**STATE OF FLORIDA**
**FLORIDA HOUSING FINANCE CORPORATION**

**FHFC CASE NO.** 2021-078VW
**APPLICATION NO.:** _____

BLOCK 55 RESIDENTIAL, LP

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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FLORIDA HOUSING FINANCE CORPORATION

**PETITION FOR WAIVER OF RULE 67-21.003(1)(b) AND NON-COMPETITIVE APPLICATION PACKAGE (REV. 04-2020)**

Pursuant to section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, BLOCK 55 RESIDENTIAL, LP, a Florida limited partnership ("**Petitioner**"), by and through its undersigned counsel, hereby petitions Florida Housing Finance Corporation (the "**Corporation**") for a waiver of the prohibition, pursuant to the Non-Competitive Application Package (REV. 04-2020) (the "**Application**"), as such is incorporated into Rule 67-21.003(1)(b), Florida Administrative Code ("**F.A.C.**") (2020), against changing the structure of Petitioner as set forth in Petitioner's Principal Disclosure Form (the "**Principal Disclosure Form**") prior to the issuance of a Preliminary Determination (as defined by Rule 67-21.002(84), F.A.C. (2020)) (the "**Structure Requirement**"). This Petition is filed pursuant to Section 120.542 of the Florida Statutes (2020) and Chapter 28-104, Florida Administrative Code. In support of this Petition, Petitioner states as follows:

## A. THE PETITIONER

1. The address, telephone number and e-mail address of Petitioner are:

Block 55 Residential, LP
2901 Florida Avenue, Suite 806
Coconut Grove, Florida 33133
Attention: Stephen Garchik
Telephone: (305) 476-0100
Email: sgarchik@sjmpartners.com

2. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address of Petitioner's counsel are:

Hollie A. Croft, Esq.
Nelson Mullins Broad and Cassel
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4239
Facsimile: (407) 650-0979
Email: hollie.croft@nelsonmullins.com

## B. THE DEVELOPMENT

3. The Petitioner submitted a Multifamily Revenue Bond Program Application (the "MDCHFA Application") to the Housing Finance Authority of Miami-Dade County (the "**HFA**") requesting a loan (the "**Loan**"), financed by the proceeds of multifamily housing revenue bonds (the "**Bonds**"), to provide financing for the construction of a 578-unit affordable housing development to be located in downtown Miami to be known as Sawyer's Walk (the "**Development**"). The Development is intended to be part of a larger, mixed-use development that will consist of the Development, retail space, and parking garage space (the "**Project**"). Petitioner also submitted an application to the Corporation for an allocation of 4% low-income housing tax credits ("**Housing Credits**") to fund a portion of the acquisition and construction of the

Development. On August 12, 2021 (the "**Closing Date**"), the HFA issued the Bonds and made the Loan to Petitioner in the principal amount of $167,500,000.00.

## C. THE RULE FROM WHICH WAIVER IS SOUGHT

4. Given the Application itself prohibits changing the structure of Petitioner as set forth in Petitioner's Principal Disclosure Form prior to the issuance of a Preliminary Determination, Petitioner is seeking a waiver of the relevant provision of the Application, as such is incorporated into Rule 67-21.003(1)(b), F.A.C. (2020) (the "**Rule**"). The relevant provisions of the Rule, and the provision of the Application from which Petitioner is seeking a waiver, are as follows:

5. Specifically, Rule 67-21.003(1)(b), F.A.C. (2020) 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. 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.**
>
> (emphasis added).

6. Specifically, Non-Competitive Application Form, Section A.6.b(1) (the "**Section**"), provides in relevant part:

> 6. Principals Disclosure for the Applicant and for each Developer:
>
> > b. The name of the Applicant entity stated in the Application may be changed only by written request of an Applicant to Corporation staff and approval of the Corporation after the Applicant has been invited to enter Credit Underwriting…
> >
> > …(1) For Applicants requesting Non-Competitive Housing Credits only:
> >
> > 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**, (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.
>
> (emphasis added).

## D. STATUTES IMPLEMENTED BY THE RULE

7. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. *See* §§ 420.509, 420.5099, *Fla. Stat.* (2020) (the "**Statute**").

8. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended results in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals 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.* (2020).

## E. JUSTIFICATION FOR GRANTING THE WAIVER

9. Petitioner requests a waiver from Section A.6.b(1) of the Application, as such is incorporated by Rule 67-21.003(1)(b), F.A.C., which prohibits on changing the ownership structure of Petitioner as set forth in the Principal Disclosure Form prior to the issuance of the Preliminary Determination.

10. Petitioner timely submitted a non-competitive application for the Development and received an invitation to underwriting on June 16, 2021.

11. When Petitioner submitted the Application, it was anticipated Rainbow Housing Assistance Corporation, a California nonprofit corporation ("**Rainbow**") would serve as general partner of the Petitioner. However, Rainbow subsequently chose not to participate in the Petitioner or the Development because it did not want to provide any guarantees, despite it being made clear from the beginning of the partnership discussions that the HFA would require the general partner of the Petitioner to provide guarantees in connection with the Loan.

12. Ultimately, Pacific Southwest Community Development Corporation, a California nonprofit public benefit corporation ("**PSCDC**") joined the Petitioner as its general partner, enabling the Petitioner to proceed with the transactions described in Section B above. As of the date of this Petition, PSCDC is the sole general partner of the Petitioner and all principals of PSCDC have been or will be disclosed by the Second Principal Disclosure Level of the Principal Disclosure Form. The principals of PSCDC are: Executive Director Robert W. Laing, Officer/Director Juan P. Arroyo, Officer/Director Marco Antonio Reyes, Officer/Director Michael T. Walsh, and Officer/Director Tom Dubose, all of whom are natural persons.

13. Pursuant to Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the power and authority to grant waivers or variances to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences in particular instances. A waiver or variance 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[1] *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. *See* § 120.542(2), Fla. Stat.

14. Here, Petitioner meets the requirements for the waiver. The requested waiver of the Structure Requirement will not adversely impact the Development or the Corporation and will ensure that the 578 affordable housing units being constructed will be preserved and made available for the target population in Miami-Dade County.

15. The strict application of the Application Rule and the Section will create substantial hardship for Petitioner, as i) Rainbow is no longer affiliated with Petitioner, ii) PSCDC has joined the Petitioner as general partner, iii) all partners of Petitioner have executed a formal agreement as to their relationship concerning the Petitioner, and iv) the Petitioner has closed the transaction described in Section B hereinabove and additional subordinate financing in connection with the Development. Imposing the rule will cause Petitioner to suffer a substantial and unnecessary operational hardship. Alternatively, because none of the other principals of Petitioner disclosed to the Corporation in the Principal Disclosure Form have changed since Petitioner submitted the

[1] "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.

Application, the waiver of the Structure Requirement will not harm the Corporation and should not impact the Corporation's confidence in the Petitioner or its principals.

16. In these specific instances, the Corporation's failure to grant the waiver requested will result in substantial hardships for Petitioner with respect to administrative and financing of the Development. Petitioner is reliant on the receipt of the Housing Credits to finance the complete construction of the Development. The area in which the Development will be situated is in dire need of housing and commercial development, as evidenced by the involvement of the Southeast Overtown CRA, the City of Miami, the Miami-Dade County, and the Sawyers Landing Community Development District ("CDD"). The Corporation will not be harmed by granting this Petition, as the intent of the Rule and the Section will not be violated. However, if the waiver is not granted, the Petitioner will be harmed, as it will not have sufficient funds to construct these much-needed affordable units to be set-aside for the elderly in Miami without the Housing Credits as an additional source of investor equity. A granting of the requested waiver will permit Petitioner to obtain the Housing Credits.

17. The requested waiver serves the purpose of the Statute that is implemented by the Rule. The Florida Housing Finance Corporation Act (Section 420.501, *et seq*.) was passed in order to encourage private and public investment in facilities for persons of low-income. The purpose of the creation of the Housing Tax Credit Program and Multifamily Mortgage Revenue Bonds Program is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting the requested waiver, Petitioner will be able to proceed with construction of the Development and obtain the needed Housing Credits, as requested in this Petition, and the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

## F. WAIVER IS PERMANENT

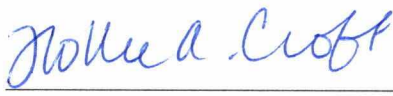
18. The waiver being sought is permanent in nature.

## G. ACTION REQUESTED

19. For the reasons set forth herein, Petitioner respectfully requests the Corporation (*i*) grant the requested waiver of Section A.6.b(1) of the Application, as such is incorporated by Rule 67-21.003(1)(b), F.A.C., (*ii*) grant the Petition and all of the relief requested herein; and (*iii*) grant such further relief as it may deem appropriate.

Respectfully submitted on the 5th day of October, 2021.

Respectfully submitted,



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Email: hollie.croft@nelsonmullins.com
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

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

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

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

The 5th day of October, 2021.

By: Hollie A. Croft

Hollie A. Croft, Esq.
Fla. Bar No. 886181