STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

CARIBBEAN ISLES, LLLP,

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC Case No.: 2025-056VW
APPLICATION NO. 2024-504C

PETITION FOR WAIVER OF RULE 67-21.026(10)

Petitioner Caribbean Isles, LLLP, a Florida limited liability limited partnership (the "Petitioner"), submits its petition to Respondent, Florida Housing Finance Corporation (the "Corporation"), for a waiver of Rule 67-21.026(10), F.A.C. (July 10, 2025) (the "Rule") in effect at the time Petitioner submitted its application for non-competitive 4% federal low income housing tax credits ("Credits") in conjunction with tax-exempt bonds issued by a County Housing Finance Authority.

In support of this petition (the "Petition"), Petitioner states as follows:

A. Petitioner and the Development.

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

Caribbean Isles, LLLP
c/o Pinnacle Communities, LLC
9100 Dadeland Boulevard, Suite 700
Miami, FL 33156
(305) 854-7100
david@pinnaclehousing.com

The name, address, telephone, and facsimile numbers of Petitioner's attorneys are:

Gary J. Cohen, Esq.
Shutts & Bowen LLP
200 S. Biscayne Blvd., Ste. 4100
Miami, FL 33131
Telephone: (305) 347-7308
Facsimile: (305) 347-7808
Email: gcohen@shutts.com

2. Petitioner is developing an eight-story residential building consisting of 142 residential dwelling units to be operated as affordable housing for the elderly known as "Caribbean Isles", together with a 3-story parking garage containing 266 parking spaces and approximately 3,372 square feet of commercial space (the "Garage") and a total of 96 at-grade parking spaces (collectively, the "Project" or "Phase II"). 150 of the parking spaces in the Garage shall be set aside for the exclusive use of patrons utilizing the busway station operated by Miami-Dade Transit located proximate to the Project.

3. An affiliate of Petitioner (Caribbean Village, Ltd.) has previously developed and currently operates a seven-story residential building next to the Project, consisting of 123 residential dwelling units being utilized as residential units for the elderly known as "Caribbean Village" or "Phase I".

4. Phase I and Phase II will share common facilities including, but not limited to, parking areas, roadways, walkways, driveways and utility lines. Caribbean Village, Ltd., Petitioner and Miami-Dade County will (at or prior to closing) enter into an Amended and Restated Declaration of Easements and Licenses in order to establish easements for the benefit and protection of each other and the development and operation of each of the Phases (the "Declaration").

5. The Project is being financed with the combination of $34,000,000 of tax-exempt bond financing to be issued by the Miami-Dade County Housing Finance Authority, a $3,500,000

loan from Miami-Dade County under the Miami-Dade Surtax/SHIP program and a total of $6,500,000 of Community Development Block Grant loan funds from Miami-Dade County ("CDBG Loan"), together with equity derived from the sale of the Credits.

6. Petitioner submitted its application for the Credits on August 11, 2025, and the credit underwriting update for the Credits was completed on November 5, 2025. Final credit underwriting for the tax-exempt financing was completed and a final credit underwriting report was issued on August 5, 2025.

7. The Project is located on land being ground leased to Petitioner by Miami-Dade County pursuant to a Ground Lease to be entered into contemporaneously with the execution of the Declaration on or before closing. In order to avoid any parking disruption to the existing residents of Phase I (Caribbean Village), the Declaration requires that construction of the Garage be completed prior to commencing construction of the Phase II 142-unit residential building. In order to facilitate financing and completion of construction of the Garage prior to the closing of the sources of financing referenced in Section 5 above, Miami-Dade County has funded construction of the Garage with the CDBG Loan, and the remaining amount necessary for the construction of the Garage was funded by Pinnacle Communities, LLC (such Pinnacle funds to be reimbursed at closing of the financing described in Section 5 above). Miami-Dade County required the CDBG Loan funds to be used only to construct the Garage and not any portion of the residential building. As such, Miami-Dade County requested a separate guaranteed maximum price ("GMP") construction contract for the Garage, in order to ensure that the County CDBG loan proceeds funded only the construction of the Garage and not any portion of the residential building. Petitioner has engaged the same general contractor for the GMP construction contract for the Garage and also for the GMP construction contract for the residential building, in order to avoid

any conflicts which may arise when dealing with different general contractors. Also, construction of the Garage will be completed prior to commencement of the construction of the residential building, further reducing any potential issues pertaining to resolution of disputes or problems under the two separate GMP construction contracts.

8. As noted below, Rule 67-21.026(10) F.A.C. (July 10, 2025) (the "Rule") requires that a single GMP construction contract be utilized for development of the Project.

B. Rules from Which the Waiver is Sought.

9. The relevant portions of the Rule in effect at the time the application for Credits was submitted and for which this waiver is sought, provide as follows:

> (10) The Corporation's assigned credit underwrite shall require a guaranteed maximum price construction contract, acceptable to the Corporation, which may include change orders for changes in cost or changes in the scope of work, or both, if all parties agree, and shall order, at the Applicant's sole expense, and review a pre-construction analysis for all new construction units or a CNA for rehabilitation units and review the Development's costs.

C. Statute Implemented.

10. The Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the "Act"), § 420.5089 (Allocation of the Low-Income Housing Tax Credit). See § 420.5089, Florida Statutes (2025). Pursuant to such statute, the Corporation acts as the state's housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

11. Pursuant to Section 120.542(1), Florida Statutes (2025), "strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation." Therefore, under Section

120.542(1), Florida Statutes and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its requirements when strict application of these requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, Section 120.542(2) states:

> "Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "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." Section 120.542(2), Florida Statutes.

12. In this instance, Petitioner meets the standards for a waiver.

D. Justification for Petitioner's Requested Waiver

13. Petitioner has submitted its application for Credits to the Corporation, and has completed final credit underwriting for its tax-exempt financing. Closing of the financing described herein and commencement of construction of the residential component of the Project is scheduled to occur within the next 60 days. Completion of construction of the Garage will occur prior to closing of the remaining financing sources. Closing on the Miami-Dade County CDBG Loan occurred on May 17, 2025, and such funds (together with funds advanced by Pinnacle Communities, LLC, the Project's developer) are being drawn down to complete construction of the Garage. Once construction of the Garage is complete, closing on the financing for construction for the remainder of the Project will occur.

14. Petitioner has entered into a second GMP construction contract for construction of the residential building portion of the Project dated March 19, 2025 with the same general

contractor which is constructing the Garage. Such second GMP construction contract will govern construction of the residential building; construction of the Garage is governed by that certain GMP construction contract entered into between Petitioner and the general contractor on November 1, 2024.

15. For the reasons set forth above, Miami-Dade County has required separate GMP construction contracts for the construction of the Garage and the residential building.

16. For the foregoing reasons, Petitioner must enter into more than one GMP construction contract and respectfully request the waiver of the Rule in order to do so.

17. The requested waiver will ensure the availability of Credits which will facilitate construction of the Project.

E. Conclusion

18. The facts set forth in Section 7 and Sections 11 through 13 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver. A denial of the Petition would (a) result in substantial economic hardship to Petitioner, as it has incurred expended approximately $4,000,000 of its own funds to date toward construction of the Garage; (b) deprive Miami-Dade County of the provision of much needed affordable housing; and (c) violate principles of fairness. Section 120.52(2), Florida Statutes. The requirement of two separate GMP construction contracts has been caused by circumstances outside Petitioner's control.

19. As demonstrated above, the requested waiver serves the purposes of Section 420.5099, Florida Statutes, and the Act as a whole, because one of their primary goals is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to low income persons and households. Further, by granting the requested waiver, the Corporation would recognize principles of fundamental fairness in the development of affordable rental housing.

20. The waiver of the Rule will not prejudice the development of the Project or the Corporation. Pursuant to the requested two GMP construction contracts, Petitioner will receive the same scope and work as if it had been undertaken pursuant to one single construction contract.

21. The waiver being sought is permanent in nature. Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

WHEREFORE, Petitioner respectfully requests that the Corporation:

A. Grant this Petition and all the relief requested therein;

B. Grant a waiver of the Rule such that Petitioner may proceed with the two GMP construction contracts referenced herein; and

C. Award such further relief as may be deemed appropriate.

Respectfully submitted,

Gary J. Cohen, Esq.
Shutts & Bowen LLP
Counsel for Caribbean Isles, LLC
200 S. Biscayne Blvd., Ste. 4100
Miami, FL 33131
Telephone: (305) 347-7308
Fax: (305) 347-7808
E-Mail: gcohen@shutts.com

CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 17th day of November, 2025.

Gary J. Cohen, Esq.
Shutts & Bowen LLP
Counsel for Caribbean Isles, LLLP
200 S. Biscayne Blvd., Ste. 4100
Miami, FL 33131
Telephone: (305) 347-7308
Fax: (305) 347-7808
E-Mail: gcohen@shutts.com