STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: College Trace Apartments, L.P. FHFC Case No.: 2023-036VW

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ORDER GRANTING WAIVER OF RULES 67-21.0025(7)(c) & 67-21.003(1)(b), FLA. ADMIN. CODE (2022) & SECTION A.6.b.1 OF THE NON-COMPETITIVE APPLICATION PACKAGE (Rev. 04-2022)

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on July 21, 2023. On May 11, 2023, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rules 67-21.0025(7)(c) and 67-21.003(1)(b), F.A.C. (07/06/2022) and Section A.6.b.1 of the Non-Competitive Application Package and on June 30, 2023, Florida Housing received an Amended Petition for Waiver of Rules 67-21.0025(7)(c) and 67-21.003(1)(b), F.A.C. (07/06/2022) and Section A.6.b.1 of the Non-Competitive Application Package (the "Petition") from College Trace Apartments, L.P. (the "Petitioner") to (1) allow the Petitioner to make a material change to the ownership structure of the Applicant entity, which may occur prior to the issuance of the Preliminary Determination and (2) allow disclosure of natural person principals beyond the third principal disclosure level. Notice of the Petition was published on May 15, 2023, and July 5, 2023, in Volume 49, Numbers 94 and 129, of the Florida Administrative Register.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
7/21/2023
DATE

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.

2. Petitioner successfully applied for funding to assist in the acquisition and rehabilitation of the College Trace Apartments, a 112-unit development located in Escambia County, Florida (the "Development").

3. Rule 67-21.0025(7)(c), Fla. Admin. Code (2022), states, in relevant part:

(7) Disclosure of the Principals of the Applicant must comply with the following:

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(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. Florida Administrative Code Rule 67-21.003(1)(b) (2022) incorporates by reference the Non-Competitive Application Package ("NCA") in effect at the time Petitioner submitted the Application. At issue here is Section A.6.b.1 of the NCA (Rev. 04-2022), which provides:

> 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. Any allowable replacement to the natural person Principals of a Public Housing Authority or officers and/or directors of a non-profit entity will apply to all preliminarily awarded Applications and Applications pending final Board action that include the Public Housing Authority or non-profit entity.

5. Petitioner seeks to complete a transaction that would change the ownership structure of the Applicant and, in doing so, requests a waiver of the above Rules to allow the Petitioner to make a future material change in the ownership structure, which may occur before the issuance of the Preliminary

Determination and allow disclosure of natural person principals beyond the third principal disclosure level. As part of a larger transaction, Teachers Insurance and Annuity Association of America, through its wholly owned affiliate, TGA GP FL HoldCo LLC (collectively, "TIAA"), seeks to acquire an interest in the Petitioner's general partner, Omni Affordable Florida, LLC ("Omni"). TIAA's present business structure does not conform to the above Rules. Petitioner states that the TIAA has rearranged some of its business organization in order to better comply with Florida Housing requirements; however, because of TIAA's unique corporate structure (which includes a Board of Governors as its sole shareholder and a Board of Trustees that operates as a traditional board of directors), TIAA cannot disclose all natural person principals by the third level. Petitioner states that TIAA will install a Board of Managers so that by the fourth level, TIAA will disclose all natural persons within a Board of Managers responsible for day-to-day operations and management. TIAA agrees it will not change those individuals without Florida Housing's written consent. TIAA provides a detailed description of its proposed ownership structure, the business transaction, and the individuals who will be disclosed within the attached Petition.

6. Petitioner and TIAA are currently undergoing diligence on this transaction, whereby, if/when the transaction closes, TIAA would acquire the

ownership interest in Omni. Petitioner is submitting the Petition at this time because the purchasers would like confirmation that this requested rule waiver would be approved before completing the acquisition. The closing on the acquisition may occur at any time during construction or may occur after construction completion. Therefore, due to uncertainty of the timing of this transaction and because the closing of this transaction may occur prior to issuance of the Preliminary Determination, Petitioner has requested a waiver of the timing requirements so that the Applicant entity may be changed prior to the issuance of the Preliminary Determination, if necessary. As a condition of this waiver, once the transaction is ready to occur, Petitioner has agreed to coordinate with Florida Housing staff for underwriter review of the new entities before completing the transaction.

7. 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.

8. 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.

9. 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)(c) and 67-21.003(1)(b), Fla. Admin. Code (2022), and Section A.6.b.1 of the Non-Competitive Application Package (Rev. 04-2022), is hereby **GRANTED** to:

(1) Allow the Petitioner to make a future material change to the ownership structure of the Applicant entity and allow the change to occur prior to the issuance of the Preliminary Determination, if necessary; and

(2) Allow disclosure of natural person principals beyond the third principal disclosure level.

The recommendation to allow a future material change in the Applicant ownership structure is contingent upon receipt of a positive recommendation from the credit underwriter.

DONE and ORDERED this 21st day of July, 2023.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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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.