STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: 2021-068VW **APPLICATION NO.:** 2021-___HB

IN RE: WM at the River, LP

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FLORIDA HOUSING
FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-21.0025(7)(d)

WM at the River, LP, a Florida limited partnership (the "Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-21.0025(7)(d), Florida Administrative Code (May 18, 2021)("Rule" or "Fla. Admin. Code"), which limits the disclosure of entities to three principal disclosure levels with respect to (a) the applicant of four (4%) low income housing tax credits ("LIHTC"). Petitioner seeks the Board's approval to undertake the allocation of 4% LIHTC and the Developer notwithstanding the provisions in the Regulations for the reasons set forth herein. This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code. In support, the Petitioner states as follows:

A. THE PETITIONER

1. The mailing address, telephone number and email of the Petitioner WM at the River, LP, a Florida limited partnership ("Petitioner") is:

Petitioner's General Partner

WM at the River, LP

c/o: The WM GP, LLC, a Florida limited liability company, 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
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Washington, D.C. 20006
Telephone: (202) 677.4924
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3. Petitioner is the Applicant in connection with a private activity multifamily housing bond issuance ("Bonds") undertaken by the Housing Authority of the City of Daytona Beach organized under Chapter 421, Fla. Stat. (2020, as amended) and body corporate and politic of the State of Florida ("DBHA"). 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, is the source of the private activity bonds, and has reserved the requisite volume cap for the Petitioner 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. Petitioner's general partner is The WM GP, LLC, a Florida limited liability company ("WMGP").

6. Petitioner is rehabilitating a public housing property consisting of two towers known as the Windsor Tower and Maley Tower owned by DBHA that is undergoing a conversion under the Rental Assistance Demonstration ("RAD") program authorized under 42 U.S.C. §1437v, the United States Housing Act of 1937, and are classified as one (1) property as existing elderly and elderly/disabled housing by the United States Department of Housing and Urban Development ("HUD") located at 524 South Beach Street, Daytona Beach, Florida 32114 ("Windsor") and 600 South Beach Street, Daytona Beach, Florida 32114 ("Maley") (interchangeably referred to as the "Property" or "Windsor-Maley"). The Windsor and Maley Towers are currently public housing units subsidized under §1437g of the Housing Act of 1937 and are public housing. 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")

7. The Property is "federally-assisted" as that term is defined under 24 CFR Part 5.100.

8. Petitioner's Property will remain federally encumbered by covenants with HUD, and further, will be deemed federally-assisted after closing.

9. Petitioner's general partner is The WM GP, LLC, a Florida limited liability company ("GP").

10. The GP's co-members are The WM GP I, LLC, a Florida limited liability company ("Manager and Member") and The WM GP II, LLC, a Florida limited liability company ("Member").

11. The Manager's members is BGC Advantage, LLC, a Mississippi limited liability company ("BGC").

12. BGC's manager is Knight Advantage, LLC, a Mississipi limited liability company ("Knight") whose sole principal is Holly Knight. Knight Advantage, LLC holds 50% of BGC's membership units. Ms. Knight holds 100% of Knight Advantage, LLC's units.

13. BGC's member holding 50% of BGC's membership units is MT Resources Group, LLC. MT has two members: KPL LLC, a Louisiana limited liability company ("KPL") and McConnell Southeast Holdings, LLC, a Louisiana limited liability company ("MSH").

14. KPL's members are Patrick M. Temple (KPL Manager and Member), Kelsey Temple Philips, and Leslie Temple Horvath.

15. MSH's members are Clay K. McConnell, Melissa M. Merritt, Wesley W. McConnell, the Clay K. McConnell Family Trust ("CKM"), the Melissa M. Merritt Family Trust ("MMM"), and the Wesley W. McConnell Family Trust ("WWM").

16. The beneficiaries of MMM who are of the age of majority are Melissa M. Merritt and Austin Merritt. The remaining (2) beneficiaries are minors under the age of 18.

17. The beneficiaries of CKM who are of the age of majority are Clay K. McConnell, Rhonda Gail McConnell, and Alexandra Baskin McConnell. The remaining two (2) beneficiaries are minors under the age of 18.

18. The beneficiaries of WWM who are of the age of majority are Wesley W. McConnell, Elise Rabowin McConnell, and Alexandra Baskin McConnell. The remaining three (3) beneficiaries are minors under the age of 18.

19. No business entity or natural person who is a participant in the transaction being undertaken by the Petitioner has been sanctioned by HUD, the Corporation or any other state housing finance agency.

20. The WM GP II, LLC, a Florida limited liability company ("WMGP II"), is a member in WM is a wholly owned affiliate of the Daytona Beach Housing Development Corporation, a Florida non-profit corporation ("DBHDC").

21. DBHCD is an instrumentality of the DBHA as defined under §1437a(b)(6) of the Housing Act of 1937. HUD requires that all RAD development be undertaken under single purpose entities acting as public housing agency instrumentalities under the Housing Act of 1937 and its appurtenant federal regulations.

22. DBHA's and DBHCD's Board of Directors are Kelvin Daniels, Chairman of DBHA and DBHDC, Kim Brown-Crawford, Commissioner and Vice Chairwoman of DBHA and DBHDC, Sally L. Jass, Commissioner of DBHA and Director of DBHDC, Irma Browne Jamison, Commissioner of DBHA and Director of DBHDC, and Hemis N. Ivey, Jr., Commissioner of DBHA and Director of DBHDC (together, the "Board").

23. Natalie Smith-Wells is the Interim Chief Executive Officer and Executive Director of DBHA ("Executive Director") and the President and Secretary of DBHDC.

24. The Housing Act of 1937, RAD guidelines, and HUD require that the real property undergoing RAD conversion remain in the public housing agency's ownership.

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

B. THE RULE FROM WHICH WAIVER IS SOUGHT

The Petitioner requests a waiver of or variance from Rule 67-21.0025 (7)(c), Florida Administrative Code (effective May 18, 2021) (the "Rule"), which provides in part: **67-21.0025(7)(c) – Miscellaneous Criteria.**

> (d) The Applicant must disclose all of the Principals of all 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**;
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> [...]
>
> Ellipse and emphasis added.

C. STATUTES IMPLEMENTED BY THE RULES

7. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statute that designated the Corporation pursuant to §§420.507, 420.5093, and 420.5099, Fla. Stat (2021, as amended).

D. JUSTIFICATION FOR PETITIONER'S REQUESTED WAIVER

8. The Petitioner is requesting to disclose through the fifth (5^{th}) principal disclosure level, for the following reasons:

a. Petitioner's general partner, WMGP (first disclosure level) is composed of two members, The WM GP I, LLC, the Manager ("WMGP I") and The WM GP II, LLC ("WMGP II"), both Florida limited liability companies and WMGP's members (second level disclosure).

b. WMGP I's members is BGC (third level disclosure).

c. BGC's members are Knight and MT (fourth level disclosure).

(i). Knight's sole member and manager is Holly Knight.

(ii). MT's members are KPL and MSH (fourth disclosure level).

(iii). Please see paragraph 13 for the individual members of KPL (sixth disclosure level).

(iv). MSH's members are MMM, WWM, and CKM (seventh disclosure level).

(v). Please see paragraphs 15-17 for the individual beneficiaries of MMM, WWM, and CKM who are of the age of majority (eighth disclosure level).

(vi.) Melissa M. Merritt is the co-Trustee with authority for MMM, WWM, and CKM (eighth disclosure level).

d. The WM GP II has one member, DBHDC (third disclosure level).

e. DBHDC is a wholly owned affiliate of DBHA and an instrumentality of DBHA for purposes of the Housing Act of 1937 (fourth disclosure level).

f. DBHDC is composed of its Board and the Executive Director who acts as DBHDC's President and Secretary.

g. DBHA is composed of the Board and the Executive Director (fifth disclosure level).

9. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, Fla. Admin. Code, the Corporation has the power and authority to grant waivers to its rule requirements when strict application of the 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[1] *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.[1]

11. Compliance with the Rule would undermine the preservation and rehabilitation of affordable housing by denying the Petitioner's application for non-competitive 4% LIHTC that would be a critical resource for the Petitioner's efforts undertake the rehabilitation of the Property, rehabilitate obsolete public housing units under HUD's RAD program, and preserve existing affordable housing, despite the disclosure of all relevant natural persons of the age of majority through the eighth level. The disclosure of natural persons on the "third disclosure level" instead of subsequent levels defeats the purpose of allocating 4% LIHTC and assist in the preservation of units encouraged federally (by HUD) and the Corporation. Moreover, requiring compliance with the "third disclosure level" instead of subsequent levels accurately reflects the actual structure of the transaction and to restructure and disclose the transaction in any other way in order to comply with the Rule would make the Bond transaction legally and economically non-viable. Finally, compliance would create a substantial economic hardship to the Petitioner by altering its transaction structure in a manner that would terminate the transaction because current significant economic participants that are indispensable to the transaction would no longer be able to participate.

12. Additionally, compliance would cause a legal hardship by forcing the entities that compose the Petitioner's general partner to breach federal requirements relating to HUD's RAD

[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.

program, the Housing Act of 1937 and its appurtenant federal regulations, and various executed agreements. Moreover, compliance would cause Petitioner to incur considerable costs in obtaining financing. Furthermore, it would deprive the City of Daytona Beach and Volusia County of the preservation and renovation of much needed affordable housing serving the elderly and disabled and violate principles of fairness given the circumstances surrounding the delays are outside of the Petitioner's control.

13. Consequently, permitting disclosure of natural persons at the disclosure level beyond the third level instead of the third is necessary is accurate, preserves much needed affordable housing, and avoids unfairness and substantial hardship on the Petitioner and the Property. By granting the requested extension, the Property will be able to proceed to reach completion in the future, which will assure that 298 much needed affordable housing units remain affordable, and such a result assists the Corporation with fulfilling its statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

14. Further, a waiver of this Rule will serve the purposes of Section 420.5089 and the Act that are implemented by Chapter 67-21 of the Fla. Admin. Code, because one of the goals is for the federal and state allocated resources of Corporation be used to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. The Act (Section 420.501, *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. Denial of the waiver would deprive the City of Daytona Beach and Volusia County, Florida of essential and affordable housing units. By granting this Petition, the Corporation would recognize the goal.

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

E. TYPE OF WAIVER

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COUNSEL FOR PETITIONER

16. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

17. For the reasons set forth herein, the Petitioner respectfully requests the Corporation (i) grant a waiver of the Rule to allow for a full disclosure of all relevant participants beyond the Rule required "third disclosure level" and allow the Petitioner to disclose the relevant "natural persons" through a "eighth" disclosure level, (ii) grant this Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

18. Granting this waiver furthers a more accurate disclosure of the structure of the transaction and all natural persons involved in the transaction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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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 date ~~June~~ 25, 2021

By: _____
Orlando J. Cabrera
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