STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: 2021-_095VW **APPLICATION NO.:** 2021-___HB

IN RE: The WM at the River, LP

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-21.026(9)

The WM at the River, LP, a Florida limited partnership (the "Petitioner"), by and through its undersigned counsel, submits this petition ("Petition") to the Florida Housing Finance Corporation (the "Corporation"). The Petitioner seeks a waiver of C. 67-21.026(9), Florida Administrative Code (July 8, 2018) ("Rule" or "Fla. Admin. Code"). The Rule requires that when Tax Exempt Bonds are issued by an issuer that is not the Corporation or a County housing finance agency ("County HFA"), the credit underwriter must order an appraisal in connection with the preparation of its credit underwriting. This Petition does not seek any additional remedies or waivers beyond those set forth herein. Petitioner seeks the Board's approval to waive C. 67-21.026(9) Fla. Admin. Code and permit the issuer, the Housing Authority of the City of Delray Beach, Florida (interchangeably, "Issuer" or "DBHA") the use of an appraisal upon which the Corporation may rely allowing the allocation of low income housing tax credits to the Petitioner. This Petition is filed pursuant to Section 120.542, Fla. Stat. (2021, as amended), and Chapter 28-104, Fla Admin. Code. In support, the Petitioner states as follows:

A. THE PETITIONER

1. The mailing address, telephone number and email of the Petitioner is:

The WM at the River, LP
c/o: The WM GP, LLC, a Florida limited liability company
and 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
Arnall Golden Gregory LLP
1775 Pennsylvania Avenue, N.W., Suite 1000
Washington, D.C. 20006
Telephone: (202) 677.4924
E-mail: orlando.cabrera@agg.com

3. Petitioner will receive proceeds from a private activity multifamily housing bond issuance ("Bonds") to be issued by DBHA. DBHA is organized under Chapter 421, Fla. Stat. (2020, as amended) and is a body corporate and politic of the State of Florida. 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 HFA, is the issuer of the private activity bonds, and has reserved and received a commitment for the requisite volume cap from the State of Florida's Division of Bond Finance 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. The United States Department of Housing and Urban Development ("HUD") has approved and executed all required transaction documents relating to this transaction.

6. Petitioner is rehabilitating a public housing property consisting of two towers known as the Windsor Tower and Maley Tower ("Property").

7. The Property is owned by DBHA that is undergoing a conversion under HUD's Rental Assistance Demonstration ("RAD") program authorized under 42 U.S.C. § 1437v of the United States Housing Act of 1937.

8. The DBHA Property, upon which Windsor and Maley Towers are located, is (a) classified as one (1) property by HUD and serves existing elderly and disabled residents, (b) currently public housing owned by DBHA subject to a Declaration of Trust with HUD, and (c) located at 524 South Beach Street, Daytona Beach, Florida 32114 ("Windsor") and 600 South Beach Street, Daytona Beach, Florida 32114 ("Maley") (hereinafter interchangeably referred to as the "Property" or "Windsor-Maley"), respectively. As public housing, the Property is currently subsidized under §1437g of the Housing Act of 1937 (otherwise known as Section 9 of the Housing Act of 1937). 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")(otherwise known as Section 8 of the Housing Act of 1937).

9. The Property is "federally-assisted" as that term is defined under 24 CFR § 5.100 and will remain so after rehabilitation using the 4% LIHTC allocation.

10. Petitioner's Property will remain federally encumbered by HUD pursuant to covenants recorded of public record.

11. The Housing Act of 1937, RAD guidelines, and HUD require that the underlying Property that is the subject of RAD conversion remain under DBHA ownership.

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

13. The HUD's RAD approval is based on a July 2019 appraisal prepared by Novogradac & Co. ("HUD-approved Appraisal").

14. HUD has a closing deadline of November 30, 2021 that HUD is willing to move to December 31, 2021 notwithstanding currently finalized and executed RAD documents.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

15. The Petitioner requests a waiver of or variance from C. 67-21.026 (9), Fla. Admin. Code (effective July 8, 2018) (the "Rule"), which provides in pertinent part:

> **67-21.026 HC Credit Underwriting Procedures.**
> […] (9) An appraisal report conforming to the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal and reported in a comprehensive format, and a separate market study shall be ordered by the Credit Underwriter, at the Applicant's expense, from an appraiser qualified for the geographic area and product type not later than completion of Credit Underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the proposed Development's financial feasibility. […] If the Tax-Exempt Bonds are issued by an entity other than the Corporation or a County Housing Finance Authority, the appraisal must be ordered by the Credit Underwriter. The market study must be completed by a disinterested party who is approved by the Credit Underwriter. The Credit Underwriter shall consider the market study, the Development's financial impact on Developments in the area previously funded by the Corporation, and other documentation when making its recommendation of whether to approve or disapprove a Housing Credit Allocation. The Credit Underwriter shall also review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application. For the Credit Underwriter to make a favorable recommendation, the submarket of the proposed Development must have:
> (a) An average physical occupancy rate of 92 percent or greater; and,
> (b) For Developments with new construction units, an average market rental rate, based on unit mix and annualized rent concessions, of 110 percent or greater of a 60 percent of Area Median Income rental rate. […]

16. "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.

C. STATUTES IMPLEMENTED BY THE RULES

17. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statutory provisions that designate authority to the Corporation relating to the issue set forth herein pursuant to §§420.507, 420.5093, and 420.5099, Fla. Stat (2021, as amended).

D. JUSTIFICATION FOR PETITIONER'S REQUESTED WAIVER

18. Under Section 120.542(1), Fla. Stat. and C. 28-104, Fla. Admin. Code, the Corporation has the power and authority to grant waivers to its rules when strict application of those 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 *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.

19. Compliance with the Rule would cause substantial legal hardship by endangering HUD's approval of DBHA's RAD conversion and the subsequent rehabilitation of the Property under federal law.

20. Compliance with the Rule without a waiver would cause Petitioner to lose all available financing for the transaction. Furthermore, if the Rule is not waived, it would deprive the City of Daytona Beach and Volusia County, Florida of the preservation and renovation of much needed affordable housing that serves the elderly and disabled and violates principles of fairness by denying issuance of 4% LIHTC that would otherwise be allocated if the issuer were the Corporation a County HFA.

21. Consequently, waiving the Rule and thus allowing the credit underwriter to "order" the HUD-approved Appraisal upon which the Corporation can rely preserves much needed affordable housing, and avoids unfairness and substantial hardship on the Petitioner and the Property.

22. By granting the requested waiver, the Petitioner and Issuer will be able to close and will assure that 298 much needed affordable housing units serving the elderly and disabled remain affordable and are renovated. Such a result assists the Corporation with fulfilling its statutory mandate to provide safe, sanitary, and affordable housing to the citizens of Florida.

23. Finally, a waiver of this Rule will serve the purposes of Section 420.5089 Fla. Stat. and Chapter 67-21, Fla. Admin. Code because the Rule waiver will facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income elderly and disabled persons. The Act (Section 420.501, Fla. Stat. *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, including the elderly and disabled. Denial of the waiver would cause substantial hardship to Petitioners and other stakeholders by depriving the City of Daytona Beach and Volusia County, Florida of essential and affordable housing units. Accordingly, granting this Petition contributes to the Corporation achieving its statutory purpose.

24. Further, failure to waive this Rule will cause substantial harm to DBHA and the Property because if the 4% LIHTC is not issued by the Corporation it will permanently terminate the possibility of closing this transaction.

25. HUD has already set a deadline of November 30, 2021 but will likely re-issue and re-execute all RAD documents in order to accommodate a closing by the end of December, 2021 should the Board grant this Rule waiver.

26. The literal application of the Rule would unfairly impose a requirement on DBHA a non-corporation and non-county HFA issuer, that requires it to meet an underwriting standard that is different than those applicable to the Corporation or a County HFA, thereby creating an unfair application of the Rule and will injure the Petitioner if the Corporation does not allocate 4% LIHTC and counter-productively impede the rehabilitation of safe, decent, and sanitary affordable housing.

27. Moreover, the elderly and disabled residents of the Property would be deprived of affordable, rehabilitated units if the Rule is not waived because the Corporation's failure to allocate

the 4% LIHTC would cause HUD and other financial stakeholders to withdraw their commitments to finance the transaction.

28. If the 4% LIHTC are not allocated to the Petitioner in connection with the rehabilitation of the Property, the Property's units are incapable of being financed by other means because §9 of the Housing Act of 1937 prohibits real property subject to a HUD required declaration of trust, like the Property, from being mortgaged or otherwise the subject of a LIHTC transaction. RAD conversion together with this Rule waiver allows the Property to be financed and the affordable units rehabilitated.

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

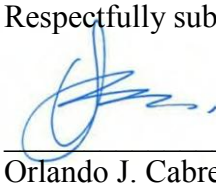
E. TYPE OF WAIVER

30. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

31. For the reasons set forth herein, the Petitioner respectfully requests the Corporation (i) grant a waiver of the Rule to allow the credit underwriter to "order" the addition of the Corporation as a party to the HUD-approved Appraisal, (ii) grant this Petition and all the relief requested herein; and (iii) grant such further relief as the Board may deem appropriate.

Respectfully submitted,



Orlando J. Cabrera
Arnall Golden Gregory LLP
1775 Pennsylvania Avenue, N.W., Suite 1000
Washington, D.C. 20006
202.677.4924
E-mail: orlando.cabrera@agg.com
Fla. Bar Number 0894151

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was sent 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 dated November 19, 2021.



Orlando J. Cabrera
Fla. Bar No. 0894151