STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Fairfield Running Brook, LP FHFC CASE NO.: 2021-098VW

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ORDER GRANTING WAIVER OF RULE OF RULES 67-21.0025(7)(c) AND 67-21.003(1)(b) FLA. ADMIN. CODE (2021)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on December 10, 2021, pursuant to a "Petition for Waiver of Rules 67-21.0025(7)(c) and 67-21.003(1)(b) Fla. Admin. Code (2021)" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on November 22, 2021, Fairfield Running Brook, LP ("Petitioner"). Notice of the Petition was published on November 23, 2021, in Volume 47, Number 227, of the Florida Administrative Register. Florida Housing has received no comments concerning the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

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

2. Petitioner has a pending Application with the Corporation (2021-512C) for an award of 4% housing tax credits. Petitioner seeks relief from the Rules cited

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/DATE: 12/13/2021

above and incorporated Application requirements regarding disclosure of Principals and the date by which the Non-Competitive Application must be filed.

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

> (7) Disclosure of the Principals of the Applicant must comply with the following:
>
> (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 of the entities identified in paragraph (a) above (second principals 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 67-21.003(1)(b), Fla. Admin. Code (2021), incorporates by reference the Non-Competitive Application Package (NCA). Section A.6.a. of the NCA provides, in relevant part:

> [T]he Principal Disclosure Form must identify … the Principals of Applicant and Developer(s). For Housing Credits, the investor limited partner of an Applicant limited partnership of the investor member of an Applicant limited liability company must be identified in 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.

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 (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... (the "Timing Requirement").

6. Petitioner asserts that its current ownership structure does not comply with the requirements of the NCA and Rules above, in that it cannot provide natural persons at the third disclosure level (unless the Principal is a trust, in which case the natural person Principal can be disclosed at the fourth disclosure level). Petitioner is majority owned and controlled by the California State Teachers' Retirement System (CalSTRS) pension fund, which includes various corporate layers to accommodate ownership by a public pension fund. The participants in the CalSTRS pension fund change continually and currently number more than 940,000 teachers, making disclosure in compliance with the Rules and NCA impractical. These participants also have no control or direction over the investments of the fund, or changes thereto.

7. Petitioner also asserts that it cannot comply with the Timing Requirement of the NCA, in that it cannot complete the credit underwriting for the

county bound allocation, because it must first finalize its ownership structure – which it cannot do without the granting of this rule waiver. Accordingly, Petitioner desires to complete its Application now and without the required credit underwriting report from the county, to prevent any additional delay in development.

8. The Board finds that granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

9. 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.

10. Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

11. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

Petitioner's request for a waiver of Rules 67-21.0025(7)(c) and 67-21.003(1)(b), Fla. Admin. Code (2021 is hereby **GRANTED** to permit Petitioner Petitioner's request for a waiver of Rules 67-21.0025(7)(c) and 67-21.003(1)(b), Fla. Admin. Code, to permit application without disclosure of natural persons at the third disclosure level; and **GRANT** a waiver of the incorporated Timing Requirement of the NCA to permit Petitioner to apply for funding without first submitting a credit underwriting report from the county issuer.

DONE and ORDERED this 10th day of December, 2021.

FLORIDA HOUSING FINANCE CORPORATION Tallahassee Florida

Florida Housing Finance Corporation

By: _____
Chair

Copies furnished to:

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Joint Administrative Procedures Committee
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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.