

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**FHFC CASE NO.** 2020-051VW  
**APPLICATION NO.:** \_\_\_\_\_

LAKEVIEW TOWER VENTURE LP

Petitioner

vs.

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

\_\_\_\_\_ /

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

LAKEVIEW TOWER VENTURE LP, a Florida limited partnership (“**Petitioner**”), by and through its undersigned counsel, hereby petitions Florida Housing Finance Corporation (the “**Corporation**”) for a waiver of the requirement that the total proposed equity amount 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 (the “**15 percent criteria**”) per the Non-Competitive Application Package (Rev. 04-2020) (the “**NCA**”) adopted and incorporated by reference into Rule 67-21.003(1)(b), Florida Administrative Code (2020). Moreover, Petitioner hereby petitions the Corporation for waiver of the requirement that for 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 Authority established pursuant to Section 159.604, F.S.; that 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 NCA adopted and incorporated by reference into Rule 67-21.003(1)(b), Florida Administrative Code (2020). This Petition is filed pursuant to Section 120.542, Florida Statutes (2020), and Chapter 28-104, Florida Administrative Code. In support, Petitioner states as follows:

**A. THE PETITIONER**

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

Lakeview Tower Venture LP  
2711 N. Sepulveda, Suite 526  
Manhattan Beach, California 90266  
Attention: Cathy Coler  
Phone: (424) 999-4582  
Email: ccoler@mrkpartners.com

2. The address and telephone number of Petitioner's counsel are:

Hollie A. Croft, Esq.  
Nelson Mullins Broad and Cassel  
390 N. Orange Ave., Suite 1400  
Orlando, Florida 32801  
Telephone: (407) 839-4239  
Facsimile: (407) 650-0979  
Email: hollie.croft@nelsonmullins.com

3. On August 6, 2019, Petitioner submitted a Multifamily Rental Housing Bond Program Application to the Housing Finance Authority of Polk County requesting \$20,000,000 in tax exempt bonds (the "**County Bonds**"). Petitioner thereafter acquired Lakeview Tower in order to rehabilitate it by the end of 2021 utilizing the County Bonds and 4% low-income housing tax credits ("**Housing Credits**"), and preserve and expand the affordable units at Lakeview Tower. Petitioner will be using the Freddie Mac Tax Exempt Loan Program ("**Freddie TEL**") and the County Bonds will be issued in the structure of a tax-exempt note. Petitioner has applied for Non-Competitive Housing Credits and requested an annual amount of \$803,699 in Housing Credits to assist in financing the rehabilitation of an 156-unit Section 8 senior development, which currently

has 82 Section 8 units and 74 market rate units known as Lakeview Tower (the “**Development**”). Petitioner further plans to close on the County Bonds financing and housing tax credit syndication by September 30, 2020, and to complete the rehabilitation of the Development on or before December 31, 2021. After closing, the Development will utilize income averaging for Housing Credits, and therefore be restricted to 82 units at 40% AMI and 74 units at 80% AMI, adding 74 new affordable housing units for 30 years. Further, the Applicant will renew the Section 8 contract for 20 years, thereby preserving the 82 affordable units for 30 years.

**B. THE RULE FROM WHICH WAIVER IS SOUGHT**

4. Petitioner requests a waiver of the NCA, adopted and incorporated by reference by 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 \(Rev. 04-2020\)](#) 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 <http://www.flrules.org/Gateway/reference.asp?No=Ref-12011>, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

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

5. The NCA 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;*

15. Applicant Certification:

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

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k. 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 (the 15 percent criteria), subject to the following:

- (1) If syndicating/selling the Housing Credits, there are two exceptions to the preceding sentence. First, if there is a bridge loan proposal within the equity proposal that provides for bridge loan proceeds that equal at least 15 percent of the amount of total proposed equity to be provided to be made available prior to or simultaneous with closing of construction financing, the 15 percent criteria will be met. Second, if there is a separate bridge loan proposal from either the equity provider, any entity that is controlled directly or indirectly by the equity provider, or a subsidiary of the equity provider's parent holding company, and the proposal explicitly proposes an amount to be made available prior to or simultaneous with the closing of construction financing that equals at least 15 percent of the total proposed equity to be paid stated in the equity proposal, the 15 percent criteria is met. Bridge loan proposals that are not within the equity proposal, though, must meet the criteria previously stated for debt financing with the exception that evidence of ability to fund does not have to be provided. The Applicant may include the proposed amount of the bridge loan as equity proceeds on the Construction or Rehabilitation Analysis and on the Permanent Analysis (Note: this 15 percent criteria must be reflected in the limited partnership agreement or limited liability company operating agreement); or
- (2) If not syndicating/selling the Housing Credits, proceeds from a bridge loan will not count toward meeting the 15 percent criteria;

See Section 15(k) of the Non-Competitive Application Form (Rev. 04-2020).

### **C. STATUTES IMPLEMENTED BY THE RULES**

6. 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 Tax Credit Program. See § 420.5099, *Fla. Stat.*

**D. WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE**

7. Petitioner hereby requests a waiver of the 15 Percent Criteria, and waiver of the Timing Requirement, for the reasons set forth below.

8. As stated above, Petitioner plans to close on the tax-exempt bonds and enter into its Amended and Restated Agreement of Limited Partnership with its investor limited partner in September 2020 (the “**Partnership Agreement**”). As will be required by that certain Partnership Agreement, in order to deliver the necessary low-income housing tax credits in 2021, the Development must complete construction on or before December 31, 2021. The September closing is necessary to complete the rehabilitation of the Development by the end of 2021. This will allow Petitioner the necessary time to prepare the site, coordinate resident schedules, and mobilize the general contractor for the rehabilitation; all while taking the necessary precautions related to COVID-19 to protect the senior residents, the management staff, and all construction personnel related to the Development.

9. While it is necessary to admit the investor limited partner at the construction financing closing, the investor limited partner is unable to contribute 15 percent of the total proposed equity until January 2021. The uncertainty caused by the Covid-19 pandemic earlier in 2020 resulted in a delay of the investor limited partner’s fund closing from fall 2020 to January 2021. If closing is to be delayed from September 2020 to 2021 to mirror the investor limited partner’s funding timeline; the development team will not have enough time to properly prepare the site for rehabilitation and would risk not completing the rehabilitation of the Development in 2021. The inability to complete the rehabilitation in 2021 will cause a significant reduction in the tax credit equity contributions, which would in turn create a large shortfall in the deal. Petitioner is bringing this issue before the Corporation now, because without the waivers requested herein,

the rehabilitation of the senior community in desperate need of upgrades, and the preservation of existing affordable units and the creation of new affordable units is infeasible.

10. The Petitioner has worked with the investor limited partner on several transactions before, and, for this Development, has worked to solve for such timing and funding challenges, the result of which is the adjustment of the projected pay-in schedule to reflect the funding of a tax credit bridge loan on the anticipated close date in calendar year 2020, to allow all parties the time needed to prepare and complete the project before December 31, 2021. Nonetheless, because of the economic delays caused by Covid-19 to the investor limited partner's fund, this tax credit bridge loan is not able to be funded directly or indirectly from either the investor limited partner, or one of its affiliates, and must come from a third-party financial institution. A funding structure involving a third-party bridge loan would provide the Development with 15 percent or more of the required equity at closing. This structure has been approved by Freddie Mac, although the Freddie TEL program typically requires similar equity contributions from the investor limited partner at closing. However, Freddie Mac has approved the structure for the Development for the reasons set forth herein.

11. The issue presented above, and the need to have a waiver for the Housing Credits, has also caused a delay to Credit Underwriting and the issuance of the final Credit Underwriting Report (the "CUR"). As such, Petitioner will be unable to complete Credit Underwriting before submission of the Application. The Petitioner anticipates completing Credit Underwriting and submitting the final CUR to the Corporation at a later date, sometime after the Corporation's board meeting. However, Petitioner cannot submit this Petition without first submitting an Application and cannot submit an Application until completing Credit Underwriting and cannot complete

Credit Underwriting and finalize its CUR without the 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 requests waiver of the NCA Timing Requirement so that Petitioner can submit its Application to the Corporation before completing Credit Underwriting, in order to prevent any further delay to the much needed rehabilitation of the Development and ensure the preservation of the existing affordable housing units and the creation of additional affordable housing units for the underserved elderly population.

12. Petitioner will endure substantial hardship if this waiver request is denied as it would not be able to obtain the Housing Credits, and therefore lose a substantial portion of its anticipated financing. Without the equity investment, the rehabilitation of the Development will not be completed, and the preservation of existing affordable units and creation of new affordable units will not occur. Moreover, a denial of this waiver would violate the principles of fairness because Petitioner is being hindered by an economic delay caused by a global pandemic beyond its control.

13. Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., 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. 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<sup>1</sup> *or* violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* §

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<sup>1</sup> “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.

120.542(2), Fla. Stat. As demonstrated in this Petition, the strict application of the Rule would constitute a substantial hardship and violate the principles of fairness. Further, a waiver of this Rule will serve the purposes of Section 420.5099 and the Act that are implemented by Chapter 67-21 of the Florida Administrative Code, because one of the goals of the Corporation is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. Lastly, the requested waiver will not adversely impact the Development or the Corporation.

**E. TYPE OF WAIVER**

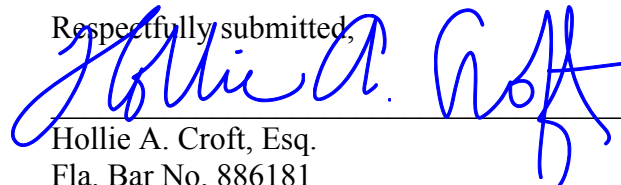
14. The waiver being sought is permanent in nature.

**F. ACTION REQUESTED**

15. For the reasons set forth herein, Petitioner respectfully requests the Corporation (i) grant the requested waiver of Rule 67-21.003(1)(b), Fla. Admin. Code, waiving the requirement that 15% of the equity be paid at construction closing and the requirement that the Application cannot be submitted until the Applicant completes Credit Underwriting ; (ii) grant the Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted on the 19th day of August, 2020.

Respectfully submitted,



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Fla. Bar No. 886181  
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Email: 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

The 19th day of August, 2020.

NELSON MULLINS BROAD & CASSEL

By: 

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Hollie A. Croft, Esq.  
Fla. Bar No. 886181