STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

PLATFORM 3750 II, LLC
a Florida limited liability company,

Petitioner,

FHFC CASE NO. 2022-034VW
Application No. 2020-504C

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-21.003(1)(b), F.A.C. (06/23/2020) AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS (04/2020)

Petitioner Platform 3750 II, LLC (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of Rule 67-21.003(1)(b), Florida Administrative Code ("F.A.C.") (6/23/20) ("Rule"), and the Non-Competitive Application ("NCA") instructions (04/2020), which prohibit changes to an applicant's organizational structure prior to issuance of the preliminary determination. The Housing Finance Authority of Miami-Dade County passed Resolution No. HFA 2020-12 on March 16, 2020 providing its initial approval of the issuance of debt in order to provide a loan to Petitioner and closed on local bonds on January 22, 2021. In conjunction with this multifamily housing revenue debt obligations, Petitioner used the organizational structure identified in the attached Exhibit A. However, when Petitioner submitted Application No. 2020-504C (the "Application") on or about August 24, 2020 for Non-Competitive 4% Housing Credits, Petitioner – though it correctly identified its natural person managers – mistakenly misidentified its investor members. *See* Exhibit B, Structure Identified in the Non-Competitive Application. This mistake was recently discovered in preparing the credit

underwriting report update letter. Petitioner is in need of a waiver of the Rules so that it may revise its disclosures to Florida Housing to correctly reflect Petitioner's organizational structure (*i.e.*, the bond closing structure). This revision must occur now, as opposed to waiting until after the preliminary determination issues, because the 2021 tax returns must reflect the ownership entity structure that will in fact operate the Development. Specifically, Petitioner's disclosures must be revised so that its first principal disclosure level identifies two investor members whose managers are natural persons previously disclosed in Petitioner's application. Petitioner therefore respectfully requests a waiver of the Rule and NCA Instructions to permit Petitioner to correctly identify its structure. In support, Petitioner states as follows:

A. <u>THE PETITIONER.</u>

1. The address, telephone, facsimile numbers and e-mail address for Petitioner and its qualified representative are:

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Cornerstone Group Partners, LLC
2100 Hollywood Blvd.
Hollywood, FL 33020
Telephone: 305-4438288
Fax: N/A
Email: Mara.Mades@Cornerstonegrp.com

2. The address, telephone, and facsimile number and e-mail address of Petitioner's counsel are:

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
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Miami, Florida 33130
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Bridget Smitha
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
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B. WAIVER IS PERMANENT.

3. The waiver being sought is permanent in nature.

C. DEVELOPMENT BACKGROUND.

4. Petitioner applied for non-competitive housing credits to assist in the construction of Platform 3750, a mixed-income, mixed-use, transit oriented affordable housing development (the "Development").

5. The following information pertains to the Development:

- Development Name: Platform 3750
- Development Address: 3750 S. Dixie Hwy., Miami, FL 33133
- County: Miami-Dade County
- Developer: Cornerstone Group Partners, LLC / Mara Mades
- Number of Units: 191
- Type: High Rise (new construction)
- Set Asides: 77 units at 60% AMI; 114 non-tax credit units
- Demographics: Family
- Funding: 4% Housing Credit annual allotment of $972,314

D. PETITIONER'S PRINCIPAL STRUCTURE.

6. Petitioner correctly identified its organizational structure when applying for local bonds issued through the Housing Finance Authority of Miami-Dade County in March 2020. *See* Exhibit A.

7. Petitioner subsequently applied for 4% housing credits and, in the Application, 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). *See* Exhibit B. 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). *Id*.

8. Petitioner respectfully requests a Rule waiver so that it may revise the principals mistakenly disclosed in its Application in order to correctly reflect its true organizational structure. If granted, Platform 3750 II, LLC would disclose its two investor members: (1) QOF I, LLC (50%) and (2) QOF II, LLC (50%). *See* Exhibit B. The managers are the same for both investor members: Jorge Lopez, Leon J. Wolfe and Mara S. Mades.[1] *Id*. These natural person principals were disclosed with Petitioner's Application.

9. 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.

E. <u>THE RULES FROM WHICH WAIVER IS REQUESTED.</u>

10. To change Petitioner's principals, Petitioner requests a waiver of Rule 67-21.003(1)(b), F.A.C. (06/23/2020) which 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.
>
> ***

[1] As investor members, QOF I, LLC and QOF II, LLC are not required to disclose at any other levels.

> (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 https://www.flrules.org/Gateway/reference.asp?No=Ref-12011, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

Id. Rule 67-21.003(1)(b), F.A.C. (06/23/2020) 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.

Id. at Part A. 6. b. (1) (emphasis added).

F. STATUTES IMPLEMENTED BY THE RULE.

11. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"):

- Section 420.502, Legislative findings.
- Section 420.507, Powers of the corporation.
- Section 420.508, Special powers; multifamily and single-family projects.
- Section 420.509, Revenue bonds.
- Section 420.5099, Allocation of the low-income housing tax credit.

12. Per Section 420.5099(1),(2), Florida Housing acts as the State's housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

G. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

13. Petitioner submitted its Application for non-competitive housing credits on or about August 24, 2020 and received an invitation to credit underwriting.

14. Petitioner subsequently discovered that a miscommunication caused it to incorrectly identify its organizational structure in the Application. 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).

15. If the Rule is imposed, Petitioner 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. Upon information and belief, the purpose of the Rule prohibiting changes to Petitioner's structure prior to issuance of the preliminary determination is to ensure full and fair consideration by Florida Housing of all

persons that might exert control over the Development. If the Petition is granted, Petitioner's 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, granting the Petition should not impact Florida Housing's confidence in the Development, Petitioner, or its principals.

16. Under Section 120.542(1), *Fla. Stat.,* and Chapter 28-104, F.A.C., Florida Housing has the 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. Waivers 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 or, violate principles of fairness,[2] 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.

17. Because all natural person principals that must be disclosed if the Petition is granted were disclosed to Florida Housing via the Petitioner's initial principal disclosures, granting the

[2] "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "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. § 120.542(2), Fla. Stat.

requested waiver will prevent a substantial and unfair hardship from being imposed on Petitioner while still achieving the underlying purpose of the Rule.

18. For the foregoing reasons, Petitioner meets the standards for the requested waiver.

19. The requested waiver will not adversely impact the Development or Florida Housing.

H. ACTION REQUESTED.

20. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver such that Petitioner may correctly identify its organizational structure prior to issuance of the Preliminary Determination; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

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Counsel for Petitioner

By: */s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 31st day of May, 2022.

By:___*/s/ Brian J. McDonough*_____
Brian J. McDonough, Esq.

Exhibit A - Organizational Structure for Development Operation

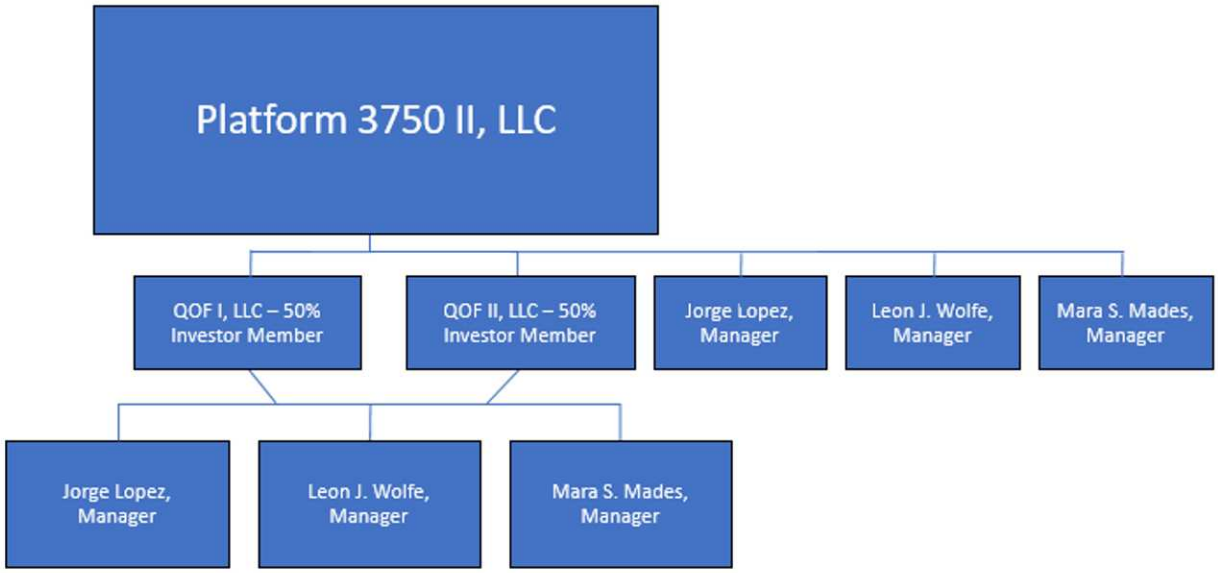


Exhibit B - Structure Mistakenly Identified in the Non-Competitive Application

