

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**GLORIETA PARTNERS, LTD.,  
a Florida Limited Partnership,**

**Petitioner**

v.

**FHFC CASE NO. 2018-064VW  
APPLICATION NO. 2016-535C**

**FLORIDA HOUSING FINANCE  
CORPORATION,**

**Respondent.**

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**AMENDED PETITION FOR WAIVER OF RULE 67-21.003(1)(b), F.A.C.**

Glorieta Partners, Ltd., a Florida Limited Partnership (“Petitioner”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for a waiver of Rule 67-21.003(1)(b), Florida Administrative Code (2017) (the “Rule”). Specifically, Petitioner is requesting a waiver of the requirement that 15% of equity be paid in at the closing of the construction financing per the Non-Competitive Application Package (Rev. 08-2016) (the “NCA”) adopted and incorporated by reference into the Rule. This Amended Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

In support of this Amended Petition, the Petitioner states as follows:

**A. THE PETITIONER AND ATTORNEYS FOR THE PETITIONER**

1. The name, address, e-mail address, telephone number, and facsimile number of the Petitioner is:

Glorieta Partners, Ltd.  
Attn: Kenneth G. Weiss  
8895 North Military Trail  
Suite 201E  
Palm Beach Gardens, FL 33410  
Phone: 561-309-6501  
Fax: 561-627-5116  
E-Mail: [kgw.partners@gmail.com](mailto:kgw.partners@gmail.com)

2. The name, address, e-mail address, telephone number, and facsimile number of the Attorney for the Petitioner is:

Sarah Pape, Esq.  
[spape@zkslawfirm.com](mailto:spape@zkslawfirm.com)  
Jack Grygiel, Esq.  
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**B. THE DEVELOPMENT (BACKGROUND)**

3. On September 25, 2015, Petitioner closed on tax-exempt multi-family bonds issued by Capital Trust Agency in the amount of \$24,000,000.00 (the “Bond and Construction Closing”), which financing was used for the acquisition and rehabilitation of a 330-unit development known as Gardens-Glorieta Apartments, located in the City of Opa Locka, Miami-Dade County (the “Development”). Thereafter, Petitioner began the rehabilitation of the Development. Construction of the Development was completed at the end of 2017.

4. On October 19, 2017, nearly two years after the Bond and Construction Closing and shortly before construction of the Development was completed, Petitioner submitted an Application to the Corporation for Non-Competitive Housing Credits (“Application”) requesting

an annual amount of \$1,654,690.00 in 4% low-income housing tax credits (“Credits”), pursuant to Chapter 67-21, Florida Administrative Code to assist in financing the Development. The Corporation’s underwriter has advised the Petitioner that a waiver of the 15% Criteria (as defined below) is required in order for the Corporation to approve the Application.

**C. RULE(S) FROM WHICH WAIVER IS SOUGHT**

5. Petitioner requests a waiver from the NCA that is adopted and incorporated by reference into the Rule. The Rule provides:

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. 08-2016) 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 <http://www.flrules.org/Gateway/reference.asp?No=Ref-07356>, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

(Rule 67-21.003(1)(b), F.A.C. (emphasis added)).

6. The NCA provides, in pertinent part:

7. Applicant Certification:

By completing, executing and submitting this Application form and all applicable exhibits, the Applicant certifies and acknowledges that:

....

j. The proposed equity amount to be paid prior to or simultaneous with the closing of construction financing is at least 15 percent of the total proposed equity to be provided (15 percent criteria), subject to the following: . . . (the “15% Criteria”).

(NCA at pp. 12, 14).

**D. STATUTE(S) IMPLEMENTED BY THE RULE(S)**

7. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statute that designated the Corporation as the housing credit agency and created the Housing Credit Tax Program. *See* § 420.5099, Fla. Stat.

**E. TYPE OF ACTION REQUESTED (PETITIONER’S REQUEST FOR WAIVER FROM THE RULE)**

8. Petitioner hereby requests a waiver of the 15% Criteria for the reasons set forth below.

9. Pursuant to Section 120.542, Fla. Stat., and Chapter 28.104, F.A.C., the Corporation has the power and authority to grant waivers to its rule requirements. In this regard, Section 120.542(2), Fla. Stat., provides that waivers *shall* be granted when the person subject to the rule demonstrates that (1) the purpose of the underlying statute will be or has been achieved by other means by the person, and (2) the application of the rule would (a) create a substantial hardship<sup>1</sup> *or* (b) violate principles of fairness<sup>2</sup>.

10. As stated in this Petition, the purpose of the underlying statute will be or has been achieved by other means (Section G below) and application of the rule will create a substantial hardship and violate principles of fairness (Section F below). To qualify for a rule waiver, a petitioner need only show that application of the rule would create a substantial hardship *or* violate principles of fairness. In this case, application of the rule would both create a substantial hardship *and* violate principles of fairness. Thus, the Corporation must grant a waiver pursuant to Section 120.542(2), Fla. Stat.

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<sup>1</sup> “Substantial hardship” means a demonstrated economic, technical, legal, or other type of hardship to the person requesting the variance or waiver.

<sup>2</sup> “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.

**F. SPECIFIC FACTS THAT JUSTIFY A WAIVER OF THE RULE FOR THE PETITIONER (SUBSTANTIAL HARDSHIP OR VIOLATION OF PRINCIPLES OF FAIRNESS)**

11. The NCA, as adopted and incorporated by the Rule, requires the “Applicant” to pay “at least 15 percent of the total proposed equity to be provided” at the time of the construction closing. For the purposes of the Rule, Applicant means “any person or legal entity . . . that is *seeking a loan or funding from the Corporation by submitting an Application . . .*” Rule 67-21.002(9), F.A.C. (emphasis added). Application means “the forms and exhibits created by the Corporation for the purposes of providing the means to apply for MMRB only, Non-Competitive Housing Credits only, or both MMRB and Non-Competitive Housing Credits, as outlined in subsection 67-21.003(1), F.A.C.” Rule 67-21.002(10), F.A.C.

12. Stated another way, the Rule applies to Applicants only when they “*apply* for MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC.” Rule 67-21.003(1), F.A.C. (emphasis added).

13. At the time of the Bond and Construction Closing for the Development, less than 15% of the total proposed equity was paid by the equity provider. Following the Bond and Construction Closing on September 25, 2015, rehabilitation and construction of the Development commenced, and the equity provider paid additional equity into the Development. As of the date of this Petition, the equity provider has paid 55% of the total proposed equity, or approximately \$8,618,809.00.

14. In 2017, Petitioner applied to the Corporation for the Credits, and the Petitioner is now in the underwriting process for the Credits. The Corporation’s underwriter has advised the Petitioner that a waiver of the 15% Criteria is required in order for the Corporation to approve the Application.

15. It would be a violation of principles of fairness to apply the 15% Criteria to the Petitioner because at the time of the Bond and Construction Closing in 2015, the Petitioner had not yet submitted an Application to the Corporation to seek a loan or funding from the Corporation and Petitioner was not an Applicant within the meaning of the Rule. *See* Rule 67-20.002(9), F.A.C.; Rule 67-21.003(1), F.A.C. Since the Petitioner was not an Applicant and had not yet submitted an Application to the Corporation, the 15% Criteria did not apply at the time of the Bond and Construction Closing. There is no way for the Petitioner to change the amount of equity that was paid at the Bond and Construction Closing nearly two years ago. Notwithstanding the fact that less than 15% of the total proposed equity was paid by the equity provider at the time of the Bond and Construction Closing, the purpose of the 15% Criteria has been met because the equity provider has now paid 55% of the total equity—well beyond the minimum 15% required by the Rule and the NCA. Applying the 15% Criteria to the Petitioner retroactively would, in effect, be an unfair and unjust application of the Rule.

16. Moreover, Petitioner will endure substantial hardship if this waiver request is denied as it would not be able to obtain the Credits and will therefore lose a substantial portion of its financing, thereby suffering a demonstrated economic hardship. Without the requested waiver, Petitioner's Application will fail. If the Petitioner's application for noncompetitive Credits fails, the Petitioner's investor limited partner will not receive the tax credits for which it bargained, entitling the Petitioner's investor limited partner to exercise various remedies, including, without limitation, (i) the right to withhold the remaining capital contributions (approximately \$6,910,191.00) upon which the Petitioner depends to complete the rehabilitation, (ii) the right to assert claims against the general partners, the developer, the Petitioner, and any tax credit guarantors, and (iii) the right to exit the transaction.

**G. A WAIVER OF THE RULE WILL SERVE THE PURPOSES OF THE UNDERLYING STATUTE**

17. The waiver requested by the Petitioner will serve the purposes of Section 420.5099, Fla. Stat., and the Act because one of the responsibilities of the Corporation is to facilitate and encourage the development of safe housing for low-income persons in the state. If the waiver is granted, then the Development will proceed and provide low-income affordable housing in the state. Additionally, the requested waiver will not adversely impact the Development or the Corporation. Notably, the waiver requested is with respect to a non-competitive application so no other parties will be adversely impacted. Moreover, as stated above, the purpose of the 15% Criteria has been met because the equity provided has paid 55% of the total equity.

**H. STATEMENT AS TO WHETHER THE VARIANCE IS PERMANENT OR TEMPORARY**

18. The waiver requested by the Petitioner is permanent.

**I. ACTION REQUESTED**

19. For the reasons set forth herein, Petitioner respectfully requests the Corporation: (1) grant the requested waiver of the Rule with respect to the requirement that 15% of the equity be paid at the construction closing; (2) grant the Petition and all relief requested herein; and (3) grant such further relief as it may deem appropriate.

Respectfully submitted this 24<sup>th</sup> day of August, 2018.

Respectfully Submitted,



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Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Amended Petition is being served by email and overnight mail delivery for filing with the Corporation Clerk of the Florida Housing Finance Corporation to the following address: Corporation Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, [CorporationClerk@Floridahousing.org](mailto:CorporationClerk@Floridahousing.org), with a copy being served by overnight delivery to the Joint Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, and a copy being served by email to Chris McGuire, Assistant General Counsel, Florida Housing Finance Corporation, [Chris.mcguire@floriudahousing.org](mailto:Chris.mcguire@floriudahousing.org), this 24th day of August, 2018.

By:   
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Sarah Pape  
Florida Bar No. 0026398