STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: LRC DESERT-SILVER, LLC FHFC Case No.: 2021-028VW

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ORDER GRANTING WAIVER FROM RULE 67-21.002(9) and (85), FLORIDA ADMINISTRATIVE CODE (2018) AND BOARD APPROVAL PURSUANT TO RULE 67-21.003(1)(b), (8)(b), AND THE NON-COMPETITIVE APPLICATION INSTRUCTIONS (2018)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on June 18, 2021. On May 20, 2021 Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-21.002(9), (85), F.A.C. (2018) and Board Approval Pursuant to Rule 67-21.003(1)(b), (8)(b), and the Non-Competitive Application Instructions (2018) (the "Petition"). Notice of the Petition was published on May 21, 2021, in Volume 47, Number 99, 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:

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: 6/18/2021

2. Petitioner applied for non-competitive housing credits to assist in financing the acquisition and rehabilitation of Desert Winds and Silver Creek, an affordable, family housing development in Duval County, Florida. (the "Development").

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

> "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."

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

> 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,

...

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

...

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

...

5. Rule 67-21.003(1)(b) Fla. Admin. Code (2018), in relevant part, requires applicants for non-competitive housing credits that will not be in conjunction with other Florida Housing funding to utilize the Non-Competitive Application ("NCA") Package in effect at the time the application is submitted and adopts and incorporates the NCA Package.

6. Rule 67-21.003(8)(b) Fla. Admin. Code (2018), in relevant part, states:

(8) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application is deemed complete. Those items are as follows:

...

(b) Principals of each Developer, including all co-Developers; notwithstanding the foregoing, the Principals of the

Developer(s) may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter Credit Underwriting. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application documentation;

7. The NCA Package includes the following requirement:

The Applicant entity shall be the recipient of the Housing Credits and cannot be changed in any way (materially or non-materially) until after the Preliminaly Determination is issued. Once the Preliminary Determination has been issued, (a) replacement of the Applicant or **a 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 Applicant entity may be changed without 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. Changes to 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 to 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.

NCA Package at Part A.5.b.(1)(emphasis supplied).

8. Specifically, Petitioner requests 1) Board approval pursuant to Rule 67-21.003(1)(b), Fla. Admin. Code (2018) and the Non-Competitive Application Instructions to materially change the Petitioner's principals; 2)

Board approval pursuant to Rule 67-21.0003(8)(b), Fla. Admin. Code (2018) to change the Developer's principals; and 3) a waiver of the definition of "Applicant" as defined in Rule 67-21.002(9), Fla. Admin. Code (2018) and "Principal" as defined in Rule 67-21.002(85)(a)(3), Fla. Admin. Code (2018) (referred to herein as the "Rule") to the extent such definitions require that only natural persons be disclosed by or at the third principal disclosure level.

9. Petitioner asserts that the requested Board approval and waiver were necessitated by the substitution of placeholder limited partners that occurred after closing, principal name changes, and the discovery that Petitioner did not properly complete the principal disclosure form despite efforts to make a full disclosure via an organizational chart attached to Petitioner's application. Petitioner states that, over the course of almost four months, Petitioner attempted to make the organizational structure changes necessary to come into compliance with the Rule. However, neither HUD nor the lender allowed changes to Petitioner's structure subsequent to FHA endorsement. Petitioner states that it has no other viable options except to request waiver of the Rule.

10. Petitioner states that it submitted an NCA Package on August 2, 2018 and was confused by the principal disclosure form. In an effort to ensure that all necessary disclosures were made, Petitioner provided a Principals of

Applicant and Developer Memo and a chart of Petitioner's organizational structure with the application package.

11. Petitioner asserts that it made a good faith effort to comply with the Rule but was unable to do so. Below is a summary of Petitioner's timeline of its efforts to comply with the Rule:

- Petitioner was invited to credit underwriting on September 5, 2018.
- Petitioner's HUD 223F Loan officially closed on December 28, 2018 and the FHA endorsement occurred on that same date. The Housing Assistance Payments Contract was assigned to the new ownership as of the closing date as well.
- On February 12, 2019, Florida Housing provided a Preliminary Determination Certificate.
- Petitioner requested Florida Housing's approval of the Developer's name change on September 9, 2020.
- In the course of discussing the requested name change, Florida Housing identified discrepancies in Petitioner's and Developer's principal disclosures and notified Petitioner of the Rule violation on September 22, 2020.

- Petitioner participated in numerous communications with its local counsel to understand the Rule, the violation, and potential options to cure.
- Envolve worked with Developer's counsel to identify potential organizational structures. After identifying the best option (i.e., the "Compliance Structure"), Developer's counsel began drafting the documents necessary to create the new Compliance Structure.
- Envolve then contacted its HUD Counsel to discuss the procedure for obtaining approval of the Compliance Structure from HUD and the effect of the change as it related to the Housing Assistance Payments Contract.
- Envolve had several discussions with the lender, to confirm an organizational structure change was possible, the procedure for changing the structure, and what effect the Compliance Structure would have as it related to Petitioner's HUD 223(f) Loan. Envolve also provided the lender with the Compliance Structure's organizational chart. Unfortunately, the lender responded by letter dated February I 8, 2021, attached as Exhibit E, that the Compliance Structure was not

possible because: (a) changes in ownership structure are not allowed by HUD or the Lender after FHA endorsement (which endorsement occurred on December 28, 2018); and (b) any change to the key principal structure was a violation of the current loan covenants.

12. Petitioner requests this waiver and discloses the principals as stated in its Petition and the exhibits attached thereto. Petitioner states that if the Petition is denied, Petitioner will not be able to obtain the financial support necessary to complete the Development. Additionally, Petitioner asserts that all natural persons in control and financially benefitting from the Development were disclosed to Florida Housing by the Petitioner's initial principal disclosures and that granting the requested waiver will prevent a substantial and unfair hardship from being imposed on Petitioner while still achieving the underlying purpose of the Rule. Florida Housing staff contacted Seltzer Management Group, Inc, the underwriter on this transaction, who confirmed that the changes to the organizational structure would have no impact on their original recommendation in the non-competitive 4% Housing Credits update letter, dated February 5, 2019.

13. 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.

14. 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.

15. 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.

16. 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: Petitioner's request for a waiver of Rules 67-21.002(9), (85), F.A.C. (2018) and Board Approval Pursuant to Rules 67-21.003(1)(b), (8)(b), and the Non-Competitive Application Instructions Part A.5.b.(1) (2018), is hereby **GRANTED** to materially change Petitioner's and Developer's principals as stated in the Petition and to waive the definition 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 to allow the disclosure of principals beyond the third disclosure level as stated in the Petition.

DONE and ORDERED this 18th day of June 2021.

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.