STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: PLATFORM 3750 II, LLC FHFC Case No.: 2022-034VW

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ORDER GRANTING WAIVER OF RULE 67-21.003(1)(b), FLORIDA ADMINISTRATIVE CODE (06/23/2020) AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS (04/2020)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on June 17, 2022. Florida Housing Finance Corporation ("Florida Housing") received the Petition for Waiver of Rule 67-21.003(1)(b), Florida Administrative Code (06/23/2020) and the Non-Competitive Application Instructions (04/2020) ("Petition") on May 31, 2022, from Platform 3750 II, LLC, Meridian Preservation, L.P. ("Petitioner"). The Notice of the Petition was published on June 1, 2022, in Volume 48, Number 106, 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 successfully applied for non-competitive housing tax credits to assist in the construction of Platform 3750, a 191-unit family rental

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/DATE: 6/17/2022

development in Miami-Dade County, Florida (the "Development") in August 2020. Petitioner was previously awarded a local bond issuance by The Housing Finance Authority of Miami-Dade County to fund the Development in March 2020.

3. Rule 67-21.003(1)(b), Florida Administrative Code (2020), 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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> (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. 04-2020) 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-12011, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

4. Rule 67-21.003(1)(b), Florida Administrative Code (2020), incorporates by reference the Non-Competitive Application Package (Rev. 04-2020) ("NCA"). The NCA includes the following requirement:

> The Applicant entity shall be the recipient of the Housing Credits and the ownership structure of the Applicant entity as set forth in the Principal Disclosure Form and cannot be changed in any way (materially or non-materially) until after the Preliminary Determination is issued. Once the Preliminary Determination has been issued, (a) any material change in the ownership structure of the named Applicant will require Board approval prior to the change, and (b) any non-material change in the ownership structure of the named Applicant will require Corporation approval prior to the change. The ownership structure of the Applicant entity may be changed without Corporation or Board approval after a Final Housing Credit Allocation Agreement has been approved and the IRS Forms 8609 have been issued; however, the Corporation must still be notified in writing of the change. Changes to the ownership structure of the Applicant entity prior to the issuance of the Preliminary Determination or without Board approval or Corporation approval, as applicable, prior to the approval of the Final Housing Credit Allocation and issuance of the IRS Forms 8609 shall result in a disqualification from receiving funding and shall be deemed a material misrepresentation. Changes prior to the issuance of the Preliminary Determination to the officers or directors of a Public Housing Authority, officers or directors of a Non-Profit entity, or 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, however, the Corporation must be notified of the change. Changes to the officers or directors of a Non-Profit entity shall require Corporation approval.

5. Petitioner respectfully requests a waiver of the Rule and of the NCA Instructions so that it may revise the principals mistakenly and incorrectly disclosed in its application in order to correctly reflect its true organizational structure. The mistake was recently discovered in preparing the credit underwriting report update letter and was due to a miscommunication. Specifically, Petitioner's disclosures must be revised so that its first principal disclosure level correctly identifies two investor members. The investor members' managers are natural persons, who were previously disclosed in Petitioner's application.

6. Petitioner correctly identified its organizational structure when applying for local bonds issued through the Housing Finance Authority of Miami-Dade County. In its application for the non-competitive housing credits, however, Petitioner mistakenly disclosed at its first principal disclosure level: (1) 9501 Partners, LLC (Non-Investor Member); (2) Jorge Lopez (Investor Member and Manager); (3) Awilda Lopez (Non-Investor Member); (4) Mara S. Mades (Non-Investor Member and Manager); and (5) Leon J. Wolfe (Manager). At its second principal disclosure level, Petitioner disclosed the members and managers of 9501 Partners, LLC: (1) Leon J. Wolfe (Member and Manager); (2) Lisa M. Wolfe (Member); (3) Margo

Wolfe (Member); (4) Meryl Wolfe-Touret (Member); and (5) Myles Wolfe (Member).

7. If granted, Petitioner would disclose its two investor members: (1) QOF I, LLC (50%) and (2) QOF II, LLC (50%). These investor members are not required to disclose at any other levels. The managers are the same for both investor members: Jorge Lopez, Leon J. Wolfe and Mara S. Mades. These natural person principals were disclosed with Petitioner's Application. Since the preliminary determination has not been issued, Petitioner is in need of a Rule waiver in order to revise the disclosure to correctly reflect Petitioner's organizational structure.

8. According to the Petitioner, this error must be corrected now (i.e., before the preliminary determination) so that the 2021 tax returns will accurately reflect the bond closing structure (i.e., the structure that will be used to operate the Development).

9. If the Rule is imposed, Petitioner states that it will be prevented from correctly identifying its structure and will be forced to proceed with a structure that it never intended to use and that does not match the bond closing structure, causing a substantial and unnecessary operational hardship. Granting the requested waiver will prevent a substantial and unfair hardship from being imposed on Petitioner while still achieving the underlying purpose

of the Rule; prohibiting changes to Petitioner's structure prior to issuance of the preliminary determination to ensure full and fair consideration by Florida Housing of all persons that might exert control over the Development.

10. If the Petition is granted, Petitioner states that its first disclosure level will correctly identify two investor members whose managers are natural persons previously identified in the Application. Thus, the requested waiver would not cause Petitioner to disclose natural person principals that were not previously disclosed in the Application and should, therefore, not cause concern for Florida Housing. Since the same natural person principals disclosed in the Application will serve as the natural person managers of the correctly identified investor members, Florida Housing should have the same degree of comfort as if the structure were properly disclosed in the initial Application. Accordingly, Petitioner alleges granting the Petition should not impact Florida Housing's confidence in the Development, Petitioner, or its principals.

11. 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.

12. 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.

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

14. 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), Florida Administrative Code (06/23/2020), and of the NCA Instructions (04/2020), is hereby **GRANTED** so that Petitioner can correct its organizational structure at its first principal disclosure level to identify two investor members whose managers are natural persons previously disclosed in Petitioner's application, as follows: the two investor members are QOF I, LLC (50%) and QOF II, LLC (50%), with managers of both being Jorge Lopez, Leon J. Wolfe and Mara S. Mades.

DONE and ORDERED this 17th day of June, 2022.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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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.