STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2022-040VW
APPLICATION NO. 2021-551C

FAIRFIELD MIAMI GARDENS LP,

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-21.0025(7)(c) AND 67-21.003(1)(b)

FAIRFIELD MIAMI GARDENS LP, a Florida limited partnership ("**Petitioner**"), by and through its undersigned counsel, hereby petitions Respondent, the FLORIDA HOUSING FINANCE CORPORATION (the "**Corporation**") for a waiver of the Corporation's rule which requires a natural person principal by the third principal disclosure level. Moreover, Petitioner hereby petitions the Corporation for waiver of the requirement for Non-Competitive Housing Credits (the "**4 Percent HC**") only, to be used for a Tax-Exempt Bond-Financed Development where the bonds are issued by a County Housing Authority established pursuant to Section 159.604, Florida Statues (2021), that the Non-Competitive Application Form (the "**Application**") 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**"), per the Non-Competitive Application Package (REV. 03-2021) (the "**NCA**") adopted and incorporated by reference into Rule 67-21.003(1)(b), Florida Administrative Code (2021). Petitioner further petitions the

Corporation for a waiver of the prohibition against changing the structure of Petitioner set forth in Petitioner's Principal Disclosure Form (as defined below) prior to the issuance of a Preliminary Determination (as defined by Rule 67-21.002(84), F.A.C. (2021)) or after such issuance but before a Final Housing Credit Allocation Agreement has been approved and the IRS Forms 8609 have been issued, per the NCA adopted and incorporated by reference into Rule 67-21.003(1)(b), Florida Administrative Code (2021) (the "**Structure Requirement**"). This Petition is filed pursuant to Section 120.542 of the Florida Statutes (2021) and Chapter 28-104 of the Florida Administrative Code (2021). In support of its Petition, the Petitioner states:

A. PETITIONER AND DEVELOPMENT

1. The address, telephone number, facsimile number and email address of the Petitioner are:

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Attn: Richard Boynton
Telephone: (858) 824-6424
Facsimile: (858) 625-6047
Email: rboynton@ffres.com

2. For purposes of this Petition, the address, telephone number, facsimile number and email address of Petitioner's counsel is:

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Nelson Mullins Riley & Scarborough
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3. Petitioner previously submitted an application to the Housing Finance Authority of Miami-Dade County, Florida for an issuance of multifamily housing revenue bonds (the

"**Bonds**") to be used for the rehabilitation of that certain 141-unit multifamily housing development commonly known as the Emerald Dunes Apartments, located at 1931 NW 207th Street, Miami Gardens, Florida 33056 (the "**Development**"). Petitioner has also submitted an Application to the Corporation for an allocation of 4 Percent HC to fund a portion of the acquisition or rehabilitation of the Development.

B. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver from Rule 67-21.0025(7)(c), F.A.C. (2021) which requires the Petitioner to disclose a natural person principal by the third principal disclosure level when submitting the Principal Disclosure Form (defined below) in connection with the Non-Competitive Application Package and 67-21.003(1)(b), F.A.C. (2021) which adopts and incorporates the Non-Competitive Application Package (Rev. 03-2021) (collectively, the "**Rule**"). The specific provisions of the Rule from which Petitioner is seeking a waiver are as follows:

6. Rule 67-21.0025(7)(c), F.A.C (2021), which provides 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;
>
> (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 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."

(emphasis added).

7. Rule 67-21.003(1)(b), F.A.C. (2021), which provides in relevant part:

"**(b) If the NC Award will not be in conjunction with other Corporation funding made available through the competitive solicitation funding process outlined in rule Chapter 67-60, F.A.C., the Applicant shall utilize the Non-Competitive Application Package in effect at the time the Applicant submits the Application. The Non-Competitive Application Package or NCA (Rev. 03-2021) is adopted and incorporated herein by reference…**"

(emphasis added).

8. Section A.6.a. of the NCA, which 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.**

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."

(emphasis added).

9. The NCA, which provides, in pertinent part:

"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**;"

(emphasis added).

10. Section A.6.b(1) of the NCA, which provides, in relevant part:

6. Principals Disclosure for the Applicant and for each Developer:

***

b. The name of the Applicant entity stated in the Application may be changed only by written request of an Applicant to Corporation staff and approval of the Corporation after the Applicant has been invited to enter Credit Underwriting.

For purposes of (1) and (2) **below, 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.**

(1) For Applicants requesting Non-Competitive Housing Credits only:

The Applicant entity shall be the recipient of the Housing Credits **and the ownership structure of the Applicant entity as set forth in the Principal Disclosure Form and cannot be changed in any way (materially or non-materially) until after the Preliminary Determination is issued. Once the Preliminary Determination has been issued, (a) any 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 ownership structure of the Applicant entity may be changed without Corporation or 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. The Applicant must comply with Principal disclosure requirements outlined in Rule Chapter 67-21, F.A.C. for the duration of the Compliance Period. **Changes to the ownership structure of 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 prior to the issuance of the Preliminary Determination to the officers or directors of a Public Housing Authority, officers or directors of a Non-Profit entity, or 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, however, the Corporation must be notified of the change. Changes to the officers or directors of a Non-Profit entity shall require Corporation approval.

(emphasis added).

D. STATUTES IMPLEMENTED BY THE RULE

11. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. *See* §§ 420.509, 420.5099, *Fla. Stat.* (2021) (the "**Statute**").

12. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended results in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals of fairness, 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.*

E. JUSTIFICATION FOR GRANTING THE WAIVER OF THE RULE

13. Petitioner is seeking a waiver from Section A.6.a. of the Non-Competitive Application Package, which requires the applicant to include with its application for non-competitive tax credits the Principals of the Applicant and Developer(s) Disclosure Form in excel format (hereinafter, the "**Principal Disclosure Form**"), as an exhibit to the NCA. The application further requires that the applicant identify the principals pursuant to subsection 67-21.002(86), F.A.C., which provides the definition of who constitutes a "Principal" for disclosure purposes. Moreover, subsection 67-21.0025(7) of the Corporation's rules provides specific requirements an applicant must comply with for the disclosure of "Principals".

14. As such, for Petitioner to submit a NCA for 4 Percent HC for the Development and comply with Section A.6.a. thereof, it must be able to submit the Principal Disclosure Form in accordance with not only Rule 67-21.002(86), but also Rule 67-21.0025(7)(c). Petitioner's current ownership structure does not comply with the requirements of Rule 67-21.0025(7)(c). Therefore, Petitioner is also seeking a waiver of 67-21.0025(7)(c), which requires that by the third principal disclosure level of the Principal Disclosure Form, the Principals disclosed must all be natural persons except if the Principal is a trust, in which case the natural person Principal can be disclosed by the fourth principal disclosure level.

15. Petitioner cannot meet the requirement to have a natural person principal by the third principal disclosure level for the following reasons:

a. Petitioner 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 CalSTRS, a public pension fund. The

participants of the CalSTRS pension fund are continually changing and currently number in excess of 980,000 (teachers of the State of California), and therefore it is not practical or feasible to include in the Principal Disclosure Form.

b. Further, the ultimate participants in the pension plan have no ability to control the investments and may change on a regular basis making it impossible to have a Principal Disclosure Form which is submitted and does not change during the application process if such natural persons were included.

16. Further Petitioner requests a waiver of the Timing Requirement, which requires that Petitioner complete the credit underwriting for the county bond transaction (the "**Credit Underwriting**") before submission of the Application. In order to complete the Credit Underwriting process and receive a report (the "**Credit Underwriting Report**"), Petitioner must have finalized its ownership structure which it will not be able to do so until this Petition is granted. However, Petitioner cannot submit this Petition without first submitting an Application and cannot submit an Application until completing the Credit Underwriting and cannot complete Credit Underwriting and finalize its Credit Underwriting Report without first granting of this Petition. Consequently, Petitioner will need to submit the Application before completing Credit Underwriting in order to address this issue in advance with the Corporation. Therefore, Petitioner is requesting a waiver of the requirement to submit a final Credit Underwriting Report with its Application in order to prevent any further delay to the closing and rehabilitation commencement of the Development.

17. Finally, Petitioner requests a waiver of the Structure Requirement, which prohibits making changes to the ownership structure of the Applicant entity as set forth in the Principal Disclosure Form prior to the issuance of the Preliminary Determination or subsequent to the issuance of the Preliminary Determination, but before a Final Housing Credit Allocation Agreement has been approved and the IRS Forms 8609 have been issued. Subsequent to the submission of this Petition, Petitioner will pursue re-syndication with respect to the Development. In the process of re-syndication, Petitioner's current bridge ownership structure (the "**Bridge Structure**") will be amended to i) admit a new investor limited partner and ii) make certain changes to the ownership of the Petitioner's General Partner because the investment vehicle that was utilized for acquisition of the Development will be substituted with the investment vehicle intended to be used for the re-syndication. Despite these changes, the revised organizational structure of Petitioner (the "**Proposed Structure**") will be substantially the same as the Bridge Structure. The Proposed Structure, rather than the Bridge Structure, will be the ownership structure that accomplishes the re-syndication and ultimately participates in the Corporation's 4 Percent HC program – the Bridge Structure will only exist while Petitioner pursues re-syndication. Petitioner requests consent to change its ownership structure now so it can satisfy the principal disclosure requirements of the NCA and move forward with the submission of its Application in accordance with the other waivers discussed by this Petition.

18. A waiver of the Rule will permit Petitioner to apply for non-competitive tax credits to finance a portion of the rehabilitation of the Development. Without this additional source of investor equity, the Petitioner will not have enough funds to preserve and rehabilitate these much needed 141 affordable units in Miami Gardens, Florida. Petitioner acquired the Development on April 28, 2022. While the Development is currently encumbered by certain rent

restrictions, the Petitioner intends to pursue re-syndication with respect to the Development, which re-syndication will result in rent restrictions at the Development being extended.

19. In this instance, Petitioner meets the standards for a waiver of the Rule. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rules if strict application of those rules will lead to unreasonable, unfair or unintended results in particular instances. Unless the Rule is waived to allow the Petitioner to apply for non-competitive housing credits with its current ownership structure, certain unreasonable, unfair and unintended results will occur, resulting in a substantial hardship to the Petitioner and the Development. Specifically, the purpose of the Rule was for the Corporation to know who is participating in its programs. However, strict application of the Rule would lead to the unintended result that a public pension fund is not able to participate in the Corporation's programs as well as result in a substantial hardship to the Petitioner. In this specific instance, the Corporation's failure to grant the waiver requested will result in a substantial hardship to Petitioner, as Petitioner will not be able to apply for and obtain 4 Percent HC and, as such, will not be able to complete the much-needed rehabilitation of the Development. The Corporation will not be harmed by granting this Petition as the intent of the Rule will not be violated. The Rule was implemented to permit the Corporation to ascertain the parties involved in its programs. Petitioner is able to provide to the Corporation natural person principals, but not by the third (or fourth) principal disclosure levels. Moreover, certain entities in Petitioner's ownership structure will have participants that are not feasible to disclose because they are numerous passive investors, such as the teachers that comprise the CalSTRS public pension fund. Further, Petitioner must obtain all waivers requested herein at this time, rather than subsequent to the closing of its financing. To ensure the Development is feasible and obtain all

required financing, Petitioner must close such financing with its Proposed Structure rather than the Bridge Structure reflected in Petitioner's Application. It would be unreasonable and unfair to, and impose substantial hardship upon, Petitioner to prohibit Petitioner from changing its organizational structure from the Bridge Structure to the Proposed Structure that will ultimately rehabilitate the Development and participate in the Corporation's 4 Percent HC program, which Proposed Structure will have the same ultimate control structure as the Bridge Structure.

20. The requested waiver of the Rule serves the purpose of the Statute that is implemented by the Rule. The Florida Housing Finance Corporation Act (Section 420.501, *et seq*.) was passed in order to encourage private and public investment in facilities for persons of low-income. The purpose of the creation of the Housing Tax Credit Program and Multifamily Mortgage Revenue Bonds Program is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver of the Corporation's rule which requires a natural person principal by the third principal disclosure level and that a final Credit Underwriting Report be included in the Application, Petitioner will be able to apply for non-competitive housing credits with its current structure, as requested in this Petition, and the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low income. By granting the waiver of the Corporation's prohibition against revising the Petitioner's organizational structure after the submission of Petitioner's Application and before a Preliminary Determination, Petitioner will be able to finalize its desired organizational structure and obtain its required financing.

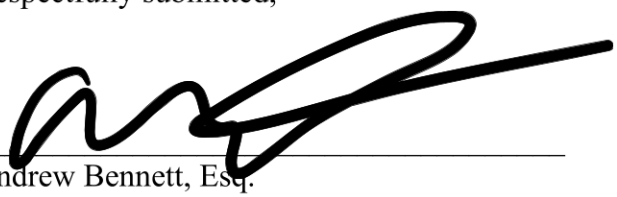
F. ACTION REQUESTED

21. For the reasons set forth herein, Petitioner respectfully requests the Corporation (*i*) grant the requested waiver of the Corporation's rule which requires a natural person principal

by the third principal disclosure level; (*ii*) grant the requested waiver of the Timing Requirement and Corporation's requirement that a final Credit Underwriting Report be included in the Application; (*iii*) grant the requested waiver of the Structure Requirement and the Corporation's prohibition of making changes to the ownership structure of Petitioner; (*iv*) grant the Petition and all of the relief requested herein; and (*v*) grant such further relief as it may deem appropriate.

Respectfully submitted on the 8th day of July, 2022.

Respectfully submitted,



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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

This 8th day of July, 2022.



Andrew Bennett, Esq.
Fla. Bar No. 0125189