STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2022-024VW
APPLICATION NO.: _____

SP DAYTONA LLLP,

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/



PETITION FOR WAIVER OF RULE 67-21.021(9), F.A.C. (2018) AND RULE 67-21.002(85)3, F.A.C. (2018)

SP DAYTONA LLLP, a Florida limited liability limited partnership ("**Petitioner**"), by and through its undersigned counsel, hereby petitions Florida Housing Finance Corporation (the "**Corporation**") for a waiver or variance of the Corporation's rules which require natural person principals by the third principal disclosure level ("**Third Disclosure Level Requirement**"). Specifically, Petitioner seeks a waiver or variance of Rule 67-21.002(9), Florida Administrative Code (F.A.C.) (2018), and Rule 67-21.002(85)(a)3, F.A.C. (2018). This Petition is filed pursuant to Section 120.542 of the Florida Statutes and Chapter 28-104, Florida Administrative Code. In support, Petitioner states as follows:

A. THE PETITIONER AND DEVELOPMENT

1. The address, telephone number and e-mail address of Petitioner are:

SP DAYTONA LLLP
5403 West Gray Street
Tampa, FL 33609
Attention: Brianne E Heffner
Telephone: (813) 288-6988
Email: bheffner@sphome.com

2. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address of Petitioner's counsel are:

Yisell Rodriguez, Esq.
Nelson Mullins Riley & Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4290
Facsimile: (407) 425-8377
Email: yisell.rodriguez@nelsonmullins.com

3. Petitioner previously filed a non-competitive application (the "**Application**") with the Corporation for the issuance of tax-exempt bonds in the principal amount of $20,000,000 and non-competitive housing credits to be used to finance a loan to the Petitioner for the acquisition and rehabilitation of that certain 230-unit affordable housing development located in Volusia County, Florida and commonly known as Daytona Gardens Apartments (the "**Development**"). On or about July 30, 2019, the Corporation issued Multifamily Mortgage Revenue Bonds, 2019 Series F, in the aggregate principal amount of $20,000,000 (the "**Bonds**") and disbursed to the Petitioner a loan in the amount of $20,000,000 (the "**Loan**").

B. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

C. THE RULES FROM WHICH WAIVER IS SOUGHT

5. Petitioner requests a waiver from Rule 67-21.002(9), Florida Administrative Code (F.A.C.) (2018) and Rule 67-21.002(85)(a)3, F.A.C. (2018), which require the Petitioner to consist

exclusively of all natural persons by the third principal disclosure level of the ownership structure of the Petitioner. The specific provisions of the Rules from which Petitioner is seeking a waiver are as follows:

> Rule 67-21.002(9), F.A.C. (2018), which provides in relevant part:
>
> (9) "Applicant" means any person or legal entity of the type and with the management and ownership structure 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."**
>
> (emphasis added).
>
> Rule 67-21002(85)(a)3, which provides in relevant part:
>
> (85) "Principal" means:
>
> (a) With respect to an Applicant that is:
>
> ***
>
> 3. **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,
>
> b. A limited partnership, any general partner or limited partner of the limited partnership,

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

d. A trust, any trustee of the trust and all beneficiaries of majority age (i.e.; 18 years of age) as of Application deadline, each of whom must be a natural person. Such trust shall be comprised only of trustee(s) and beneficiaries who are natural persons; **and with respect to any entity identified at the second principal disclosure level that is:**

e. A corporation, by the third principal disclosure level, any officer, director, executive director, or shareholder of the corporation, each of whom must be a natural person,

f. A limited partnership, by the third principal disclosure level, any general partner or limited partner of the limited partnership, each of whom must be a natural person,

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

h. A trust, any trustee of the trust and all beneficiaries of majority age (i.e.; 18 years of age) as of Application deadline, each of whom must be a natural person. Such trust shall be comprised only of trustee(s) and beneficiaries who are natural persons.

(emphasis added).

D. STATUTES IMPLEMENTED BY THE RULES

6. The Rules are 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.* (the "**Statute**").

7. 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

8. Petitioner requests a waiver or variance from the requirement that only natural persons may be Principals at the third principal disclosure level of the Petitioner pursuant to the Rules so the Current Manager (as defined hereunder) may transfer its interest in the Petitioner to the Successor Manager (as defined hereunder), and the Petitioner may admit the Successor Manager to the Petitioner, which would have the result of the Petitioner thereafter having nine (9) tiers of ownership in its organizational structure of the Petitioner and, in the process, make the principal disclosures requested by the Corporation.

9. In connection with a Partnership Interest Purchase and Sale Agreement dated as of October 8, 2021 (the "**Purchase Agreement**"), the current manager/member of the Petitioner (the "**Current Manager**") anticipates that it will transfer its interests to a successor entity (the "**Prospective Transfer**"). After the closing of the Prospective Transfer, the Petitioner will have nine (9) tiers of ownership due to the equity structure of the successor manager/member (the "**Successor Manager**"). The Loan would survive the Prospective Transfer.

10. Following the Prospective Transfer, the Petitioner will not be able to meet the Third Disclosure Level Requirement without waivers or variances of the Rules due to the corporate structure used by Successor Manager and the complex equity structure within the corporate structure. The Petitioner has fully disclosed to the Corporation the organizational structure of the Successor Manager and Corporation staff has reviewed the complete organizational chart for the Successor Manager showing the full ownership at each tier in connection with the requested waivers or variances. This organizational chart illustrates the complex ownership structure of the

Successor Manager and also shows that, despite the various levels of ownership, the ultimate control of the Successor Manager, and thus the Petitioner, after the Prospective Transfer, will primarily rest with two natural persons, which persons will also act as non-member managers of the Successor Manager.

11. A denial of the requested waivers or variances would lead to unreasonable, unfair and unintended results in this particular instance. Given the corporate structure of the Successor Manager and the complex equity structure within the ownership of the Successor Manager, compliance with the Third Disclosure Level Requirement would lead to unintended results in that Successor Manager would be required to restructure its ownership which would make the Prospective Transfer economically non-viable because current significant economic participants that are indispensable to the Prospective Transfer would no longer be able to participate. In turn, Petitioner would not be able to bring in Successor Manager to continue the operations of the Development in a manner that provides safe, sanitary and affordable housing to its residents.

12. Alternatively, permitting disclosure of natural persons beyond the Third Disclosure Level Requirement allows for the Successor Manager to close on the Prospective Transfer with its standard corporate organizational structure that includes significant economic participants indispensable to the Prospective Transfer, and avoids the unintended result to the Petitioner, the Current Manager and the Development of not closing on the Prospective Transfer.

13. In this instance, Petitioner meets the standards for a waiver of the Rules. 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. Specifically, the purpose of the Third Disclosure Level Requirement is for the Corporation to know who is participating in its programs. However, strict application of

this rule would lead to unintended results. With respect to the Petitioner and the Successor Manager, either i) the Prospective Transfer will not be able to occur, and/or ii) the Petitioner and the principals of the Successor Manager will be required to pursue a costly and lengthy restructuring which, even if completed, would likely still result in the Petitioner being unable to satisfy the Third Disclosure Level Requirement. Further, such a denial would have the effect of setting a negative precedent for entities with complex equity arrangements seeking to become involved in affordable housing transactions in the State of Florida as successor members or partners who have similar goals of maintaining safe, sanitary and affordable housing within the State of Florida.

14. The Corporation will not be harmed by granting this Petition as the intent of the Rules will not be violated. The Corporation imposed the Third Disclosure Level Requirement on applicants applying for certain Corporation funding so that it could ascertain the relevant participants and natural persons involved in its programs. The Prospective Transfer is a transfer of interests in the Applicant, and does not involve applying for new Corporation funding. The Corporation may request information from Petitioner and Successor Manager during its evaluation of the transferee to ascertain the relevant participants involved in the Loan following the Prospective Transfers, which, in the present case, involves additional levels of disclosure.

15. The requested waiver of the Third Disclosure Level Requirement serves the purpose of the Statute that is implemented by the Rules. The Florida Housing Finance Corporation Act (Section 420.501, *et seq*.) was passed in part to facilitate the availability of decent, safe and sanitary housing in the State of Florida to ow-income persons and households. By granting this waiver of the Rules, the Current Manager will be able to transfer its interests in Petitioner to the Successor Manager, who will continue to operate the Petitioner and the Development to meet the

Corporation's goal of providing decent, safe and sanitary housing to the residents of Volusia County, Florida.

F. ACTION REQUESTED

16. For the reasons set forth herein, Petitioner respectfully requests the Corporation (i) grant the requested waivers or variances of the Corporation's Rules; (ii) grant the Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

Yisell Rodriguez

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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

The 16th day of February, 2022

By: Yisell Rodriguez
Yisell Rodriguez, Esq.
Fla. Bar No. 117915