("Petitioner"). The Notice of the Petition was published on July 21, 2022, in Volume 48, Number 141, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors ("Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner has submitted an application for 4% non-competitive housing credits ("HC"), which are to be used in conjunction with tax-exempt

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/s/ Adam Gamory /DATE: 8/8/2022

bond for developments wherein the bonds are issued by a county housing finance authority, to Florida Housing to partially fund construction of a 227-unit multifamily housing development to be known as Sol Vista in Miami-Dade County, Florida (the "Development"). Petitioner has also submitted an application to the Housing Finance Authority of Miami-Dade County, Florida for issuance of multifamily revenue bonds (the "Bonds").

3. Petitioner requests a waiver from Rule 67-21.003(8)(1), Florida Administrative Code (2021), which requires the Petitioner to execute an Applicant Certification and Acknowledgement in the form attached to the NCA, as defined below, without supplementation in connection with the Application and from Rule 67- 21.003(1)(b), Florida Administrative Code (2021), which adopts and incorporates the NCA. More specifically, Petitioner requests waiver of the requirement in Applicant Certification and Acknowledgement that all principals be in good standing among other state agencies and have not been prohibited from applying for funding.

4. Rule 67-21.003(8)(1), Florida Administrative Code (2021), in relevant portion, states:

> (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:
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> ...

(l) **The Application must include a properly completed Applicant Certification**....

5. Rule 67-21.003(1)(b), Florida Administrative Code (2021), in relevant portion, states:

> (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.
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> ...
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> (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. 03-2021) is adopted and incorporated herein by reference**...

6. Rule 67-21.003(1)(b), Florida Administrative Code (2021), incorporates by reference the Non-Competitive Application Package (Rev. 03-2021) ("NCA"). The NCA at Section A.16. includes the following requirement:

> 16. Applicant Certification:
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> The Applicant Certification and Acknowledgement Form Application must be signed by the Authorized Principal

Representative and provided as "Exhibit 10" to the Application form. The Applicant Certification and Acknowledgement Form may be found on the Non-Competitive Application website.

7. Section p. of the Applicant Certification and Acknowledgment Form of the NCA includes the following representation:

> The Applicant certifies and acknowledges that...
>
> p. The Applicant, the Developer and **all Principals are in good standing among all other state agencies and have not been prohibited from applying for funding.**

7. The NCA at page 1 also provides in pertinent part:

> Non-Competitive Housing Credits (4 Percent HC) only, to be used for a Tax-Exempt Bond- Financed Development where the bonds are issued by a County Housing Finance Authority (HFA) established pursuant to Section 159.604, F.S. **The Non-Competitive Application Form can be submitted anywhere from the time the Applicant completes Credit Underwriting for the Bonds up until the last Corporation business day of December of the year the Development is placed in service**;

(emphases added).

8. Petitioner is seeking a waiver from Section A.16 of the NCA and more specifically Section 16(p) of the Applicant Certification and Acknowledgement Form, which requires the Petitioner to certify that all of the Principals, Applicant and Developer are in good standing with all other state agency and are not prohibited from applying for funding. However, Petitioner cannot make this certification as of Application submission as

certain Principals and the Developer (the "Affected Parties") are currently prohibited from applying for funding in the State of Virginia for reasons that would not be the basis for a funding prohibition in the State of Florida (but that the Affected Parties are nevertheless working to remedy with Virginia Housing to return to good standing).

9. Petitioner states that the basis for the aforementioned prohibition were additional design guidelines in connection with the rehabilitation of a project in Virginia (the "VA Project") which, while not necessary for issuance of 8609s, were nonetheless required by Virginia Housing. Petitioner further states that while it is true that some of the additional design guidelines were not reflected in the VA Project upon issuance of the 8609s, it was the Affected Parties understanding from its prior discussions with Virginia Housing that such matters would not be the basis for a prohibition on funding applications. Based on Petitioner's experiences with the VA project and unlike the process in the State of Florida, application prohibitions do not need to go through prior board discussion or approval and, as such, as there is no delineated opportunity to correct or dispute perceived deficiencies in the State of Virginia prior to the issuance of a prohibition, the Affected Parties were placed out of good standing before steps could be taken to address Virginia Housing's concerns. This was a first time offense by the Affected Parties and Petitioner

argues that it does not think the issues in the VA Project rose to the level to warrant an immediate prohibition but, the Affected Parties are currently in the process of remediating the design deficiencies indicated by Virginia Housing and intend to have the work necessary to have Virginia Housing release the prohibition as soon as possible.

10. As such, for Petitioner to submit a NCA for 4 Percent HC for the Development and comply with Section A.16. thereof, it must be able to submit the Applicant Certification and Acknowledgement with Section 16(p) struck through. Petitioner argues that the basis for the Affected Parties' current prohibition in the State of Virginia would not have resulted in a similar prohibition in the State of Florida and, regardless the Affected Parties are working to resolve the current lack of good standing in the State of Virginia as quickly as possible. Further the Affected Parties have participated in a number of prior deals in the State of Florida, currently consisting of over 1,500 units throughout the State of Florida, over 1,000 of which have been recently renovated and are in the process of or have already received their 8609s, for which the Affected Parties remain in good standing in connection therewith.

11. Further Petitioner requests a waiver of the Timing Requirement, which requires that Petitioner complete the credit underwriting for the county bond transaction (the "Credit Underwriting") before submission of the

Application. In order to complete the bond Credit Underwriting Report, Petitioner states that it must confirm the Affected Parties are permissible in the ownership structure which it will not be able to do so until this Petition is granted. However, Petitioner cannot submit this Petition without first submitting an Application and cannot submit an Application until completing the bond Credit Underwriting and cannot complete Credit Underwriting and finalize its bond Credit Underwriting Report without first granting of this Petition.

12. Consequently, Petitioner states that it will need to submit the Application before completing bond Credit Underwriting in order to address this issue in advance with the Corporation. Therefore, Petitioner is requesting a waiver of the requirement to submit a final bond Credit Underwriting Report with its Application in order to prevent any further delay to the closing and construction commencement of the Development.

13. Petitioner indicates that a waiver of the Rule will permit Petitioner to apply for non-competitive tax credits to finance a portion of the construction of the Development. Without this additional source of investor equity, Petitioner will not have enough funds to construct these much needed 227 affordable units in Miami, Florida.

14. Petitioner argues that it meets the standards for a waiver of the Rule. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rules if strict application of those rules: will lead to unreasonable, unfair or unintended results in particular instances. Unless the Rule is waived to allow Petitioner to apply for non-competitive housing credits with its current ownership structure, certain unreasonable, unfair and unintended results will occur, resulting in a substantial hardship to Petitioner and the Development. Specifically, Petitioners indicates that based on its experiences that the purpose of the Rule was for the Corporation to certify to specific matters in its Application prevent perpetual bad actors in other states from participating in its programs. However, Petitioner alleges that strict application of the Rule would lead to the unintended result that parties with extenuating circumstance and that have otherwise demonstrated their good intentions and prior competency are not able to participate in the Corporation's programs as the result of standards set in place by other state programs, as well as result in a substantial hardship to Petitioner. In this specific instance, Petitioner argues that the Corporation's failure to grant the waiver requested will result in a substantial hardship to Petitioner, as Petitioner will not be able to apply for and obtain 4 Percent HC and, as such, will not be able to complete the much-needed construction of the

Development. Petitioner further states that the Corporation will not be harmed by granting this Petition as the intent of the Rule will not be violated.

15. Section 120.542(2), *Florida Statutes*, provides in pertinent part:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

16. The Board finds that granting the requested waiver would not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing.

17. The Board finds that Petitioner has demonstrated that it would suffer a substantial hardship if the waiver is not granted.

18. The Board finds that Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" would still be achieved if the waiver is granted. §420.5099, Fla. Stat.

IT IS THEREFORE ORDERED: Petitioner's request for a waiver of Rule 67-21.003(1)(b) and 67-21.003(8)(l), Florida Administrative Code (2021); and of Section A.16. and the applicable Timing Requirements on page 1 of the NCA (03/2021), incorporated by rule; is hereby **GRANTED** so that Petitioner may supplement its Applicant Certification and Acknowledgement

by "striking through" Paragraph 16 of the certification, which states that all Principals are in good standing among other state agencies and have not been prohibited from applying for funding, and to allow the Petitioner to submit its Application before completing the county bond credit underwriting.

DONE and ORDERED this 5th day of August, 2022.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.