STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Country Club Magnolia Family II, LP

FHFC CASE NO.: 2022-029VW

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ORDER GRANTING WAIVER OF RULE 67-48.002(94), F.A.C, RULE 67-48.0075(8), F.A.C., AND SECTION FOUR A.3.c.(4) OF RFA 2020-201

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on April 29, 2022, pursuant to a "Petition for Waiver of Rule 67-48.002(94), F.A.C., Rule 67-48.0075(8), F.A.C., and Section Four A.3.c.(4) of RFA 2020-201" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on April 11, 2022, from Country Club Magnolia Family II, LP ("Petitioner"). Notice of the Petition was published on April 12, 2022, in Volume 48, Number 71, 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 on 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 successfully applied for financing under RFA 2020-201 and was subsequently invited into Credit Underwriting.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION

Wms/Mamory DATE: 5/2/2022

3. Rule 67-48.002(94), Fla. Admin. Code (June 23, 2020), states, in relevant part:

> **Definitions...**
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> (94) "Principal" means:
> (a) For a corporation, each officer, director, executive director, and shareholder of the corporation.
> (b) For a limited partnership, each general partner and each limited partner of the limited partnership.
> (c) For a limited liability company, each manager and each member of the limited liability company.
> (d) For a trust, each trustee of the trust and all beneficiaries of majority age (i.e.; 18 years of age) as of Application deadline.
> (e) For a Public Housing Authority, each officer, director, commissioner, and executive director of the Authority.

4. Rule 67-48.0075(8), Fla. Admin. Code (June 23, 2020), states, in relevant part:

> **Miscellaneous Criteria**...
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> (8) Unless otherwise stated in a competitive solicitation, 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;
> (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; and
> (d) If any of the entities identified in (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.

5. Section Four A.3.c.(4) of RFA 2020-116 states, in relevant part:

> For purposes of the following, a material change shall mean 33.3 percent or more of the Applicant, a general partner of the Applicant, or a non-investor member of the Applicant, and a non-material change shall mean less than 33.3 percent of the Applicant, a general partner of the Applicant, or a non-investor member of the Applicant…
>
> 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 Carryover Allocation Agreement is in effect. Once the Carryover Allocation Agreement has been executed by all parties, (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... Changes to the Applicant entity (material or non-material) prior to the execution of a Carryover Allocation Agreement 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 may result in a disqualification from receiving funding and may be deemed a material misrepresentation.
>
> The Principals of each Developer identified in the Application, including all co-Developers, 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. In addition, any allowable replacement of an experienced Principal of a Developer entity must meet the experience requirements that were met by the original Principal.

6. Rule 67-48.004(3)(b), Fla. Admin. Code (June 23, 2020), states, in relevant part:

> (3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:

(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. Mr. Noel F. Khalil is listed as both a member and manager of New Columbia Residential LLC ("NCR") on Petitioner's third-level principal applicant disclosure.

8. Mr. Noel F. Khalil is also listed as a Manager of New Affordable Housing Partners, LLC ("NAHP") in the first level developer principal disclosure.

9. Petitioner asserts that Mr. Noel F. Khalil has recently passed away and requested a waiver of the above rules to allow the Estate of Noel F. Khalil to act in Mr. Khalil's stead as a Principal in the Petitioner's and NAHP's ownership structure.

10. Petitioner further requested a waiver of the above rules to allow Petitioner to amend its Principal Disclosures to allow the executor of the estate, a natural person, on the appropriate levels of the Applicant and Developer Principal Disclosure Forms.

11. 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.

12. 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.

13. Petitioner has demonstrated that the waiver is needed in order to efficiently serve the community. 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.

14. 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 Rule 67-48.002(94) and Rule 67-48.0075(8), Fla. Admin. Code (June 23, 2020), and Section Four A.3.c(4) of RFA 2020-201 is hereby **GRANTED** to allow the estate of Noel F. Khalil and the estate's executor to act in the capacity as a Principal.

Petitioner's request for approval to make such changes to the Petitioner and Developer ownership structures pursuant to 67-48.004(3)(b), Fla. Admin. Code (June 23, 2020), and Section Four A.3.c.(4) of RFA 2020-201 is hereby **GRANTED**.

DONE and ORDERED this 29th day of April, 2022.

Florida Housing Finance Corporation

By: _____
Chair

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.