

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2020-053VW

PLATFORM 3750 II, LLC  
Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,  
Respondent.

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PETITION FOR WAIVER OF RULES 67-21.003(1)(b), 67-21.026(13)(f)  
AND 67-21.026 (13)(h)  
FLORIDA ADMINISTRATIVE CODE (2019)

Pursuant to section 120.542, Florida Statutes, and rule 28-104.002, Florida Administrative Code, Platform 3750 II, LLC ("Platform 3750" or "Petitioner") submits this Petition to Respondent, Florida Housing Finance Corporation ("Florida Housing") for a waiver of Rule 67-21.026 (13)(f) and (h), F.A.C. Platform 3750 is proposing to develop a unique mixed-income, mixed-use, transit oriented affordable housing development in Miami-Dade County, Florida, financed with tax-exempt bonds issued by the Housing Finance Authority of Miami-Dade County, Florida Housing 4% low income housing tax credits and an equity contribution by the ownership entity. Cornerstone Group Partners, LLC, the developer selected Current Builders, Inc., (hereinafter "Current Builders") as the General Contractor given their wealth of experience constructing projects in South Florida, including mixed-use properties. Petitioners seek a waiver of rules 67-21.003(1)(b), 67-21.026 (13)(f) and (h), F.A.C. so that Current Builders may contract with CB Structures, Inc., (hereinafter "CB Structures") an affiliated company to perform the Shell work and to allow Platform 3750 to apply for the non-competitive Housing Credits earlier than the allowed time. In support of this Petition, Platform 3750, states as follows:

PETITIONER AND ATTORNEY

1. The name, address, telephone number and email address for Petitioner is Mara Mades, Cornerstone Group Partners, LLC, 2100 Hollywood Blvd., Hollywood, Fl., 33020, (305)-443-8288, Mara.Mades@cornerstonegrp.com. For purposes of this proceeding, the contact information for Petitioner is that of the undersigned counsel.

2. The name, address, telephone number, and email address for Petitioner's attorney is Maureen McCarthy Daughton, Maureen McCarthy Daughton, LLC, 1400 Village Square Blvd., Ste 3-231, Tallahassee, Florida 32312; 850-345-8251; [mdaughton@mmd-lawfirm.com](mailto:mdaughton@mmd-lawfirm.com).

BACKGROUND

3. Platform 3750 is the first mixed-use, mixed income, transit oriented development project to be developed in Miami-Dade County. The project consists of 13,586 square feet of office space, 20,470 square feet of retail space, 12,585 feet of County office space, 79 affordable residential units and 112 market rate units. Platform 3750 offers residents a community in which they can “work and live” by offering 50 retail jobs, 50 private sector office jobs and 20-30 government positions. The site will also host Aldi’s, a premier value-oriented grocer, a Starbucks, and a 9,500 square foot complete rebuilding of the Frankie Shannon Rolle Center (hereinafter “FRSC”) which provides a wide variety of social, health and community services to residents of Miami-Dade and West Coconut Grove, in particular.<sup>1</sup>

4. Platform 3750 is uniquely situated at the Douglas Road Metro-Rail Station and is attached to the station by means of an existing pedestrian overpass. Across the street at Stirrup Plaza is a designated meals for the Elderly location which provides free hot meals for elderly residents five

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<sup>1</sup> Miami-Dade County Community Action and Human Services Department (“CAHSD”) will occupy 4,500 square feet of space within the FSRC offices. CAHSD is the largest provider of comprehensive social services in Miami-Dade County, and is a nationally accredited organization recognized for its outstanding practices in providing high quality social services. Part of the services provided includes, Early Childhood Education & Development, Employment Preparation & Placement, Child and Youth Development Services and Elderly & Disability Services. In addition, State of Florida, Department of Children and Families (“DCF”) will occupy the balance of the space at FSRC which will provide services to central Miami-Dade residents.

(5) days a week. The offices of the Miami-Dade County District 7 Commissioner, currently Xavier Suarez, will also be housed at Platform 3750 in a 3,000 square foot office. This will provide residents direct and valuable access to County government.

5. The Cornerstone Group was awarded the lease on the proposed site from Miami-Dade County in 2017 and has been working on the design of the development, specifically from an efficiency perspective, with Current Builders, Inc. and others, including CB Structures, for the past two (2) years. The mixed-use nature of Platform 3750 makes this a complicated construction project and constructions costs are over *fifty (50) million dollars* with the shell costs in excess of *fifteen (15) million dollars*. The Development has almost completed underwriting with HUD, the first mortgage lender, and the financing must close in the fall or Platform 3750 will lose the retail tenants it has already secured which will jeopardize its successful completion.

6. The 79 affordable residential units, with corresponding community space, will make up approximately 27% of the proposed development site.

7. Due to the complex nature of this development, bids were only sought for the Shell work from established and experienced subcontractors. Two complete bids were received one from CB Structures and one from Baker Concrete Construction, Inc. ("Baker"). The bid from CB Structures was \$15,998,178, the bid from Baker was \$2,219,007 more than the CB Structures bid totaling \$18,217,185.

8. CB Structures, is willing to perform the shell work for the affordable residential units at cost. All labor and materials provided by CB Structures for these units will be at cost with no built-in profit or fees. Current Builders, the General Contractor, is *not* an affiliate of the Developer. The total cost of the Shell Work is \$15,998,178 with approximately \$4,203,645 of that being attributed to the 79 affordable residential units and the cost of the remaining shell work \$11,794,533. If this Petition is approved, 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%.<sup>2</sup>

9. CB Structures, Inc. is a division of Current Builders, Inc, with over 250 employees. CB Structures has over thirty (30) years of experience in constructing shell structures for all types of developments. Since 2004, when CB Structures incorporated, it has been serving as a third-party subcontractor for the construction of shells for numerous affordable housing developments.<sup>3</sup>

10. Rule 67-21.026(13)(g), Florida Administrative Code prohibits, without Board approval, more than 31% of the construction cost be contracted to deliver the building shell of a building over five (5) stories. Here the contracted cost to deliver the building shell is 36.27% of the total construction cost exclusive of General Contractor fees. This 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. In the absence of Board approval of this Petition for Waiver this rule would prohibit the hiring of CB Structures.

11. Additionally, Rule 67-21.026(13)(h), Florida Administrative Code, prohibits construction costs from being subcontracted to any entity that has common ownership or is an Affiliate of the General Contractor or the Developer. It appears that application of this rule would prohibit Current Builders from engaging CB Structures as its subcontractor for the Shell work.

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<sup>2</sup> The construction cost is \$50,198,085, however excluding the General Contractors Fee and other costs by the General Contractor the Contract Amount is reduced to \$44,190,564. The General Contractor Fee for the shell work for the affordable units will be limited to 10% or \$420,364.50 and the General Contractor fee for the remaining shell work will be limited to 14% or \$1,651,235 for a total of \$2,071,599 as the General Contractor Fee for all of the Shell work.

<sup>3</sup>The list includes but is not limited to Verbena (performed work as 3<sup>rd</sup> party subcontractor), Heron Pond, University Park, Pinnacle at Peacefield (3<sup>rd</sup> party subcontractor) and Arbor View Apartments (2016-161C) (Received approval by FHFC to subcontract CB Structures, Inc.)

12. Lastly Rule 67-21.003(1) requires non-competitive applications, under certain circumstances, applicable here to only be submitted after credit underwriting for the bonds is completed. Credit Underwriting is currently in process for the bonds.

13. The requested waivers are permanent in nature.

RULE FOR WHICH WAIVER IS SOUGHT

14. Rule 67-21.003(1)(b), provides as follows,

67-21.003 Application and Selection Process for Developments.

(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 terms 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 (ECHL) Program.

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(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. at 04-2020) is adopted and incorporated herein by reference and consists of the forms and instructions available, without change, 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](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.

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15. The Non-Competitive Application Instructions, provide in relevant part,

When applying for funding for the proposed Development, Applicants

Shall only utilize the Non-competitive Application Form to apply for the following new funding when no other new Corporation funding sources, besides the Predevelopment Loan Program (PLP) or Elderly Housing Community Loan (ECHL) are being requested:

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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.

16. Rule 67-21.026, F.A.C., provides:

(13) The General Contractor must meet the following conditions:

...

(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 a common ownership or are Affiliates of any other subcontractor, with the exception of a subcontractor (or any group of entities that have a common ownership or are Affiliates of any other subcontractor):

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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

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(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"

STATUTES IMPLEMENTED BY RULE

17. Pursuant to section 420.5099(1), Florida Statutes, Florida Housing is designated as the



"housing credit agency" for Florida within the meaning of section 42 of the Internal Revenue Code. Florida Housing is responsible for the allocation plan that includes priorities and selection criteria. Section 420.5099(2) also requires Florida Housing to "adopt allocation procedures that will ensure the maximum use of available tax credits in order to encourage development of low-income housing in the state, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing, the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought." Thus, the rules subject to this waiver request implement sections 420.5099(1) and (2), Florida Statutes, as well as other provisions of Part V of chapter 420, Florida Statutes, the Florida Housing Finance Corporation Act.

#### JUSTIFICATION FOR REQUESTED WAIVER

18. Section 120.542(1), Florida Statutes, provides that "[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances". The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation." That procedure requires those seeking a variance of, or waiver from, a rule to demonstrate that application of the rule would create a substantial hardship or would violate principles of fairness. S 120.542(2), Fla. Stat.<sup>4</sup> Petitions for variances and waivers are also required to demonstrate the purposes of the underlying statute will be achieved. Id.

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<sup>4</sup> "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 not significantly different from the way it affects other similarly situated persons who are subject to rule.

19. The controlling statutes and Florida Housing's Rules are clearly designed to allow the flexibility necessary to provide relief when strict application, would lead to an unreasonable, unfair, or unintended result. Approving the instant request would allow the Development to proceed to completion providing much needed affordable housing and permanent employment for residents in Miami-Dade County.

20. It is the Petitioner's belief that this Development involves coordination with both Private and Public stakeholders on a scale rarely, if ever, seen before. This coordination will be greatly enhanced by the use of CB Structures which because of their participation in the development process for the last several years, already has the necessary relationships with the different stakeholders moving forward.

21. Petitioners' have been working with Staff and understand and intend to comply with the purpose of the rule in question, which is to ensure that the General Contractor not exceed permissible limits on profit through the use of an affiliated entity. Petitioners agree to limit CB Structures to the cost of providing the labor and materials for the shell work for the affordable units. The General Contractor fees, overhead and profit will be limited to no more than 10% on the CB Structure amount attributable to the affordable units and to 14% on the CB Structure amount attributable to the remainder of the shell work, including the market units and retail/office space.

An independent Certified Public Accountant will confirm and audit all payments between the General Contractor and CB Structures. Additionally, the independent CPA will audit and confirm all payments and report on those costs within the General Contractors Cost Certification. Lastly, in addition to the audit of CB Structures mentioned in this Section the independent CPA will confirm and/or verify an additional 40% of the Development's construction costs per the Final Cost Certification Application Package.

22. While Petitioner understands the purpose of the rule in question, its application here demonstrates the differing results dependent upon the identity of the hiring entity. By way of



example, CB Structures could be hired by any unaffiliated third-party to perform the *same work* that CB Structures could not perform here without the waiver. Moreover CB Structures has been involved in the planning of this development for the last two years, to bring in another entity at this late juncture would result in delay in the provision of affordable housing units and possibly far worse issues which may significantly increase the cost of the work. Custom Builders and CB Structures have been intimately involved in this project's development and the decisions that have been made to bring this unique development to fruition. If this request is not approved it will result in financial hardship to Petitioner in the form of increased oversight costs as well as the increased bid price and the very real risk of even higher costs if the work is not timely completed

23. Florida Housing has granted similar waivers for other Developments facing similar circumstances thus denial of this request would violate principles of fairness. <sup>§</sup>

24. The requested waiver will not adversely affect any party. A denial of the requested waiver, however, would result in substantial economic hardship to Platform 3750 in addition to added risk. Additionally, denial of the waiver request would violate principles of fairness, as other similarly situated Developments have been granted relief from a similar housing credit rule, 67 48.0072(17)(g), F.A.C.

25. The statutes underlying the rule will be served by the approval of Platform 3750's waiver request. Section 420.504(4), Florida Statutes, states that Florida faces "a serious shortage of decent, safe, and sanitary housing in the state available to persons and families of low, moderate, and middle income..." One of the primary purposes of the Act is to facilitate the availability of affordable housing. Granting the waiver request will further these goals.

#### ACTION REQUESTED

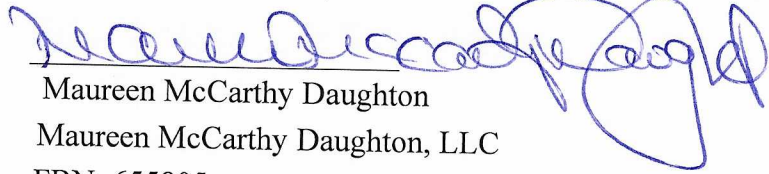
26. For the above stated reasons, Platform 3750, respectfully requests that the Florida Housing Board

of Directors:

- Grant the requested Petition for Waiver of Rules 67-21.003(1)(b), 67-21.026(13)(f) and (h), F.A.C.

Dated this 19<sup>th</sup> of August 2020.

Respectfully submitted,



Maureen McCarthy Daughton

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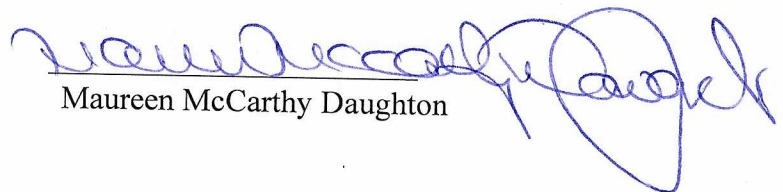
Counsel for Petitioner

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was filed this 19th day of August 2020, by electronic delivery to:

Florida Housing Finance Corporation  
Attn: Corporation Clerk  
227 North Borough Street, Suite 5000 Tallahassee,  
Florida 32301  
[Corporationclerk@floridahousing.org](mailto:Corporationclerk@floridahousing.org)

Joint Administrative Procedures Committee  
680 Pepper Building  
1 11 W. Madison Street  
Tallahassee, Florida 32399  
[Joint.admin.procedures@leg.state.fl.us](mailto:Joint.admin.procedures@leg.state.fl.us)



Maureen McCarthy Daughton