

**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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**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 Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

In support of this 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.  
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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, 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.

4. On October 19, 2017, Petitioner applied to the Corporation for Non-Competitive Housing Credits requesting an annual amount of \$1,654,690.00 in 4% low-income housing tax credits (“Housing Credits”), pursuant to Chapter 67-21, Florida Administrative Code to assist in financing the Development.

**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 F below) and application of the rule will create a substantial hardship and violate principles of fairness (Section G below). Thus, the Corporation must grant a waiver pursuant to Section 120.542(2), Fla. Stat.

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

11. 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

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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.

Development or the Corporation. Notably, the waiver requested is with respect to a non-competitive application so no other parties will be adversely impacted.

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

12. The NCA requires the applicant to pay “at least 15 percent of the total proposed equity to be provided” at the time of the construction closing. At the time of the construction closing for the Development, due to mistake and inadvertence, only 10 percent of the total proposed equity was paid by the equity provider.

13. Following the bond 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% percent of the total proposed equity.

14. Petitioner has now applied to the Corporation for the Housing Credits, and is in the underwriting process for the Housing Credits. The Corporation’s underwriter has advised the Petitioner that a waiver of the 15% Criteria is required in order for the closing on the Housing Credits to proceed.

15. Notwithstanding the mistake and error at the construction closing in which only 10% of the total proposed equity was paid by the equity provider, 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.

16. Petitioner will endure substantial hardship if this waiver request is denied as it would not be able to obtain the Housing Credits and will therefore lose a substantial portion of its financing. Without the Housing Credit financing the acquisition and rehabilitation of the

Development will not be completed. Moreover, a denial of this waiver would violate the principles of fairness because at this time Petitioner has met the 15% Criteria since more than 15% equity has now been paid by the equity provider.

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

17. The waiver requested by the Petitioner is permanent.

**I. ACTION REQUESTED**

18. 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 17<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 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, this 17<sup>th</sup> day of August, 2018.

By:   
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Sarah Pape  
Florida Bar No. 0026398