STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Fairfield Miami Gardens LP FHFC Case No.: 2022-040VW

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ORDER GRANTING WAIVER OF
RULES 67-21.0025(7)(c) AND 67-21.003(1)(b) F.A.C.

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on August 5, 2022. On July 8, 2022, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rules 67-21.0025(7)(c) and 67-21.003(1)(b), Florida Administrative Code, (the "Petition") from Fairfield Miami Gardens LP (the "Petitioner") to waive the requirements that 1) a natural person Principal be disclosed by the third Principal disclosure level; 2) the Principals Disclosure Form not include any type of entity that is not specifically included in the Rule definition of Principals; 3) county bond credit underwriting be completed before submitting Petitioner's application; and 4) prohibit changes to the ownership structure before of the issuance of the Preliminary Determination. Notice of the Petition was published on July 11, 2022, in Volume 48, Number 133, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful

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

review of the record and being otherwise fully advised on the premises, the Board hereby finds:

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

2. Petitioner has applied for non-competitive 4% housing credits to assist in the acquisition and rehabilitation of a 141-unit affordable housing development named Emerald Dunes Apartments in Miami-Dade County, Florida (the "Development").

3. Rule 67-21.0025(7)(c), Fla. Admin. Code (2021), provides in relevant part:

> (7) Disclosure of the Principals of the Applicant must comply with the following…
>
> (c) The Applicant must disclose all of the Principals of all of the entities identified in paragraph (b) above (third principal disclosure level). Unless the entity is a trust, all of the Principals must be natural persons…

4. Rule 67-21.003(1)(b), Fla. Admin. Code (2021) incorporates by reference the Non-Competitive Application Package (Rev. 03-2021) ("NCA"). Section A.6.a. of the NCA provides, in relevant part:

> Principals Disclosure for the Applicant and for each Developer:
>
> a. The Principals of the Applicant and Developer(s) Disclosure Form in effect at the time of Application submission ("Principal Disclosure Form"), must be submitted, in Excel format, as part of the Application package.

The Principal Disclosure Form must identify, pursuant to subsections 67-21.002(86) and 67-21.0025(7) and (8), F.A.C., the Principals of the Applicant and Developer(s). For Housing Credits, the investor limited partner of an Applicant limited partnership or the investor member of an Applicant limited liability company must be identified on the Principal Disclosure Form. *A Principals Disclosure Form should not include, for any organizational structure, any type of entity that is not specifically included in the Rule definition of Principals....(emphasis added).*

5. The NCA further provides:

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 (HF A) 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. (emphasis added).*

6. Section A.6.b(l) of the NCA provides, in relevant part:

6. Principals Disclosure for the Applicant and for each Developer...

(1) For Applicants requesting Non-Competitive Housing Credits only:

The Applicant entity shall be the recipient of the Housing Credits and *the ownership structure of the Applicant entity as set forth in the Principal Disclosure Form and cannot be changed in any way (materially or nonmaterially) until after the Preliminary Determination is issued. Once the Preliminary Determination has been issued, (a) any material change in the ownership structure of the named Applicant will require Board approval prior to the change*, and (b) any non-material change in the ownership structure of the named Applicant will require Corporation approval prior to the change. The ownership structure of the Applicant entity may be changed without Corporation or Board approval after a Final Housing Credit Allocation Agreement has been

> approved and the IRS Forms 8609 have been issued; however, the Corporation must still be notified in writing of the change. The Applicant must comply with Principal disclosure requirements outlined in Rule Chapter 67-21, F.A.C. for the duration of the Compliance Period. *Changes to the ownership structure of the Applicant entity prior to the issuance of the Preliminary Determination or without Board approval or Corporation approval, as applicable, prior to the approval of the Final Housing Credit Allocation and issuance of the IRS Forms 8609 shall result in a disqualification from receiving funding and shall be deemed a material misrepresentation.* Changes prior to the issuance of the Preliminary Determination 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. *(emphasis added).*

7. Petitioner requests a waiver of the above Rules and NCA terms to allow 1) third disclosure level principals that are not natural persons; 2) the Principals Disclosure Form to include a type of entity that is not specifically included in the Rule definition of Principals; 3) consideration of Petitioner's application before Petitioner's county bond transaction has completed credit underwriting; and 4) Petitioner to change its ownership structure before the issuance of the Preliminary Determination.

8. Petitioner avers it cannot meet the requirement to have a natural person principal by the third principal disclosure level because Petitioner is majority owned by the California State Teachers' Retirement System pension fund ("CalSTRS"). The pension fund participants of the CalSTRS are

numerous and ever-changing, and participants have no authority over CalSTRS investments. Petitioner claims that it is not practical or feasible to include all CalSTRS pension fund participants on the principal disclosure form.

9. Petitioner further states that Petitioner will be pursuing a Development re-syndication during the pendency of its application. In the process of re-syndication, Petitioner's current ownership structure will be amended to admit a new limited partner and make certain changes to the ownership of the Petitioner's General Partner. Petitioner claims that its proposed organizational structure will be substantially the same as Petitioner's current ownership structure.

10. Petitioner also requests that Florida Housing consider Petitioner's application before Petitioner's county bond transaction has completed credit underwriting. To complete its county bond credit underwriting process, Petitioner states that it must finalize its ownership structure; as stated above, Petitioner is in the process of re-syndication. Thus, Petitioner requests a waiver of the requirement to submit a final Credit Underwriting Report with its application to prevent further delay to the Development.

11. 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.

12. 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.

13. 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.

14. 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.

IT IS THEREFORE ORDERED that Petitioner's request for a waiver of Rules 67-21.0025(7) and 67-21.003(1)(b), Fla. Admin. Code (2021), and the above-cited Sections of the Non-Competitive Application Package is hereby **GRANTED** allowing Petitioner to:

1. have a public pension fund in its corporate structure without the requirement to disclose all natural person Principals by the third principal disclosure level on the Principal Disclosure Form;

2. submit a 4% Housing Credit Application prior to the completion of the credit underwriting for the bonds;

3. make a future change in the ownership structure prior to issuance of the Preliminary Determination. Applicant is required make a formal request when the change in ownership structure actually occurs, allowing staff to approve this change, with a recommendation from the credit underwriter, if necessary.

DONE and ORDERED this 5th day of August 2022.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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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.