STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2022-048VW
APPLICATION NO. 2021-553C

RECEIVED
JUL 20 2022 11:14 AM
FLORIDA HOUSING FINANCE CORPORATION

CASA II VENTURE LP,

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-21.003(1)(b) AND 67-21.003(8)(l)

CASA II VENTURE LP, a Florida limited partnership ("**Petitioner**"), by and through its undersigned counsel, hereby petitions Respondent, the FLORIDA HOUSING FINANCE CORPORATION (the "**Corporation**") for a waiver of the Corporation's rule which requires that, for Non-Competitive Housing Credits (the "**4 Percent HC**") only, to be used for a Tax-Exempt Bond-Financed Development where the bonds are issued by a County Housing Authority established pursuant to Section 159.604, Florida Statues (2021), 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**"), per the Non-Competitive Application Package (REV. 03-2021) (the "**NCA**") adopted and incorporated by reference into Rule 67-21.003(1)(b), Florida Administrative Code (2021); and that the Application include an executed Applicant Certification and Acknowledgement in the form included in the NCA without supplementation, per Rule 67-21.003(8)(l), Florida

Administrative Code (2021) and the NCA adopted and incorporated by reference into Rule 67-21.003(1)(b), Florida Administrative Code (2021). This Petition is filed pursuant to Section 120.542 of the Florida Statutes (2021) and Chapter 28-104 of the Florida Administrative Code (2021). In support of its Petition, the Petitioner states:

A. PETITIONER AND DEVELOPMENT

1. The address, telephone number, facsimile number and email address of the Petitioner are:

Pacific Southwest Community Development Corporation
16935 W Bernardo Drive, Suite 238
San Diego, CA 92127
Attn: Robert Laing
Telephone: (858) 675-0506
Email: robertlaing@pswcdc.org

2. For purposes of this Petition, the address, telephone number, facsimile number and email address of Petitioner's counsel is:

Hollie A. Croft, Esq.
Nelson Mullins Riley & Scarborough
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4200
Facsimile: (407) 425-8377
Email: hollie.croft@nelsonmullins.com

3. Petitioner previously submitted an application to the Housing Finance Authority of Miami-Dade County, Florida for an issuance of multifamily housing revenue bonds (the "**Bonds**") to be used for the construction of that certain 227-unit multifamily housing development to be commonly known as Sol Vista, located at the NE Corner of SW 113th Avenue and SW 200th Street, Miami, Florida 33157 (the "**Development**"). Petitioner has also submitted an Application to the Corporation for an allocation of 4 Percent HC to fund a portion of the construction of the Development.

B. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver from Rule 67-21.003(8)(l), F.A.C. (2021) which requires the Petitioner to execute an Applicant Certification and Acknowledgement in the form attached to the NCA without supplementation in connection with the Application and 67-21.003(1)(b), F.A.C. (2021) which adopts and incorporates the NCA (collectively, the "**Rule**"). More specifically, Petitioner requests waiver of the requirement in Applicant Certification and Acknowledgement emphasized below. The specific provisions of the Rule from which Petitioner is seeking a waiver are as follows:

6. Rule 67-21.003(8)(l), F.A.C (2021), which provides in relevant part:

> "(8) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and **cannot be revised, corrected or supplemented** after the Application is deemed complete. Those items are as follows…
>
> (l) **The Application must include a properly completed Applicant Certification.…**"
>
> (emphasis added).

7. Rule 67-21.003(1)(b), F.A.C. (2021), which provides in relevant part:

> "**(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. 03-2021) is adopted and incorporated herein by reference…**"
>
> (emphasis added).

8. Section A.16 of the NCA, which provides, in relevant part:

"The Applicant Certification and Acknowledgement Form Application must be signed by the Authorized Principal Representative and provided as "Exhibit 10" to the Application form. The Applicant Certification and Acknowledgement Form may be found on the Non-Competitive Application website."

9. Applicant Certification and Acknowledgement Form Section 16.p. of the NCA, which provides, in relevant part:

"The Applicant certifies and acknowledges that…

p. The Applicant, the Developer **and all Principals are in good standing among all other state agencies and have not been prohibited from applying for funding.**"

(emphasis added).

10. The NCA, which provides, in pertinent 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).

D. STATUTES IMPLEMENTED BY THE RULE

11. 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.* (2021) (the "**Statute**").

12. 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.*

E. JUSTIFICATION FOR GRANTING THE WAIVER OF THE RULE

13. Petitioner is seeking a waiver from Section A.16 of the NCA and more specifically Section 16(p) of the Applicant Certification and Acknowledgement Form, which requires the Petitioner to certify that all of the Principals, Applicant and Developer are in good standing with all other state agency and are not prohibited from applying for funding. However, Petitioner cannot make this certification as of Application submission as certain Principals and the Developer (the "**Affected Parties**") are currently prohibited from applying for funding in the State of Virginia for reasons that would not be the basis for a funding prohibition in the State of Florida (but that the Affected Parties are nevertheless working to remedy with Virginia Housing to return to good standing).

14. The basis for the aforementioned prohibition were additional design guidelines in connection with the rehabilitation of a project in Virginia (the "**VA Project**") which, while not necessary for issuance of 8609s, were nonetheless required by Virginia Housing. While it is true that some of the additional design guidelines were not reflected in the VA Project upon issuance of the 8609s, it was the Affected Parties understanding from its prior discussions with Virginia Housing that such matters would not be the basis for a prohibition on funding applications. Unfortunately, unlike the process in the State of Florida, application prohibitions do not need to go through prior board discussion or approval and, as such, as there is no delineated opportunity to correct or dispute perceived deficiencies in the State of Virginia prior to the issuance of a prohibition, the Affected Parties were placed out of good standing before steps could be taken to

address Virginia Housing's concerns. This was a first time offense by the Affected Parties and we do not think the issues in the VA Project rose to the level to warrant an immediate prohibition but, the Affected Parties are currently in the process of remediating the design deficiencies indicated by Virginia Housing and intend to have the work necessary to have Virginia Housing release the prohibition as soon as possible.

15. As such, for Petitioner to submit a NCA for 4 Percent HC for the Development and comply with Section A.16. thereof, it must be able to submit the Applicant Certification and Acknowledgement with Section 16(p) struck through. The basis for the Affected Parties' current prohibition in the State of Virginia would not have resulted in a similar prohibition in the State of Florida and, regardless the Affected Parties are working to resolve the current lack of good standing in the State of Virginia as quickly as possible. Further the Affected Parties have participated in a number of prior deals in the State of Florida, currently consisting of over 1,500 units throughout the State of Florida, over 1,000 of which have been recently renovated and are in the process of or have already received their 8609s, for which the Affected Parties remain in good standing in connection therewith.

16. Further Petitioner requests a waiver of the Timing Requirement, which requires that Petitioner complete the credit underwriting for the county bond transaction (the "Credit Underwriting") before submission of the Application. In order to complete the Credit Underwriting Report, Petitioner must confirm the Affected Parties are permissible in the ownership structure which it will not be able to do so until this Petition is granted. However, Petitioner cannot submit this Petition without first submitting an Application and cannot submit an Application until completing the Credit Underwriting and cannot complete Credit Underwriting and finalize its Credit Underwriting Report without first 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.

17. A waiver of the Rule 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, the Petitioner will not have enough funds to construct these much needed 227 affordable units in Miami, Florida.

18. In this instance, Petitioner meets the standards for a waiver of the Rule. 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 Rule is 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 Rule was for the Corporation to certify to specific matters in its Application prevent perpetual bad actors in other states from participating in its programs. However, strict application of the Rule would lead to the unintended result that parties with extenuating circumstance and that have otherwise demonstrated their good intentions and prior competency are not able to participate in the Corporation's programs as the result of standards set in place by other state programs, as well as result in a substantial hardship to the Petitioner. In this specific instance, the Corporation's failure to grant the waiver requested will result in a substantial hardship to Petitioner, as Petitioner will not be able to apply for and

obtain 4 Percent HC and, as such, will not be able to complete the much-needed construction of the Development. The Corporation will not be harmed by granting this Petition as the intent of the Rule will not be violated.

19. The requested waiver of the Rule 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 this waiver of the Corporation's rule which requires the Application include an executed Applicant Certification and Acknowledgement in the form included in the NCA without supplementation, Petitioner will be able to apply for non-competitive housing credits while the Affected Parties work to resolve the outstanding issues with the VA Project, 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. ACTION REQUESTED

20. For the reasons set forth herein, Petitioner respectfully requests the Corporation (*i*) grant the requested waiver of the Corporation's rule which requires the Application include an executed Applicant Certification and Acknowledgement in the form included in the NCA without supplementation; (*ii*) grant the requested waiver of the Timing Requirement and Corporation's requirement that a final Credit Underwriting Report be included in the Application (*iii*) grant the Petition and all of the relief requested herein; and (*iv*) grant such further relief as it may deem appropriate.

Respectfully submitted on the 20th day of July, 2022.

Respectfully submitted,



Andrew Bennett, Esq.
Fla. Bar No. 0125189
Hollie A. Croft, Esq.
Fla. Bar No. 886181
NELSON MULLINS RILEY & SCARBOROUGH
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4200
Facsimile: (407) 425-8377
Email: drew.bennett@nelsonmullins.com
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

This 20th day of July, 2022.



Andrew Bennett, Esq.
Fla. Bar No. 0125189