

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

Valencia Park Preservation, Ltd.,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2020-050VW
Application No. 2019-103B

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-21.003(1)(b) (eff. 7-11-19)
AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS

Petitioner Valencia Park Preservation, Ltd. (the “Petitioner”) by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation (“Florida Housing”), for a waiver of the prohibition under Rule 67-21.003(1)(b), Florida Administrative Code (“F.A.C.”) (7-11-19) and the Non-Competitive Application Instructions against changing the principals of Petitioner identified in the application. In its application, Petitioner identified 13 Hazeltine LLC at the second level (as a member of Petitioner’s General Partner: Valencia Park GP LLC), the sole member of which was Zack Ulman. However, 13 Hazeltine LLC and Zack Ulman are no longer associated with Valencia Park GP LLC and/or Petitioner. Accordingly, Petitioner respectfully seeks a waiver so that its current organizational structure, attached as Exhibit A, may be revised to remove 13 Hazeltine LLC from the second principal disclosure level and Mr. Ulman from the third level, as depicted in Exhibit B. The requested change will not result in the association of previously undisclosed entities, but rather the disassociation of two disclosed principals bearing a mere 5% interest in Petitioner’s 00.01% General Partner. In support, Petitioner states as follows:

A. THE PETITIONER.

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

Valencia Park Preservation, Ltd., a Florida limited partnership
Attn: Mr. Jonathan Gruskin
201 Santa Monica Boulevard, Suite 550
Santa Monica, CA 90401
Telephone: (303) 489-7187
Email: yoni@lincolnavecap.com

2. The address, telephone, and facsimile number and e-mail address of Petitioner's counsel is:

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff &
Sitterson, P.A.
150 West Flagler Street
Suite 2200
Miami, Florida 33130
Telephone: 305-789-3350
Fax: 305-789-3395
Email: Bmcdonough@stearnsweaver.com

Bridget Smitha
Stearns Weaver Miller Weissler Alhadeff &
Sitterson, P.A.
106 East College Avenue, Suite 700
Tallahassee, FL 32301
Telephone: 850-329-4852
Fax: 850-329-4864
Email: BSmitha@stearnsweaver.com

B. WAIVER IS PERMANENT.

3. The waiver being sought is permanent in nature.

C. DEVELOPMENT BACKGROUND.

4. The following information pertains to the development underlying Petitioner's application:

- Development Name: Valencia Park Apartments
- Development Address: 532 Park Tree Terrace, Orlando, FL 32825
- County: Orange
- Developer: Valencia Park Developer LLC
- Number of Units: 208 acquisition/rehab

- Type: Garden
- Set Asides: 40% of units at 60% AMI or lower.
- Demographics: Family
- Funding: \$25,500,000 FHFC-issued MMRB and an annual non-competitive HC Allocation of \$1,319,555

D. PETITIONER'S PRINCIPAL STRUCTURE.

5. Petitioner, a Florida limited partnership, disclosed: (1) Valencia Park GP LLC (General Partner); and (2) BFIM TBD LP (Limited Partner) at the first principal disclosure level in its application. *See* Current Organizational Structure, attached as Exhibit A. Petitioner is in the process of replacing BFIM TBD LP with one of National Equity Fund, Inc.'s affiliates. Once the substitution is finalized, Petitioner will notify FHFC in accordance with the NCA's requirements and the new limited partner will be included in the credit underwriting report. Petitioner is not otherwise seeking a change at this level.

6. At the second level, only the principals flowing from Valencia Park GP LLC are pertinent here, which comprise: (1) 13 Hazeltine LLC (5% member); (2) SJB Management LLC (36% member); (3) ENB Family LLC (24% member); (4) Matthew Bronfman Family EMBT (19% member); and (5) Red Rocks 90 LLC (16% member). At this level, Petitioner is only seeking to remove 13 Hazeltine LLC and to redistribute its 5% interest among the remaining members: (1) SJB Management LLC (37.9%); (2) ENB Family LLC (25.26%); (3) Matthew Bronfman Family EMBT (20%); and (4) Red Rocks 90 LLC (16.84%). *See* Proposed Organizational Structure, attached as Exhibit B.

7. At the third level, only the principal flowing from 13 Hazeltine LLC is at issue. Because 13 Hazeltine LLC is no longer a member of Valencia Park GP LLC and must be

removed from the organization structure, so too must 13 Hazeltine LLC's sole member (Mr. Ulman) be removed. See Proposed Organizational Structure, attached as Exhibit B.

E. THE RULE FROM WHICH WAIVER IS REQUESTED.

4. To change Petitioner's principals, Petitioner requests a waiver of Rule 67-21.003(1)(b), F.A.C. (7-11-19) which provides in pertinent part:

(1) Applicants shall apply for MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC as set forth below. For purposes of this subsection only, the term NC Award shall refer to MMRB, Non-Competitive HC, or a combination of MMRB and Non-Competitive HC, and funding from the following Corporation programs will not be considered to be other Corporation funding: Predevelopment Loan Program (PLP) and Elderly Housing Community Loan (EHCL) Program.

(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. 04-2019) 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-10774>, which shall be completed and submitted to the Corporation in accordance with this rule chapter.

Id. Rule 67-21.003(1)(b), F.A.C. (7-11-19) incorporates by reference the Non-Competitive Application Package (Rev. 04-2019) ("NCA"). The NCA includes the following requirement:

The Applicant entity shall be the recipient of the Non-Competitive Housing Credits and the borrowing entity for the MMRB Loan and **cannot be changed in any way** (materially or non-materially) until after the MMRB Loan closing. After loan closing, (a) any material change will require review and approval of the Credit Underwriter, as well as Board approval prior to the change, and (b) any non-material change will require review and approval of the Corporation, as well as Board approval prior to the change. Changes to the Applicant entity (material or non-material) prior to the loan closing or without Board approval after the loan closing shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes prior to loan closing to the officers or directors of a Public Housing Authority, officers or directors of a Non-Profit entity, or the limited partner of an investor limited partnership or an investor

member of a limited liability company owning the syndicating interest therein will not result in disqualification, however, the Corporation must be notified of the change. Changes to the officers or directors of a Non-Profit entity shall require Corporation approval.

Id. at Part A. 6. b. (2) (emphasis added).

F. STATUTES IMPLEMENTED BY THE RULE.

8. Rule 67-21.003, F.A.C. (2019), implements, among other sections of the Florida Housing Finance Corporation Act (the “Act”):

- Section 420.502, Legislative findings.
- Section 420.507, Powers of the corporation.
- Section 420.508, Special powers; multifamily and single-family projects.
- Section 420.509, Revenue bonds.
- Section 420.5099, Allocation of the low-income housing tax credit.

9. Per Section 420.5099(1),(2), Florida Housing acts as the State’s housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

G. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

10. Petitioner timely submitted a non-competitive application for Valencia Park Apartments (the “Development”). Petitioner received an invitation to underwriting on December 6, 2019.

11. Subsequently, 13 Hazeltine LLC and its sole member (Mr. Ulman) became disassociated with Petitioner and released all of its interest Petitioner’s general partner. As a result, the parties no longer wish to, nor plan to, work together.

12. If the request for waiver is denied, Petitioner and its general partner will be forced to continue associating with entities that have released all associated interests. This will create an immense administrative burden.

13. As set forth above, Petitioner's natural person principals disclosed in its application will not change if the Petition is granted. Rather, two previously disclosed principals (*i.e.*, 13 Hazeltine LLC and its sole member) will simply be removed from the organizational structure. Put another way, the natural persons benefitted by the funding will not increase if the Petition is granted. Moreover, the member being removed comprised only a 5% interest in the General Partner. Accordingly, granting the Petition – and allowing a fictitious entity and a natural person to be removed – should not impact FHFC's confidence in the Petitioner or its principals.

14. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., Florida Housing has the 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 or, violate principles of fairness,¹ and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat.

15. If the Rule is imposed, Petitioner's organizational structure will suffer a substantial and unnecessary operational hardship.

¹ "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. § 120.542(2), Fla. Stat.

16. Because all natural persons financially benefitting from the Development were disclosed to Florida Housing via the Petitioner's initial principal disclosures, granting the requested waiver will prevent a substantial and unfair hardship from being imposed on Petitioner while still achieving the underlying purpose of the Rule.

17. For the foregoing reasons, Petitioner meets the standards for the requested waiver.

18. Granting the waiver will not adversely impact the Development or Florida Housing.

H. ACTION REQUESTED.

19. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver such that Petitioner may remove an entity and its sole member from its organizational structure; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
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Miami, Florida 33131
Tel: (305) 789-3350
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Counsel for Petitioner

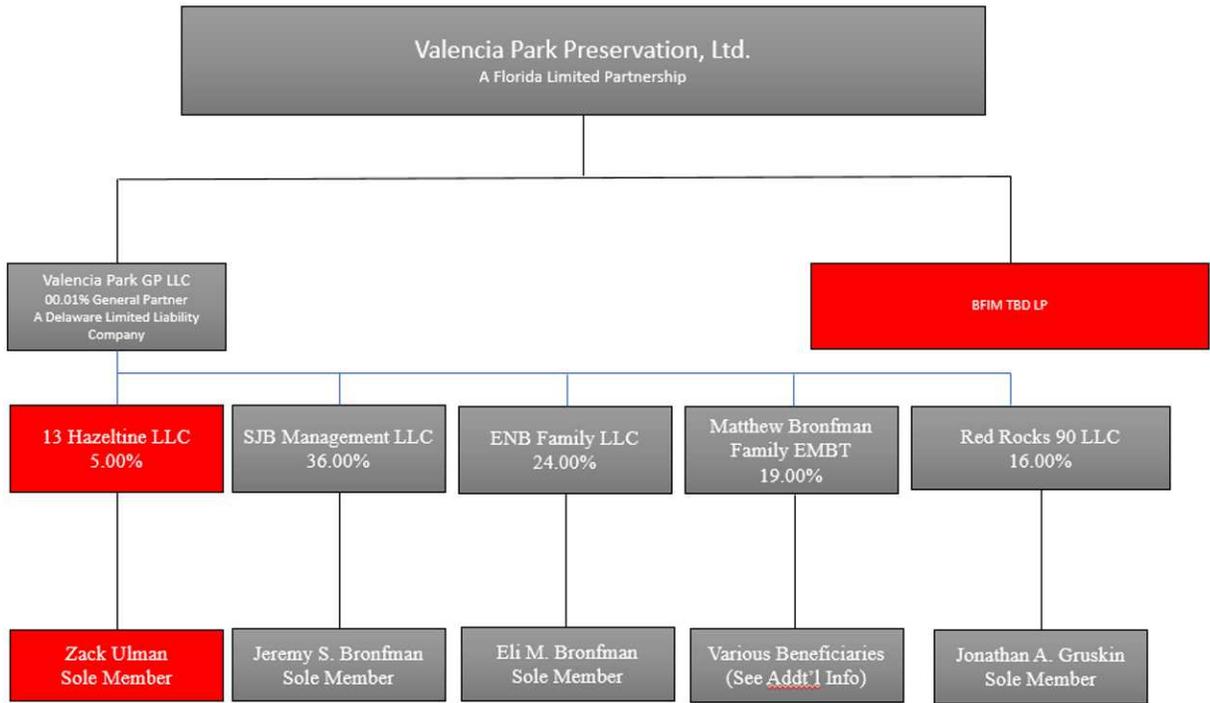
By: /s/ Brian J. McDonough
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 17th day of August, 2020.

By: /s/ Brian J. McDonough
Brian J. McDonough, Esq.

Exhibit A – Current Organizational Structure



Additional Information

Matthew Bronfman Family EMBT

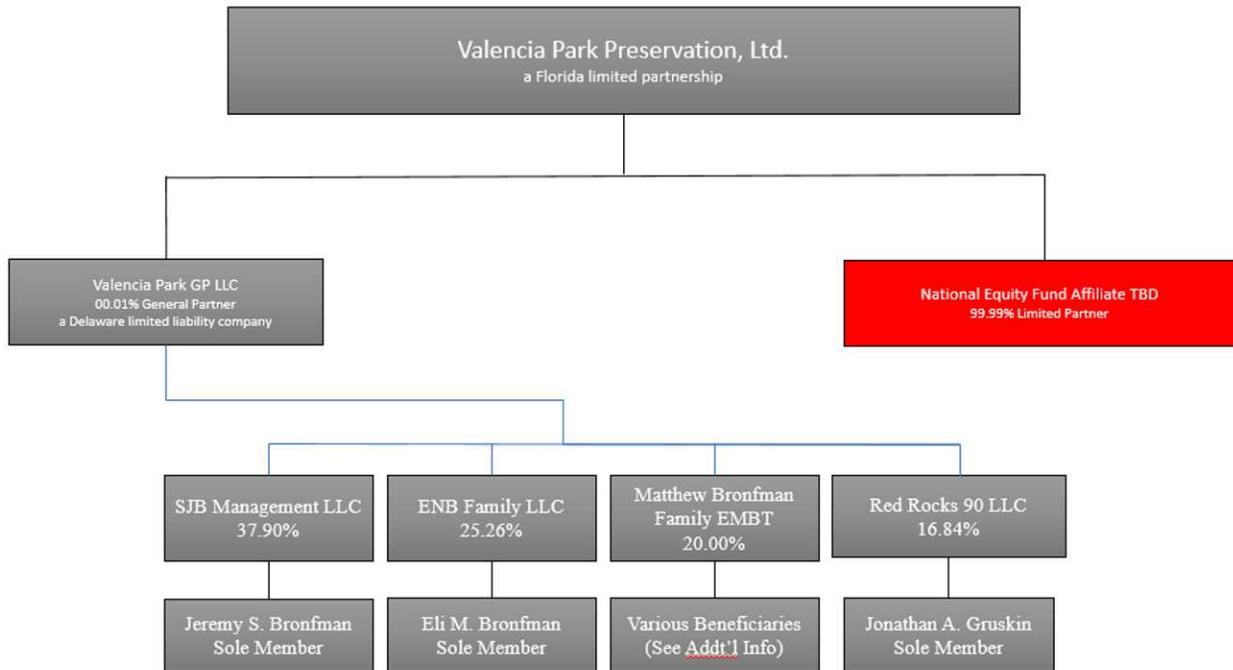
Beneficiaries

- Matthew Bronfman
- Sasha Bronfman
- Jeremy Bronfman
- Tess Bronfman
- Eli Bronfman
- Ezekiel Bronfman
- Gabriela Bronfman
- Coby Bronfman
- Sadie Bronfman

Matthew Bronfman Family EMBT Trustees

- Matthew Bronfman
- John Weinberg
- Almog Geva
- Edgar Bronfman Jr.
- Mayo Shattuck
- Adam Bronfman

Exhibit B – Proposed Organizational Structure



Additional Information

Matthew Bronfman Family EMBT Beneficiaries

- Matthew Bronfman
- Sasha Bronfman
- Jeremy Bronfman
- Tess Bronfman
- Eli Bronfman
- Ezekiel Bronfman
- Gabriela Bronfman
- Coby Bronfman
- Sadie Bronfman

Matthew Bronfman Family EMBT Trustees

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