STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: SP Daytona, LLLP FHFC Case No.: 2022-024VW

_____/

ORDER GRANTING WAIVER FROM RULES 67-21.002(9) AND 67-21.002(85)(a)3, FLA. ADMIN. CODE (2018)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on August 5, 2022. On February 16, 2022, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-21.021(9) [sic], F.A.C. (2018) and Rule 67-21.002(85)(a)3, F.A.C. (2018) (the "Petition") from SP Daytona, LLLP (the "Petitioner"). On July 20, 2022, Florida Housing received an Amended Petition for Waiver of Rule 67-21.021(9) [sic], F.A.C. (2018) and Rule 67-21.002(85)(a)3, F.A.C. (2018) (the "Amended Petition") from Petitioner. The Petition and the Amended Petition request to waive the requirement to disclose natural person Principals by the third Principal disclosure level. Notice of the Petition was published on February 18, 2022, in Volume 48, Number 34, 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 hereby finds:

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION
Ann McElmoyl DATE: 8/8/2022

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

2. Petitioner successfully applied Multifamily Mortgage Revenue Bonds ("MMRB") and non-competitive housing credits (collectively referred to as the "Financing") to assist in financing the acquisition and rehabilitation of Daytona Gardens Apartments, an affordable housing development in Volusia County, Florida (the "Development").

3. Rule 67-21.002(9), Fla. Admin. Code (2018), states:

> (9) "Applicant" means any person or legal entity of the type and with the management and ownership stucture [sic] described herein that is seeking a loan or funding from the Corporation by submitting an Application or responding to a competitive solicitation pursuant to rule chapter 67-60, F.A.C., for one or more of the Corporation's programs. For purposes of rule 67-21.031, F.A.C., Applicant also includes any assigns or successors in interest of the Applicant. Unless otherwise stated in a competitive solicitation, as used herein, a 'legal entity' means a legally formed corporation, limited partnership or limited liability company with a management and ownership structure that consists exclusively of all natural persons by the third principal disclosure level. For Applicants seeking Housing Credits, the Housing Credit Syndicator/Housing Credit investor need only be disclosed at the first principal disclosure level and no other disclosure is required. The terms 'first principal disclosure level' and 'third principal disclosure level' have the meanings attributed to them in the definition of "Principal."

(Emphasis added).

4. Rule 67-21.002(85)(a)3 Fla. Admin. Code (2018), in relevant part, defines Principal with respect to an Applicant that is:

3. A limited liability company, at the first principal disclosure level, any manager or member of the Applicant limited liability company, and, unless otherwise excluded at subsection 67-21.002(9), F.A.C., with respect to any manager or member of the Applicant limited liability company, at the second principal disclosure level, that is:

a. A corporation, any officer, director, executive director, or shareholder of the corporation,

b. A limited partnership, any general partner or limited partner of the limited partnership,

c. A limited liability company, any manager or member of the limited liability company, or

d. A trust, any trustee of the trust and all beneficiaries of majority age (i.e.; 18 years of age) as of Application deadline, each of whom must be a natural person. Such trust shall be comprised only of trustee(s) and beneficiaries who are natural persons; and with respect to any entity identified at the second principal disclosure level that is:

e. A corporation, by the third principal disclosure level, any officer, director, executive director, or shareholder of the corporation, each of whom must be a natural person,

f. A limited partnership, by the third principal disclosure level, any general partner or limited partner of the limited partnership, each of whom must be a natural person,

g. A limited liability company, by the third principal disclosure level, any manager or member of the limited liability company, each of whom must be a natural person, or

h. A trust, any trustee of the trust and all beneficiaries of majority age (i.e.; 18 years of age) as of Application deadline, each of whom must be a natural person. Such trust shall be comprised only of trustee(s) and beneficiaries who are natural persons.

(Emphasis added).

5. Petitioner requests a waiver or variance from the requirement that only natural persons may be Principals at the third Principal disclosure level of the Petitioner pursuant to the above-cited Rules in order for the current administrative general partner of the Petitioner ("Current GP") to transfer its interest in the Petitioner to the non-managing partner of the successor general partner ("Successor GP") and so that Petitioner may admit the Successor GP to the Petitioner. In connection with a Contribution Agreement dated June 9, 2022 (the "Purchase Agreement"), the Current GP anticipates that it will contribute its interests, in one or a series of transfers to a successor entity (the "Prospective Transfer"). After closing on the Prospective Transfer, Petitioner will have six tiers of ownership due to the equity structure of the Successor GP. The Financing, which has already been closed on or disbursed to Petitioner, would survive the Prospective Transfer.

6. Due to the complex equity structure within the corporate structure, Petitioner will not be able to meet the third level Principal disclosure requirement following the Prospective Transfer. Petitioner states that it has fully disclosed to Florida Housing the organizational structure of the Successor GP showing the full ownership at each tier. The organizational structure of the Successor GP shows that even though there are various levels

of ownership, the ultimate control of the Successor GP, and thus Petitioner, after the Prospective Transfer, will primarily rest with two natural persons, who will also act as non-member managers of the controlling owner of the Successor GP.

7. Petitioner asserts that if the waiver request is denied that among other hardships, Petitioner would not be able to bring in Successor GP to continue the operations of the Development in a manner that provides safe, sanitary, and affordable housing to its residents.

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

> Variances 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.

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

10. 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.

11. 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" would still be achieved if the waiver is granted. §420.5099, Fla. Stat.

12. The Board finds that Staff has reviewed the organizational structure as it will exist after the Prospective Transfer. The Board finds that the Petition regards a request to transfer ownership of an existing development and the granting of this waiver will not serve as a precedent for waiver of Principal disclosure requirements for Applicants applying for funding from Florida Housing.

IT IS THEREFORE ORDERED that Petitioner's request for a waiver of Rules 67-21.002(9) and 67-21.002(85)(a)3, Fla. Admin. Code (2018) is hereby **GRANTED** to waive the definitions of "Applicant" and "Principal" to the extent that those definitions require that only natural persons be disclosed by or at the third Principal disclosure level in order to allow the disclosure of Principals beyond the third disclosure level as stated in the Amended Petition.

DONE and ORDERED this 5th day of August 2022.

FLORIDA HOUSING FINANCE CORPORATION Tallahassee Florida

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

Yisell Rodriguez, Esq.
yisell.rodriguez@nelsonmullins.com

Hugh R. Brown, General Counsel
Marisa Button, Managing Director of Multifamily Programs
Florida Housing Finance Corporation
Hugh.Brown@floridahousing.org
Marisa.Button@floridahousing.org

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
Joint.admin.procedures@leg.state.fl.us

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.