STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2021-025VW
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 RULES 67-21.0025(7)(c) and 67-21.003(1)(b) and NON-COMPETITIVE APPLICATION PACKAGE (REV. 04-2020)

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 Corporation's rules which require natural person principals by the third principal disclosure level ("**Third Disclosure Level Requirement**"). Moreover, Petitioner hereby petitions the Corporation for waiver of the requirement that for 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 established pursuant to Section 159.604, Florida Statutes (2020); that the Non-Competitive Application Form (the "**Application**") 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 (the "**Timing Requirement**"). Further, Petitioner requests a waiver of the requirement that the total proposed equity amount to be paid prior to or simultaneous with the closing of

construction financing be at least 15 percent of the total proposed equity (the "**15% Criteria**") per the Non-Competitive Application (Rev. 04-2020). This Petition is filed pursuant to Section 120.542 of the Florida Statutes (2020) and Chapter 28-104, Florida Administrative Code. In support, Petitioner states as follows:

A. THE PETITIONER AND DEVELOPMENT

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: Flynann Janisse
Telephone: (480) 467-3171
Email: fjanisse@rainbowhousing.org
With a copy to: ccoler@mrkpartners.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 Riley & Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4239
Facsimile: (407) 650-0979
Email: hollie.croft@nelsonmullins.com

3. Petitioner previously submitted an application to the Housing Finance Authority of Miami-Dade County (the "**HFA**") for the issuance of multifamily housing revenue bonds to be used for the construction of that certain 578-unit affordable housing development (the "**Development**"), which is intended to be part of a mixed-use development in Downtown Miami, Florida that will be known as Sawyer's Walk ("**Sawyer's Walk**"), and Petitioner is in the process of closing with the HFA, which closing is scheduled to occur the beginning of June, 2021. Petitioner has 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.

B. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

C. THE RULES FROM WHICH WAIVER IS SOUGHT

5. Petitioner requests a waiver from Rule 67-21.0025(7)(c), F.A.C. (2020), which requires Petitioner to disclose natural person principals by the third principal disclosure level (unless the entity is a trust in which case the natural person principals may be identified by the fourth principal disclosure level) when submitting the Principal Disclosure Form (defined below) in connection with the Application; and the Non-Competitive Application Instructions which are incorporated by Rule 67-21.003(1)(b), F.A.C. (2020) (collectively, the "**Rules**"). The specific provisions of the Rules from which Petitioner is seeking a waiver are as follows:

> Rule 67-21.0025(7)(c), F.A.C. (2020), which provides in relevant part:
>
> (7) Disclosure of the Principals of the Applicant must comply with the following:
>
> > (a) The Applicant must disclose all of the Principals of the Applicant (first principal disclosure level). For Applicants seeking Housing Credits, the Housing Credit Syndicator/Housing Credit investor need only be disclosed at the first principal disclosure level and no other disclosure is required;
> >
> > (b) The Applicant must disclose all of the Principals of all the entities identified in paragraph (a) above (second principal disclosure level);
> >
> > (c) **The Applicant must disclose all of the Principals of all of 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**; and

(d) If any of the entities identified in paragraph (c) above are a trust, the Applicant must disclose all of the Principals of the trust (fourth principal disclosure level), all of whom must be natural persons.

(emphasis added)

Rule 67-21.003(1)(b), F.A.C. (2020), which provides in relevant part:

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 **********.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. Given the Application itself requires the Third Disclosure Level Requirement, the Timing Requirement, and the 15% Criteria, Petitioner is also seeking a waiver of various provisions of the Application, as incorporated into the Rule. The specific provisions of the Application from which Petitioner is seeking a waiver are as follows:

Non-Competitive Application, Section A.6.a., provides in relevant part:

6. Principals Disclosure for Petitioner and each Developer:

a. Provide the Principals of the Applicant and Developer(s) Disclosure Form in effect at the time of Application submission ("Principal Disclosure Form"), as "Exhibit 3" to the Application form. The current Principals Disclosure Form is available on the Website at https://www.floridahousing.org/programs/developers-multifamily-programs/non-competitive.

The Principal Disclosure Form must identify, pursuant to subsections 67-21.002(86) and 67- 21.0025(7) and (8), F.A.C., the Principals of the Applicant and Developer(s)…

(emphasis added).

Non-Competitive Application Instructions, provide, in relevant 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;

(emphasis added).

Non-Competitive Application, Section 13(c)(2)(a), requires in relevant part:

(a) If the Credit Underwriting for the bonds was prepared by a Credit Underwriter under contract with the Corporation, **provide a complete copy of the final Credit Underwriting Report** as "Exhibit 7".

(emphasis added).

Non-Competitive Application, Section 15(k), provides in relevant part:

15. Applicant Certification:

By completing, executing and submitting this Application form and all applicable exhibits, the Applicant certifies and acknowledges that:

***

k. The proposed equity amount to be paid prior to or simultaneous with the closing of construction financing is **at least 15 percent of the total proposed equity** to be provided (the 15 percent criteria) …

(emphasis added).

D. STATUTES IMPLEMENTED BY THE RULES

7. The Rules are 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 OF THE RULE

9. Petitioner is seeking a waiver from Section A.6.a. of the Application, which requires the applicant to include with its application for non-competitive tax credits the Principals of the Applicant and Developer(s) Disclosure Form (Rev. 05-2019) (hereinafter, the "Principal Disclosure Form"), as an exhibit to the Application. The application further requires that the applicant identity the principals pursuant to subsection 67-21.002(86), F.A.C., which provides the definition of who constitutes a "Principal" for disclosure purposes. Moreover, subsection 67-21.0025(7) of the Corporation's rules provides specific requirements an applicant must comply with for the disclosure of "Principals".

10. As such, for Petitioner to submit an Application for 4% housing credits for the Development and comply with Section A.6.a. thereof, it must be able to submit the Principal Disclosure Form in accordance with not only Rule 67-21.002(86), but also Rule 67-21.0025(7)(c). Petitioner's current ownership structure does not comply with the requirements of Rule 67-21.0025(7)(c). Therefore, Petitioner is seeking a waiver of 67-21.0025(7)(c), which requires that by the third principal disclosure level of the Principal Disclosure Form, the Principals disclosed must all be natural persons except if the Principal(s) is a trust, in which case the natural persons

can be disclosed by the fourth principal disclosure level. Notwithstanding the requested waiver to submit the Principal Disclosure Form, Petitioner will submit the information required by the Principal Disclosure Form but is unable to submit the Principal Disclosure Form since its disclosures extend through the sixth level. An organizational chart is attached to this Petition as Exhibit A.

11. Petitioner cannot meet the requirement to have natural person principals by the third principal disclosure level for the following reasons:

a. The Development will consist of 578 affordable residential units of which 96% will serve the elderly population. In addition to the residential units which will cover 11 stories of the building, there will be 3 stories of commercial/retail space including retailers such as Aldi and Target, and the building will also include a 4-story, 955-car parking garage. The contemplated ownership structure for Sawyer's Walk is complex and is anticipated to include condominium ownership for the various components, with partial common upper tier ownership of the commercial/retail space and the residential units. The parking garage will be owned by a Community Development District. Likewise, the contemplated financing structure for the Development is complex, and is anticipated to include many grants, a City of Miami loan, Miami Forever Bonds, Miami-Dade Housing Finance Authority tax-exempt bonds, 4% low-income housing tax credits, private equity, and below-market land acquisition pricing from the Southeast Overtown CRA. It is also anticipated that Petitioner will receive

project-based vouchers from Miami-Dade County for half of the residential units.

b. The financing plan for the Development, specifically, is anticipated to consist of the local county bonds, 4% tax credits, and the City of Miami loan. To that end, Petitioner has submitted an Application for Housing Credits; however, Petitioner's ownership structure identifies natural persons by the sixth principal disclosure level and not the third/fourth, as required by the Rule.

c. Petitioner's ownership structure consists of a non-profit general partner, a Class B limited partner and the investor limited partner. The Class B limited partner has three additional levels of entities before reaching the natural person owners, which creates the noncompliance with the Third Disclosure Level Requirement. The multi-tier structure is necessary to accommodate the ownership and financing of the commercial components. Specifically, it is anticipated that several of the grants will be made to entities at the first through third levels since same will be allocated to the commercial components and therefore cannot flow through Petitioner. Further, the private equity investment, which is in relation to, and will be allocated towards, the commercial component, is anticipated to be made at the second level, which is necessary so that such private investor is not directly a member of the Class B limited partner or the joint venture entity of the developers (the third level). The various members of the joint venture entity of the developers will be companies and trusts at the fourth and fifth levels

and all natural person principals of these entities/trusts will be disclosed by the sixth level.

d. The creation of wholly different entities for the residential and commercial components is not feasible or beneficial to the Development. The Class B limited partner's participation in the ownership of all of the various components of Sawyer's Walk, through the various entities in its structure, will be crucial for the overall success of Sawyer's Walk, including the Development, as it will allow for centralized operations and oversight of all aspects of the development and financing.

12. In order to complete the Credit Underwriting Report, Petitioner must have finalized its ownership structure which it will not be able to do until this Petition is granted. As such, Petitioner will be unable to complete Credit Underwriting before submission of the Application. The Petitioner anticipates completing credit underwriting and submitting the final Credit Underwriting Report to the Corporation at a later date, sometime after the Corporation's April board meeting. However, Petitioner cannot submit this Petition without first submitting an Application and cannot submit an Application until completing Credit Underwriting and cannot complete Credit Underwriting and finalize its Credit Underwriting Report without the granting of this Petition. Consequently, Petitioner will need to submit the Application before completing 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 Credit Underwriting Report with its Application in order to prevent any further delay to the closing and construction commencement of the Development.

13. Further, Petitioner is seeking a waiver from Section 15(k) of the Application, which requires 15% of total proposed equity to be paid prior to or simultaneous with construction closing. The anticipated equity contribution at construction closing for the Development is approximately 10% of the total proposed equity, which is $7,000,000. While Petitioner is not meeting the 15% Criteria, approximately $7,000,000 is a substantial equity contribution. Generally, the rationale behind requiring the 15% Criteria is to ensure that investors are committed and have "skin in the game". Here, given the complexity of the ownership and financing of Sawyer's Walk, the investor's sizable contribution at closing sufficiently demonstrates their commitment to the Development. Additionally, Petitioner does not need an amount over 10% of the total proposed equity at construction closing. The construction schedule is approximately three (3) years and during that time Petitioner must prioritize spending bond proceeds before it utilizes other financing sources. If the 15% Criteria is not waived, a hardship will be created for Petitioner as Petitioner's credit pricing will be reduced if it must request an additional $3,500,000 from the investor up front because the investor's yield will be further decreased. Given the long construction timeframe, the investor is not going to receive the Housing Credits for substantially longer than is typical in this type of transaction.

14. A waiver of the Rules 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 sufficient funds to construct these much needed affordable units to be set-aside for the elderly in Miami.

15. In this instance, Petitioner meets the standards for a waiver of the Rules. 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 Rules are waived to allow the 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 the Petitioner and the Development. Specifically, the purpose of the Third Disclosure Level Requirement is for the Corporation to know who is participating in its programs. However, strict application of this rule would lead to the unintended result that Petitioner is unable to receive credits simply because natural persons are identified at the sixth disclosure level, rather than the third. In this specific instance, the Corporation's failure to grant the waiver requested will result in a substantial hardship to Petitioner, as Sawyer's Walk would not be constructed. This area of Miami 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, the various grants, and other components, including the CDD-owned parking garage. The Corporation will not be harmed by granting this Petition as the intent of the Rule will not be violated. The Third Disclosure Level Requirement was implemented to permit the Corporation to ascertain the parties involved in its programs. Petitioner is able to provide to the Corporation natural person principals, but not by the third (or fourth) principal disclosure levels.

16. The requested waiver of the Third Disclosure Level Requirement serves the purpose of the Statute that is implemented by the Rules. 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 this waiver of the Corporation's rules which require a natural person principal by the third principal disclosure level,

a final CUR included with the Application, and at least 15 percent of the total proposed equity to be paid prior to or simultaneous with the closing of construction financing, Petitioner will be able to apply for non-competitive housing credits with its current structure, as requested in this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

F. ACTION REQUESTED

17. For the reasons set forth herein, Petitioner respectfully requests the Corporation (i) grant the requested waiver of the Corporation's rule which requires a natural person principal by the third principal disclosure level (or fourth in the case of trusts); (ii) grant the requested waiver of the Timing Requirement and Corporation's requirement that a final CUR be included in the Application; (iii) grant the requested waiver of the 15% Criteria; (iv) grant the Petition and all of the relief requested herein; and (v) grant such further relief as it may deem appropriate.

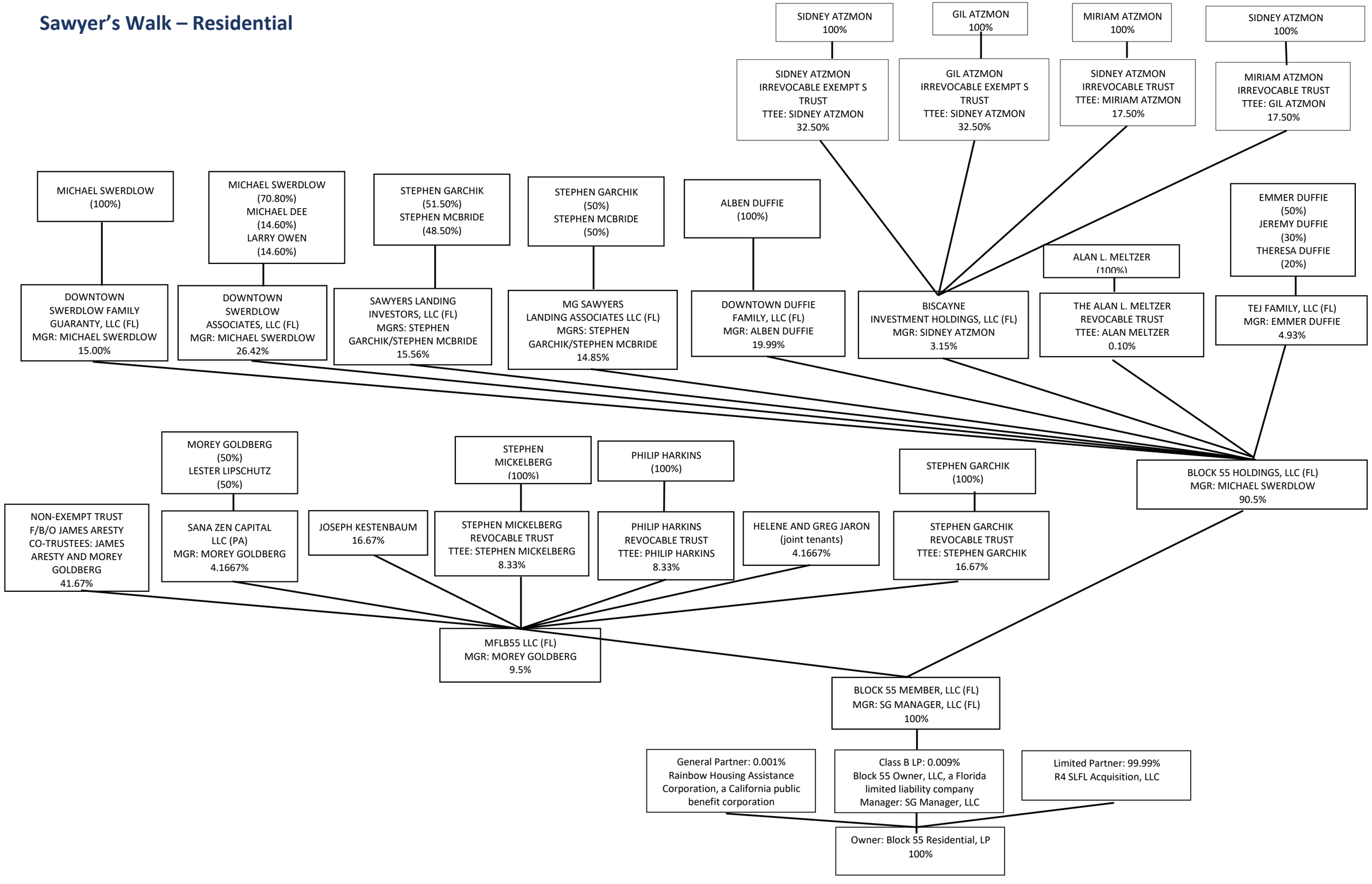
Respectfully submitted,

Hollie Croft

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COUNSEL FOR PETITIONER

EXHIBIT A
(Organizational Chart)

Sawyer's Walk – Residential



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 14th day of April, 2021.

By: Hollie Croft

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