STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: FAIRFIELD MIAMI GARDENS, LP

FHFC Case No.: 2023-043VW

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ORDER GRANTING WAIVER OF RULES 67-21.0025(7)(C) AND 67-21.026(10), FLORIDA ADMINISTRATIVE CODE (2021)

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on June 9, 2023. On May 22, 2023, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-21.0025(7)(c) and 67-21.026(10) (the "Petition") from Fairfield Miami Gardens, LP (the "Petitioner") to waive the requirements that 1) all natural person Principals of the Applicant entity be disclosed; 2) all rehabilitation work be performed under a guaranteed maximum price ("GMP") contract. Notice of the Petition was published on May 23, 2023, in Volume 49, Number 100, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful 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.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION

/DATE 6/12/2023

2. Petitioner successfully applied for funding to assist in the acquisition and rehabilitation of the Emerald Dunes Apartments, a 141-unit development located in Miami-Dade County, Florida (the "Development").

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

> (7) Disclosure of the Principals of the Applicant must comply with the following:
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> (a) The Applicant must disclose all of the Principals of the Applicant (first 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;
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> (b) The Applicant must disclose all of the Principals of all the entities identified in paragraph (a) above (second principal disclosure level);
>
> (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....
>
> (d) If any of the entities identified in paragraph (c) above are a trust, the Applicant must disclose all of the Principals of the trust (fourth principal disclosure level), all of whom must be natural persons.

4. Rule 67-21.026(10), Florida Administrative Code (2021), provides in relevant part:

(10) The Corporation's assigned Credit Underwriter shall require a guaranteed maximum price construction contract, acceptable to the Corporation, which may include change orders for changes in cost or changes in the scope of work, or both, if all parties agree, and shall order, at the Applicant's sole expense, and review a pre-construction analysis for all new construction units or a CNA for rehabilitation units and review the Development's costs.

5. Petitioner previously sought and was granted a waiver to allow Petitioner to (1) submit a 4% Housing Credit Application prior to the completion of the credit underwriting for the bonds; (2) have a public pension fund in its corporate structure without the requirement to disclose all natural person Principals; and (3) make a future change in the ownership structure prior to issuance of the Preliminary Determination (August 5, 2022 Board Meeting).

6. Petitioner now seeks to change the ownership structure of the Applicant, but in doing so, requests a waiver of Rule 67-21.0025(7)(c), Fla. Admin. Code, to further relieve Petitioner of the principal disclosure requirement for two entities within its proposed ownership structure, FRH CI LLC - AHF GP3 Series, a Delaware limited liability company and FRH CI LLC - AHF LP3 Series, a Delaware limited liability company (collectively, the "Profit-Sharing Entities"). The Profit-Sharing Entities are being included in the ownership structure as employee profit sharing entities, which own,

collectively, less than a 3% ultimate interest in the general partner of the Petitioner.

7. The Profit-Sharing Entities are made up completely of employees or trusts established by an employee. The Profit-Sharing Entities are utilized to provide compensation to employees and changes in ownership of the entities are intrinsically tied to changes to the employees. Petitioner avers, that the employees of the Profit-Sharing Entities have no ability to control the investments or to exercise meaningful control of the Profit-Sharing Entities and that the only role these members serve is to passively receive any cash flow that passes through the Profit-Sharing Entities as additional compensation for their employment. Petitioner purports that requiring the Profit-Sharing Entities to report each employee and each change in employment status would not be practical and essentially requires Petitioner to effectively consult with Florida Housing on its hiring, firing and other employment practices.

8. Petitioner further seeks a waiver of Rule 67-21.026(10), Fla. Admin. Code, to allow the Petitioner to perform certain rehabilitation work without a GMP contract. When Petitioner initially acquired the Development in April 2022, they did not immediately close on the bond financing because the seller would not accommodate the long escrow period that would be

necessary for a purchaser to close directly on the financing. Petitioner states that at acquisition, the Development required a number of immediate repairs, including deferred maintenance and life/safety issues that Petitioner needed to address promptly to ensure the safety of the residents. Petitioner asserts that the work performed, on its own, is not the type of work that would typically warrant entering a separate GMP contract and is customarily contracted directly between the purchaser of the property and the direct contractors.

9. The bond financing is expected to close in August 2023; between April 2022, when the Development was acquired and August 2023 when the bond financing closes, Petitioner states that it will incur approximately $900,000 in non-GMP work out of the total project budget of approximately $7,200,000. Petitioner further states that, but for the non-GMP work being performed outside the purview of a GMP contract, the work would otherwise constitute eligible rehabilitation costs that Petitioner could include in its basis for the Development. Petitioner agrees to submit documentation prepared by an accountant outlining all costs and contractors and certifying the work was otherwise performed in accordance with the Corporation rules.

10. The Principals of the Petitioner have been advised by staff that this waiver will not be considered on future developments and that the Principals need to determine a strategy moving forward on future

developments that meets their business model while conforming to Florida Housing rule requirements.

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 the 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:

i. a waiver of Rule 67-21.0025(7)(c), Florida Administrative Code (2021) is hereby **GRANTED** to relieve Petitioner of the principal disclosure requirement for all employee-owners of the

referenced Profit-Sharing Entities on the condition that the Petitioner provide a list of natural person Principals for the Profit-Sharing Entities if requested by staff. Failure to do so may result in staff withholding 8609s; and

ii. a waiver of Rule 67-21.026(10), Florida Administrative Code (2021) is hereby **GRANTED** to allow Petitioner to perform certain rehabilitation work without a GMP contract under the following conditions:

a. Receipt of a positive recommendation from Seltzer Management Group, Inc, the credit underwriter assigned to this Development in conjunction with the construction consultant, for the costs incurred outside of a GMP contract; and

b. Receipt of a satisfactory Agreed Upon Procedures performed by an independent Certified Public Accountant, which procedures must at a minimum (i) confirm and test the costs to all contractors and vendors utilizing the steps outlined in the General Contractor Cost Certification Instructions, (ii) confirm that all overhead, administrative costs, or other fees paid as compensation for oversight of

the work performed are documented and within 14% of the total costs paid to vendors and contractors; (iii) confirm that the costs incurred by any one contractor or vendor or any group of entities that have common ownership or are Affiliates of any other contractor or vendor does not exceed the subcontractor limitations as outlined in Florida Administrative Code Chapter 67-21; (iv) confirm that no construction or inspection work was performed by a representative of the Applicant or Developer; (v) confirm that no construction cost was contracted to any entity that has common ownership or is an Affiliate of the Applicant, General Contractor, or Developer.

DONE and ORDERED this 9th day of June, 2023.

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.