STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Fairfield Running Brook II LP FHFC Case No.: 2023-044VW

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ORDER GRANTING WAIVER OF RULES 67-21.0025(7)(c) & 67-21.003(1)(b), FLA. ADMIN. CODE (2022), AND SECTION A.6.a 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 22, 2023, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-21.0025(7)(c) and 67-21.003(1) (the "Petition") from Fairfield Running Brook II LP (the "Petitioner") to (i) relieve Petitioner of the principal disclosure requirement to disclose all employee-owners of the referenced Profit-Sharing Entities; (ii) relieve Petitioner of the principal disclosure requirement to disclose all natural person Principal participants; (iii) relieve Petitioner of the principal disclosure requirement to allow natural person Principals to be disclosed beyond the third level; (iv) allow the Petitioner to include a pension fund as a Principal on the Principal Disclosure form; and (v) allow the Petitioner to submit its Non-Competitive Application before receiving its Final Bond Transaction Credit Underwriting Report. Notice of the Petition was published May 23, 2023, in

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

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.

2. Petitioner successfully applied for funding to assist in the acquisition and rehabilitation of the Running Brook Apartments, a 186-unit development located in Miami-Dade County, Florida (the "Development").

3. Rule 67-21.0025(7), 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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> (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);
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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....

(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 (2022), incorporates the Non-Competitive Application Package (Rev. 04-2022) ("NCA") by reference. Section A.6.a of the NCA (emphasis added) provides in relevant part:

6. 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. Pursuant to subsection 67-21.002(86), any Principal that is not a natural person must be a legally formed entity as of the Application Deadline.

In order to assist the Applicant in completing the Principal Disclosure Form, the Corporation offers an Advance Review Process. The Advance Review Process for Disclosure of Applicant and Developer Principals is available on the Non-Competitive Application webpage and also includes samples which may assist the Applicant in completing the required Principals Disclosure Form.

5. The NCA further provides:

> Non-Competitive Housing Credits (4 Percent HC) only, to be used for a Tax-Exempt Bonds 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.

6. Petitioner's ownership structure does not presently meet the above Rules and the NCA terms, which require that, by the third principal disclosure level of the Principal Disclosure Form, the Principals disclosed must all be natural persons. The above rules also do not allow for pension fund Principals. Petitioner states that it cannot meet the requirements for the following reasons:

a. Petitioner states it is majority owned and controlled by the California State Teachers' Retirement System ("CalSTRS") pension fund. Petitioner's structure has various corporate layers to accommodate the fact that it is majority owned and controlled by a pension fund. The participants of the CalSTRS pension fund are continually changing and currently number above 980,000 members. Petitioner states that reporting all members on the Principal Disclosure Form is not practical or feasible. The ultimate participants in the pension plan cannot control the investments and may change regularly,

making it impossible to have a Principal Disclosure Form that does not change during the application process if such natural persons were included.

b. Petitioner's ownership structure also includes two employee profit-sharing entities, FRH CI LLC - AHF GP3 Series, a Delaware limited liability company, and FRH CJ LLC - AHF LP3 Series, a Delaware limited liability company (collectively, the "Profit-Sharing Entities"). The Profit-Sharing Entities own, collectively, less than a 3% ultimate interest in the general partner of the Petitioner. 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 states 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 further states that requiring the Profit-Sharing Entities to report each employee and each change in employment status would not be

practical. Petitioner would effectively be required to consult with Florida Housing on its hiring, firing, and other employment practices.

7. Petitioner further seeks a waiver of timing requirements under the NCA, which require that Petitioner complete the credit underwriting for its bond transaction before submission of the Application. Petitioner explains that, to complete the bond credit underwriting (necessary to submit its non-competitive credit application), Petitioner must have finalized its ownership structure, the subject of this Petition. However, under the terms of the NCA, Petitioner may not request a waiver of the NCA until it has submitted its application, and the NCA requires a final bond transaction credit underwriting before application submission. Therefore, Petitioner requests a waiver of the requirement to submit a final bond transaction Credit Underwriting Report with its Application to expedite the funding process and prevent further delay.

8. 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.

9. 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.

10. 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 (2022), and the referenced sections of the 2022 Non-Competitive Application Package (Rev. 04-2022) is hereby **GRANTED** to:

(1) Relieve Petitioner of the principal disclosure requirement to disclose all employee-owners of the referenced Profit-Sharing Entities on the condition that the Petitioner agrees to 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;

(2) Relieve Petitioner of the principal disclosure requirement to disclose all natural person Principal participants (teachers) of the CalSTRS pension fund;

(3) Relieve Petitioner of the principal disclosure requirement to allow natural person Principals to be disclosed beyond the third level;

(4) Relieve Petitioner of the definition of Principal to allow the Petitioner to include a pension fund as a Principal on the Principal Disclosure form; and

(5) Allow the Petitioner to submit its Non-Competitive Application before receiving its Final Bond Transaction Credit Underwriting Report.

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

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

Andrew Bennett
Nelson Mullins Riley & Scarborough, LLLP
drew.bennett@nelsonmullins.com

Betty Zachem, Interim General Counsel
Melissa Levy, Managing Director of Multifamily Programs
Florida Housing Finance Corporation
Betty.Zachem@floridahousing.org
Melissa.Levy@floridahousing.org

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
Joint.admin.procedures@leg.state.fl.us

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.