

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: PLATFORM 3750, LLP

FHFC Case No.: 2020-053VW

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**ORDER GRANTING WAIVER FROM RULES  
67-21.003(1)(b), 67-21.026(13)(f), AND 67-21.026(13)(h)  
FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 4, 2020. Florida Housing Finance Corporation (“Florida Housing”). On August 18, 2020, Florida Housing received a Petition for Waiver of the Rules 67-21.003(1)(b), 67-21.026(13)(f), and 67-21.026(13)(h), Florida Administrative Code (the “Petition”). Notice of the Petition was published on August 20, 2020, in Volume 46, Number 1633, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (“Board”) of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner applied for non-competitive housing credits to assist in the construction of Platform 3750, a mixed-income, mixed-use, transit orientated affordable housing development in Miami Dade County, Florida

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*Thomas M. Lamoreaux* DATE: 9/4/2020

(the “Development” or “Platform 3750”). The Application has yet to meet threshold.

3. Rule 67-21.003(1)(b), Fla. Admin Code, 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. 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.

4. Rules 67-21.026(13)(f) and (h) Fla. Admin. Code, in relevant part, states:

(f) For Developments with a Development category of new construction, unless otherwise approved by the Board for a specific Development, ensure that not more than 20 percent of the construction cost, not to include the General Contractor fee or pass-through fees paid by the General Contractor, is subcontracted to any one entity or any group of entities that have common ownership or are Affiliates of any other subcontractor, with the exception of a subcontractor (or any group of entities that have common ownership or are Affiliates of any other subcontractor):

...

2. Contracted to deliver the building shell of a building of at least five (5) stories which may not have more than 31 percent of the construction cost in a subcontract, unless otherwise approved by the Board for a specific Development; or

...

With regard to said approval, the Board shall require an analysis from the Credit Underwriter and consider the facts and circumstances of each Applicant's request, inclusive of construction costs and the General Contractor's fees. For purposes of paragraph (f), "Affiliate" has the meaning given in subsection 67-21.002(5), F.A.C., except that the term "Applicant" therein shall mean "subcontractor";

...

(h) Ensure that no construction cost is subcontracted to any entity that has common ownership or is an Affiliate of with the General Contractor or the Developer. For purposes of this paragraph, "Affiliate" has the meaning given it in subsection 67-21.002(5), F.A.C., except that the term "Applicant" therein shall mean "General Contractor."

5. Petitioner requests waiver of the above cited rules to allow Petitioner to subcontract with an affiliate of its General Contractor, for more than 31% of the construction cost to deliver the building shell for a building of at least 5 stories, and to submit its application for non-competitive housing credits prior to completion of credit underwriting for the bonds.

6. Petitioner states that Platform 3750 is the first mixed-use, mixed income, transit-oriented project to be developed in Miami-Dade County that

consists of office space, retail space, county office space, 79 affordable residential units, and 112 market rate residential units.

7. Petitioner states that Cornerstone Group Partners, LLC (“Cornerstone”) was awarded the lease on the proposed site in 2017 from Miami-Dade County and has been working on the design of the development with Current Builders, Inc. and others including CB Structures, Inc. (“CB Structures”) for the past two years. According to Petitioner, the mixed-use nature of the Development makes it a complicated construction project and construction costs are over 50 million dollars with the shell costs in excess of 15 million dollars. Petitioner asserts that the Development has almost completed underwriting with HUD, the first mortgage lender, and the financing must close in the fall or it will lose the retail tenants it has already secured which will jeopardize the successful completion of the Development.

8. Due to the complex nature of the development, Petitioner states it sought bids for the shell work only from established and experienced subcontractors. Two complete bids were received: one from CB Structures for \$15,998,178 and one from Baker Concrete Construction, Inc. (“Baker”) \$18,217,185 (over \$2 million more). According to Petitioner, CB Structures, Inc. is a division of Current Builders, Inc. with over 250 employees and over thirty years’ experience in constructing shell structures of all types of

developments including serving as a third-party subcontractor for the construction of shells for numerous affordable housing developments.

9. Petitioner asserts that the coordination with public and private stakeholders will be greatly enhanced by the use of CB Structures because CB Structures has been participating in the development process for the past several years and has the necessary relationships with the different stakeholders. Petitioner states that if it brings in an unaffiliated third-party to perform the shell work, it would result in a delay in the provision of the affordable housing units and may lead to significant increases in the cost of the work.

10. According to Petitioner, all labor and materials provided by CB Structures for the affordable residential units will be performed at cost with no built-in profit or fees. Current Builders, the General Contractor, is not an affiliate of the Developer. The 79 affordable residential units, with corresponding community space will comprise approximately 27% of the proposed development site.

11. Petitioner states that of the total cost of the shell work, approximately \$4,203,645 is attributed to the 79 affordable residential units. The allocation of costs will be vetted at credit underwriting and whatever costs are agreed to be appropriate for the affordable units, those costs will be at cost

and the 10% limitation would be applied to those agreed upon costs. Petitioner agrees that the General Contractor fee on the costs subcontracted to CB Structures for the affordable units will be capped at 10% and the General Contractor fees on all other shell costs not attributed to the affordable residential units will be capped at 14%. Additionally, Petitioner agrees that an independent Certified Public Accountant (“CPA”) will confirm and audit all payments between the General Contractor and CB Structures and the independent CPA will audit and confirm all payments and report those costs within the General Contractors Cost Certification. Also, the independent CPA will confirm and/or verify an additional 40% of the Development’s construction costs per the Final Cost Certification Application Package.

12. Petitioner asserts that the contracted cost to deliver the building shell is 36.27% of the total construction cost exclusive of General Contractor fees which exceeds the 31% limitation in Rule 67-21.026(13)(g), Fla. Admin. Code. According to Petitioner, the higher percentage is due to the mixed-use nature of the Development which includes, among other things, additional covered parking to satisfy the needs of residents as well as retail and office occupants. The credit underwriter analyzed the proposed costs and gave a positive recommendation.

13. Petitioner requests to apply for the housing credits prior to completion of the Bond underwriting in order to ensure that the above discussed issues are cleared up prior to construction in order to avoid unnecessary delays.

14. Petitioner asserts that approval of this waiver request will allow the Development to proceed to completion providing much needed affordable housing and permanent employment for residents in Miami-Dade County.

15. Section 120.542(2), Florida Statutes, provides in pertinent part:

Variations 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.

16. The Board finds that granting the requested waiver would not impact other participants in funding programs administered by Florida Housing, nor would it detrimentally impact Florida Housing.

17. The Board also finds that Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver is not granted.

18. The Board further finds that Petitioner has also demonstrated that the purpose of the underlying statute, which is to “encourage development of

low-income housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

**IT IS THEREFORE ORDERED:** Petitioner’s request for a waiver of Rules 67-21.003(1)(b), 67-21.026(13)(f) and 67-21.026(13)(h) Fla. Admin. Code is hereby **GRANTED** to allow Petitioner’s General Contractor to contract with an affiliated company, CB Structures, Inc., to perform the shell work, to exceed the 31% limitation of the construction cost for a subcontract for the shell work, and to allow Petitioner to apply for the non-competitive housing credits early under the following conditions:

- A. All costs for the affiliated work attributable to the affordable units will be at cost with no profit or other fees built in;
- B. The General Contractor Fee on the affiliated costs attributable to the affordable units will be capped at 10%;
- C. An independent CPA will confirm/audit all payments between the Affiliate entities and will verify 100% of the work performed by the Affiliate entity; and
- D. As part of the cost certification process, in addition to confirming/auditing all payments between the Affiliate entities, an independent CPA will confirm and/or verify an additional 40% of the



Development's costs per the Final Cost Certification Application Package.

**DONE and ORDERED** this 4th day of September 2020.



Florida Housing Finance Corporation

By:   
Chairperson

Copies furnished to:

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### **NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.**