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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

Mandarin Trace Apartments, L.P.,
a Florida Limited Partnership,

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

FHFC CASE NO. 2023-059VW
Application No. 2022-518C

PETITION FOR WAIVER OF RULE 67-21.0025(7)(c), F.A.C. (07/06/2022)

Petitioner Mandarin Trace Apartments, L.P. (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing"), for a waiver of the requirement under Rule 67-21.0025(7)(c), F.A.C. (07/06/2022) that only natural persons (or trusts with natural person principals) be disclosed by or at the third principal disclosure level.[1] Petitioner has applied for non-competitive housing credits (the "Application") in conjunction with the rehabilitation of 120 affordable housing units at Mandarin Trace Apartments (the "Development"). Teachers Insurance and Annuity Association of America, through its wholly owned affiliate, TGA GP FL HoldCo LLC (together with their affiliates, collectively, "TIAA") would like to acquire an indirect interest in the general partner of Petitioner. Founded in 1918, TIAA, a New York-headquartered life insurance company, is a leading provider of financial services for the academic, research, medical, cultural and governmental fields and one of the largest retirement systems in the United States (based on

[1] Effective June 28, 2023, Rule 67-21.0025(7)(c)-(e), F.A.C., was revised to allow applicants requesting non-competitive housing credits, such as Petitioner, to request approval from Florida Housing to allow for disclosure of natural person Principals below the third disclosure level. Because that version of the Rule does not apply here, Petitioner respectfully requests a waiver.

assets under management). TIAA offers a wide range of financial services, including investment and banking advice and guidance and retirement services.

TIAA has a unique organizational structure[2] which, as a prospective principal of Petitioner, must be incorporated into Petitioner's principal disclosures if this petition is granted and acquisition of the Development is completed.[3] In consideration of the Rule, TIAA has used its best efforts to condense the levels of Petitioner's proposed organizational structure to the least number possible. *See* Proposed Organizational Structure, attached as Exhibit B. Nevertheless, incorporating TIAA into Petitioner's organizational structure results in additional principal levels

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[2] Founded in 1918, TIAA is a New York stock life insurance corporation under New York Insurance Law and generally governed by New York corporations' law. TIAA has a corporate structure that is unique in comparison to similar present-day corporations, and has attributes of both a non-profit company and a mutual insurance company. TIAA's stock is held by the TIAA Board of Governors, a New York non-charitable, not-for-profit corporation. The TIAA Board of Governors holds no pecuniary rights in TIAA and has no right to TIAA's profits. Rather, under TIAA's Charter TIAA operates without profit to the corporation or its stockholders and under New York insurance law, TIAA's profits are retained by the company to enhance TIAA's capital base. In no event is any surplus or profits paid to TIAA's shareholder (*i.e.*, TIAA Board of Governors) or any member of the TIAA Board of Governors. From a governance perspective, the TIAA Board of Trustees ("TIAA Board") oversees management of TIAA. The TIAA Board delegates this authority to the officers of TIAA, who manage the day-to-day investments of TIAA and its wholly owned affiliates. TIAA's other layers are discussed in more detail at Section F, below.

[3] If this Petition is granted, the requested organizational structure change will not occur until the closing of the Florida Projects (*i.e.*, the closing of the transaction in which an indirect interest in Petitioner's general partner is purchased). Petitioner is submitting this Petition at this stage because the purchasers would like confirmation that this requested Rule waiver will be approved prior to completing acquisition of the indirect interest in Petitioner's general partner. The negotiations regarding the purchase of the indirect interest in the general partner are complete and the parties are ready to close. The only impediment to closing is gaining assurances that Florida Housing and the issuer are comfortable with Petitioner's proposed structure. For Mandarin Trace, Petitioner has already acquired the Development property and begun the rehabilitation. Thus, the closing on the acquisition of the indirect interest may occur at any time during construction or may occur after construction completion. Petitioner respectfully requests that the underwriter underwrite the housing credit transaction with regard to the current ownership reflected in the attached Exhibit A. When the transfer occurs, Petitioner will make a request to Florida Housing, and Florida Housing will request a recommendation letter from the underwriter, at which time the new entities in the transaction, identified in Exhibit B, will be vetted.

beyond Petitioner's current three disclosure levels, necessitating this petition. Although these additional levels are necessary for TIAA's corporate governance, to address the Rule's underlying purpose, TIAA proposes to install a Board of Managers at the fourth principal disclosure level, such that all natural persons, in their corporate capacity, having direct control over the daily management of the Development will be disclosed by the fourth level. *Compare* Current Organizational Structure, attached as Exhibit A with the Proposed Organizational Structure, attached as Exhibit B. Because Petitioner is unable to comply with the Rule, it respectfully requests a waiver. If the waiver is granted, the key persons responsible for overseeing the rehabilitation of the Development – and with whom Florida Housing has been working to date – will remain the same and will be in close contact with TIAA's Board of Managers.[4] In support of this Petition, Petitioner states as follows:

A. <u>The Petitioner.</u>

1. The address, telephone, facsimile numbers and e-mail address for Petitioner and its qualified representative are:

David Fleming
Mandarin Trace Apartments, LP
909 Third Ave, 21st Floor
New York, NY 10022
Phone: 646-502-7196
Fax: N/A
Email: dfleming@onyllc.com

2. The address, telephone, and facsimile number and e-mail address of Petitioner's counsel are:

Brian J. McDonough, Esq. Bridget Smitha, Esq.

[4] If this Petition is granted, Petitioner's senior staff, as well as the property-level employees currently working on the Development will remain the same as part of the acquisition by TIAA. These current individuals will in turn provide regular updates to the TIAA Board of Managers about the Development.

Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street
Suite 2200
Miami, Florida 33130
Telephone: 305-789-3350
Fax: 305-789-3395
Email: Bmcdonough@stearnsweaver.com

Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
106 E. College Ave.
Suite 700
Tallahassee, Florida 32301
Telephone: 850-329-4852
Fax: 850-329-4864
Email: BSmitha@stearnsweaver.com

B. THE DEVELOPMENT.

3. The following information pertains to the Development:

- Development Name: Mandarin Trace Apartments
- Development Address: 3960 Old Sunbeam Road, Jacksonville, FL 32257
- County: Duval
- Developer: OMP Mandarin Trace Apartments, LLC
- Number of Units: 120 (Acquisition and Rehabilitation)
- Demographic: Family
- Type: Garden Apartments
- Set Asides: 100% at or below 60% AMI
- Funding: $ 1,250,468.00 Non-Competitive HC funding request (annual amount)

C. WAIVER IS PERMANENT.

4. The waiver being sought is permanent in nature.

D. THE RULE FROM WHICH WAIVER IS REQUESTED.

5. For Petitioner's principals to appear below the third principal disclosure level, Petitioner requests a waiver of Rule 67-21.0025(7)(c), F.A.C. (7/6/22), which provides:

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

Id.

E. STATUTES IMPLEMENTED BY THE RULE.

6. Rule 67-21.0025, F.A.C. (07/06/2022), implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"):

- Section 420.509, Revenue bonds.
- Section 420.5099, Allocation of the low-income housing tax credit.

Per Section 420.5099(1)-(2), Florida Housing acts as the State's housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

8. Petitioner submitted Application No. 2022-518C for non-competitive housing credits on or about February 1, 2023.

9. As part of a larger transaction, TIAA intends to acquire the ownership interests in Omni Affordable Florida, LLC ("Omni FL"), which owns interests in the Florida affordable housing assets known as College Trace, Mandarin Trace, Oak Hammock, Emerald Place, and Gadsden Arms, and will soon also include Hollybrook Homes (collectively, the "Florida Projects").[5] The foregoing will be accomplished pursuant to that certain Securities Purchase Agreement, dated as of October 26, 2022 (the "Purchase Agreement"), whereby TIAA will acquire all of the issued and outstanding equity of Omni Holding Company and Omni FL resulting in TIAA becoming the indirect owner of 100% of the ownership interests in Omni FL.

10. However, the acquisition of the Florida Projects cannot occur without the requested waiver as the incorporation of TIAA within Petitioner's organizational structure will

[5] Hollybrook Homes, Mandarin Trace and Oak Hammock are located in Jacksonville; College Trace is in Pensacola; Emerald Place is in Titusville; and Gadsden Arms is located in Quincy.

cause principals to appear below the third level. As discussed in more detail below, despite simplifying TIAA's structure, TIAA's unique corporate structure prevents compliance with the Rule.

11. Through its wholly owned subsidiaries, TIAA specializes in acquisition, development and asset management across a diverse portfolio, including an affordable housing portfolio. This affordable housing portfolio is currently valued at more than $3,000,000,000 and consists of 140 distinct projects (approx. 20,000 apartment units) with an active footprint in 20 states. TIAA maintains its passionate vision to stimulate economic prosperity, build communities and enrich individual lifestyles by pioneering intelligent urban redevelopment projects. Under the guidance of a strong, experienced leadership team specializing in the revitalization and repositioning of multifamily properties, and leveraging achievements in housing, TIAA seeks opportunities to continue to grow its housing portfolio on a national scale while remaining in a stronger position as a full service vertically integrated national owner/operator. Its strategy is focused on community revitalization, prioritizing investments in early stage projects that help to increase the supply of affordable, sustainable and climate-safe housing in low-income and disadvantaged communities.

12. TIAA is preferred by many of the nation's premiere real estate development companies who appreciate its attentiveness to their needs and input. TIAA has the size, longevity, efficiency, and experience to provide sustainable, safe communities to low-income families and seniors. TIAA's advantage as an owner/operator is highlighted by the firm's well-capitalized investment capabilities along with quick, decision-making abilities. By focusing on the profitability and sustainability of each of its projects, TIAA has been able to provide safe and comfortable housing for those who need it most.

13. TIAA would like to expand its impact investment mission to include Florida affordable housing. With its initial acquisition, interests held by exiting Omni principals Eugene Schneur, Maurice Vaughn, and Robert Bennett in the Florida Projects will be conveyed to TGA GP FL Holdco LLC, a Delaware limited liability company ("GP Holdco"), which in turn will be wholly-owned by TGA GP Holdco Parent LLC, a Delaware limited liability company, which in turn will be wholly-owned by TIAA as depicted on the proposed structure chart attached hereto as Exhibit B. The Florida Projects will be owned by GP Holdco (the sole member and manager of Omni Affordable Florida, LLC, which will be the sole member and manager of Petitioner's general partner, if this Petition is granted).[6] The sole member and manager of the GP Holdco is TGA GP Holdco Parent LLC, whose sole member and manager is TIAA. As previously noted, TIAA's sole shareholder is TIAA Board of Governors, a not-for-profit corporation that does not operate as a typical stockholder.[7] The charter of TIAA Board of Governors specifies that its primary purpose is to hold the stock of TIAA.[8] TIAA does not issue dividends to TIAA Board of Governors. TIAA Board of Governors has members known as "Governors." The Governors

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[6] If the Petition is granted, 333 Meadow LLC and Aspire Properties LLC would no longer be members of Petitioner's general partner, Mandarin Trace Developers, LLC. *See* Exhibit B.

[7] TIAA Board of Governors is a non-charitable not-for-profit membership corporation established in 1937 and subject to the New York Not for Profit Corporation Law ("NYNPCL"). Under its constitution, the Board of Governors' primary purpose is to own and administer TIAA's stock and elect members of TIAA's governing board (the TIAA Board of Trustees), which has responsibility and authority to govern TIAA's affairs. The members of the Board of Governors (each a "Governor") manage the affairs of TIAA Board of Governors. Please see https://www.tiaa.org/public/about-tiaa/corporate-governance-leadership/tiaa-governors-trustees . As noted, neither the Board of Governors as a legal entity nor any individual Governor has a right to TIAA's profits. Rather, all surplus funds may be retained by TIAA to enhance its capital base or to distribute dividends to its policyholders.

[8] Andrew Carnegie founded TIAA to ensure the financial security of those in the higher education sector. The stock of TIAA was initially retained by Mr. Carnegie's foundation, the Carnegie Corporation. However, once the organization had a record of operating, the Carnegie Corporation determined to transfer the stock to a new body (then called the Trustees of TIAA Stock) composed of distinguished leaders of the higher education sector.

have neither a pecuniary interest in TIAA Board of Governors (the not-for-profit corporation) nor any direct or indirect entitlement to any profits of TIAA.[9] In other words, these members are not the direct or indirect (through TIAA Board of Governors) beneficial owners of TIAA.[10]

14. The TIAA Board of Trustees ("TIAA Board") functions much like a traditional corporate board of directors, overseeing management of TIAA. The TIAA Board delegates certain authority to the officers of TIAA, who carry out day-to-day investments of TIAA and its wholly owned affiliates. For the Florida Projects, including the Development, Pamela West, Nadir Settles and Patrick Li, in their capacity as members of the Board of Managers at the GP Holdco level, will, through the aforementioned mechanism of authority delegation, have broad authority to manage and govern the day-to-day affairs of GP Holdco and the Florida Projects.

15. To provide Florida Housing with comfort that the specifically designated individuals will remain in charge of the ultimate decision-making relative to the Development (and the other Florida Projects), the GP Holdco will, at all times, be governed by a Board of Managers comprised of Pamela West,[11] Nadir Settles,[12] and Patrick Li[13] – no additions or

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[9] As noted, no profits or surplus are payable or distributable to TIAA's sole shareholder (*i.e.*, TIAA Board of Governors) nor to any member or trustee or officer of TIAA Board of Governors, nor to the TIAA's Board of Trustees or any of its members, nor to any officer of TIAA.

[10] Under its charter, TIAA operates without profit to its sole stockholder, TIAA Board of Governors.

[11] Pamela is a seasoned real estate professional with over 20 years of experience and has executed over $10B of transactions in acquisitions, dispositions, financing and asset management within the U.S. Prior to joining the team, Pamela was the Regional Head of Acquisitions and Asset Management for the Northeast and Mid-Atlantic region for TH Real Estate, a subsidiary of TIAA. She managed over $2.8B of housing assets. She began her career in real estate at CBRE. In addition to her professional activity, Pamela is a Board Member of the Real Estate Executive Council, Bold Charter Schools, and City Parks Foundation. She also serves on the Advisory Boards for Leonard W. Wood Center for Real Estate Studies, Veritas Impact Partners and Cooper Housing Institute. She is a member of the ULI Affordable Housing Investors Council and the Real Estate Roundtable's President Council and New York Women Executives in Real Estate. Pamela graduated with a bachelor's degree in English Education from the University of

substitutions to the Board of Managers will occur without notice to Florida Housing and obtaining Florida Housing's consent to such change. Thus, although TIAA's principal disclosures extend for several levels, the natural persons proposed to be vetted by Florida Housing (*i.e.*, GP Holdco's Board of Managers, consisting of Pamela West, Nadir Settles, and Patrick Li), which will be responsible for overseeing the management of the Development, would appear at the fourth level if this Petition is granted.[14]

16. Under Section 120.542(1), *Fla. Stat.,* and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the

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North Carolina at Greensboro and an M.B.A. in Real Estate and Finance from the University of North Carolina at Chapel Hill.

[12] Nadir's experience includes various positions including asset management, portfolio management, acquisitions, and product development. Prior to joining Nuveen Real Estate in 2012, Nadir was involved in both asset management and acquisitions roles at Silverstein Properties and RLJ development Urban Lodging Trust (formally RLJ Development LLC). Nadir graduated with a B.A in Business Administration from St. John's University, an M.B.A. from Villanova School of Business and an M.S. in Real Estate Finance from New York University.

[13] Patrick has 10 years of experience in commercial real estate investment, and since joining Nuveen Real Estate in 2013 has executed over $4B in acquisitions, financing, and dispositions in various asset types across the U.S. Patrick actively serves on the Board of Directors of Urban Pathways, a non-profit organization that provides housing and services to the adult homeless population in the New York City metro area. He is also on the Advisory Council of Real Estate Ascending Leaders and the Advisory Board of the Manhattan chapter of AREAA. Patrick holds a B.A. in Economics and Mathematics-Statistics and an M.A. in Mathematics of Finance from Columbia University, and a Graduate Certificate in Real Estate from New York University.

[14] TIAA has a Board of Trustees and acts through its officers through a delegation of corporate authority. This delegation of authority results in Pamela West, Nadir Settles, and Patrick Li having the authority to manage on a day-to-day basis the investments of the Florida Projects. The Trustees of TIAA and the Governors of the TIAA Board of Governors are not involved in the day-to-day investment management decisions as this is delegated to the officers of the business line in question and they do not in the normal course sign documents related to any of TIAA's investments.

application of the rule would: (1) create a substantial hardship or, violate principles of fairness,[15] and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat.

17. It is Petitioner's understanding that one of the major purposes of the principal disclosure requirement (*i.e.,* the requirement to identify all natural persons by or at the third level) is to prevent a "shell game" whereby Florida Housing is unable to identify the individuals in charge of the affected housing development. If this Petition is granted, the natural persons responsible for the day-to-day operations and management will be disclosed by the fourth level and will not change without Florida Housing's written consent. Accordingly, granting the Petition should not impact Florida Housing's confidence in Petitioner, its principals, or the integrity of its ownership structure. The waiver, if granted, will merely relieve Petitioner of the impossible task of changing the corporate governance structure of TIAA that has controlled TIAA's operations for decades and which remains integral to TIAA's global operations. Because all natural persons having management or control over the Development will be disclosed, 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.

18. One of the other major goals of the Rule is for the federal and state allocated resources of Florida Housing to be used to facilitate the availability of decent, safe and sanitary housing in Florida to low-income persons. The Act (Section 420.501, *et sq*.) was passed in order

[15] "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. § 120.542(2), Fla. Stat.

to create inducements and opportunities for private and public investment in rental housing to increase and preserve the supply of affordable housing for low-income persons and households.

19. If the Petition is denied, TIAA will not be able to acquire Omni FL, the owner of the Florida Projects, and would result in an exclusion of TIAA from the Florida affordable housing LIHTC market. Accordingly, Petitioner would be unable to marshal TIAA's resources and expertise to further its mission to positively impact affordable housing in Florida.[16] Compliance with the Rule would create a substantial economic hardship by altering Petitioner's transaction structure in a manner that would terminate the proposed transactions with respect to the Florida Projects because TIAA would no longer be able to participate in the instant transaction with respect to the Florida Projects and would be precluded from any participation in the Florida affordable housing LIHTC market. Further, given TIAA's unique structure and corporate governance, the requested waiver should not create precedent that can be readily relied upon by other institutions to undermine the purpose of the Rule. Rather, the Rule would be undermined if it is strictly enforced to exclude an otherwise reputable, ethical, and mission-oriented institution from the opportunity to serve Florida affordable housing imperatives. In light of TIAA's vast real estate investment holdings in Florida, spanning other sectors and asset classes, it would be unreasonable and unfair to exclude TIAA from the Florida affordable

[16] For example, if the Petition is denied, Petitioner would not have access to TIAA's resources. TIAA is a pioneer in impact investing and remains competitively positioned to deliver a market-leading sector globally and at scale. Under Nadir Settles and Pamela West's leadership, the strategy will be to continue leveraging TIAA's industry expertise and go beyond just affordable housing to focus its attention on community revitalization. Working as partners, local communities and real estate owners can meet shared objectives and tackle local challenges, from sustainability and mitigating climate risk, to healthcare, housing, and social exclusion. With a strong sense of purpose stemming from a desire to see communities prosper, TIAA has consistently established strong P3's with various philanthropy groups and encourages a business culture deeply rooted in improving the surrounding environment. Focusing on long-term relationships and strategic market growth opportunities, TIAA intends to continue actively expanding its multifamily housing portfolio and partnerships.

housing sector simply because its unique corporate structure does not fit squarely within the Rule. The requested waiver will not adversely impact the Development or Florida Housing.

20. For the foregoing reasons, Petitioner meets the standards for the requested waiver.

G. ACTION REQUESTED.

21. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver such that the acquisition may move forward and Petitioner may adopt the Proposed Organizational Structure attached as Exhibit B upon closing on the purchase of the indirect interest; (ii) grant this Petition and all relief requested herein; and (iii) grant such further relief deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
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Miami, Florida 33131
Tel: (305) 789-3350
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E-mail: bmcdonough@stearnsweaver.com
Counsel for Petitioner

By: */s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 30th day of June, 2023.

By: */s/ Brian J. McDonough*
Brian J. McDonough, Esq.

Exhibit A - Current Organizational Structure

Current Organizational Chart

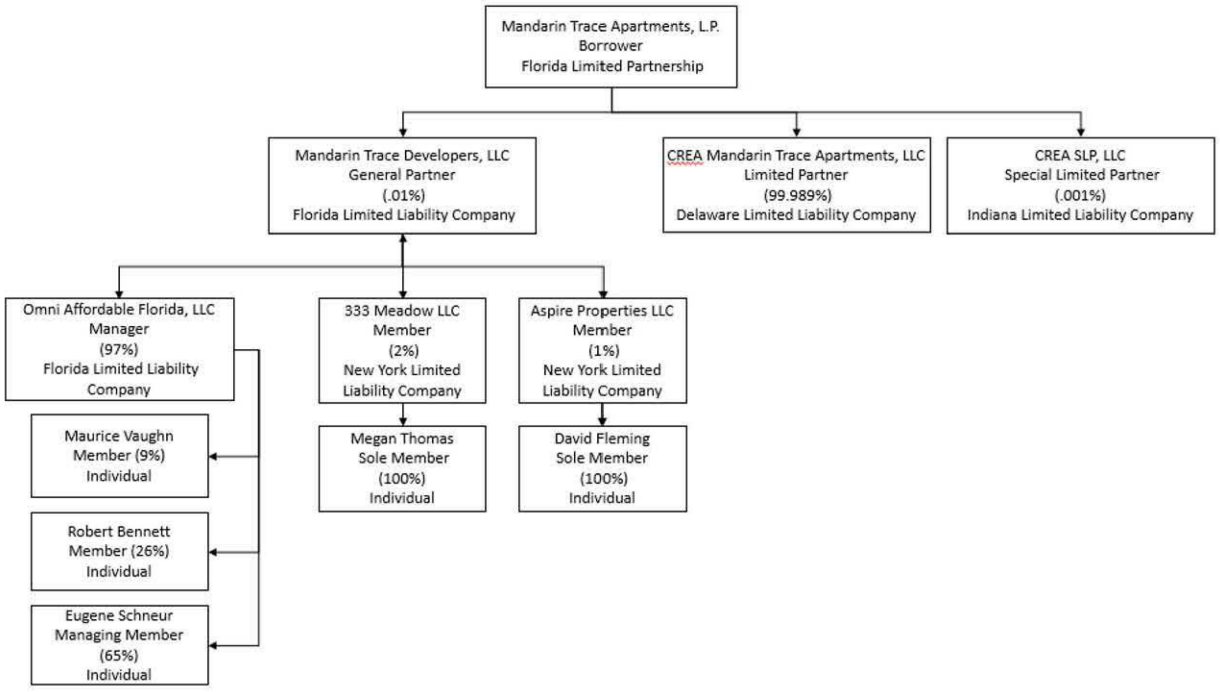


Exhibit B - Proposed Organizational Structure

Proposed Post-Closing Organizational Chart

