STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. _2024-047VW
APPLICATION NO. 2019-502C

RECEIVED
AUG 7 2024 10:58 AM
FLORIDA HOUSING FINANCE CORPORATION

FAIRFIELD ABBEY PARK LP,

Petitioner
vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-21.0025(7)(c) AND CONSENT UNDER RULE 67-21.003(8)(b)

FAIRFIELD ABBEY PARK 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 that all natural persons that constitute the ownership of a principal be disclosed. Petitioner further requests the consent of the Corporation to make certain changes to the structure of Petitioner as set forth in Petitioner's Principal Disclosure Form (the "Principal Disclosure Form"). This Petition is filed pursuant to Section 120.542 of the Florida Statutes (2019) and Chapter 28-104 of the Florida Administrative Code (2019). In support of its Petition, the Petitioner states:

A. PETITIONER AND DEVELOPMENT

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

Fairfield Abbey Park, LP
5355 Mira Sorrento Place, Suite 100
San Diego, California 92121
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 e-mail address of Petitioner's counsel is:

Hollie A. Croft, Esq.
Nelson Mullins Riley & Scarborough
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4200
Facsimile: (407) 425-8377
Email: hollie.croft@nelsonmullins.com

3. Petitioner is the owner of that certain 160-unit multifamily housing development to be known as Brenton at Abbey Park (formerly known as Pinnacle at Abbey Park), located at 1921 Abbey Park Road, West Palm Beach Florida (the "Development") for which multifamily housing revenue notes were issued in connection with the acquisition and rehabilitation of the Development. In connection with the Petitioners acquisition and rehabilitation of the Developer Petitioner submitted an application to the Corporation for an allocation of 4% Housing Credits to fund a portion of the acquisition or rehabilitation of the Development on April 30, 2019 and for which the Corporation issued its Preliminary Determination on July 15, 2020, though IRS Forms 8609 have not yet been issued.

B. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER AND/OR CONSENT IS REQUESTED

5. Petitioner requests a waiver from Rule 67-21.0025(7)(c), F.A.C. (2019) which requires the Petitioner to disclose all natural persons that constitute the ownership of a Principal,

and consent from the Corporation for certain changes to the Petitioner (and Developer) structure as required under the relevant provisions of the Application and 67-21.003(8)(b), F.A.C. (2019) (collectively, the "Rule"). The specific provisions of the Rule from which Petitioner is seeking a waiver and/or consent are as follows:

> Rule 67-21.0025(7)(c), F.A.C (2019), 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)

> Section 6(b)(1) of the Non-Competitive Application Package (Rev. 04-2019) which provides in relevant part:
>
> 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 Preliminary Determination is issued. Once the Preliminary Determination has been issued, (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. The Applicant entity may be changed without 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. Changes to 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)

Rule 67-21.003(8)(b), F.A.C. (2019), which provides in relevant part

(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;

(emphasis added)

D. STATUTES IMPLEMENTED BY THE RULE

6. 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.* (2019) (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 AND GRANTING CONSENT UNDER THE RULE

8. As Petitioner prepares for issuance of the IRS Forms 8609s, Petitioner desires the Corporations consent with respect to certain changes to the Petitioner's (and Developer's) ownership structure (the "Organizational Structure"), which would materially mirror the approved ownership structures the Petitioner's parent company has utilized in a number of its other applications for 4% Housing Credits with the Corporation. Petitioner previously sought and was granted by the Board a waiver of Rule 67-21.0025(7)(c) and 67-21.003(1)(b), F.A.C. (2019), pursuant to FHFC Case No. 2019-089VW (the "Prior Waiver"). Under the Prior Waiver, Petitioner was permitted to submit the Principal Disclosure Form (as defined in Section A.6.a. of the Non-Competitive Application Package (Rev. 04-2019)) included in its application without disclosing all natural person principals by the third level, in order to allow for a public pension fund to be included in Petitioner's ownership structure.

9. The Applicant is a limited partnership comprised of: (i) FFI Abbey Park LLC, as general partner (the "General Partner") and (ii) RJMT Fairfield Abbey Park L.L.C., as investor limited partner. In relevant part for purposes of this consent request, at the time of the Application, FRH GP LLC ("FRH GP") was the non-member manager of the General Partner; Fairfield Affordable Housing Fund Tranche II LLC ("Developer"), the developer of the Development, was the sole member of the General Partner; FRH Affordable Housing Fund Tranche II LLC ("FRH II") was the one percent (1%) member of Developer; CSJV FF Affordable Housing I, LLC ("CSJV") was the ninety-nine (99%) member of Developer; FRH

Affordable Manager LLC ("FRH Manager") was the manager of FRH II and Developer; FRH Holdings LLC ("Holdings") was the sole member of FRH II, FRH GP and FRH Manager; Fairfield Residential Holdings LLC ("Residential") was the one hundred percent (100%) managing member of Holdings; Residential was controlled by its board of managers consisting of: Gregory Pinkalla, Mitch Pleis and Julie Donegan; FRH Management LLC ("Management") was the one percent (1%) member of Residential; and Management was owned by the following four (4) members as follows: Gregory Pinkalla (40%), Jon A. MacDonald (20%), Shant Koumriqian (20%) and Thomas Brunson (20%), all as were noted in the previously provided Principal Disclosure, which is attached hereto as Exhibit A. As previously mentioned, Petitioner desires to effect certain changes with respect to the Organizational Structure, which do not impact the Development and are in line with previously approved organizational structures that Petitioner's parent company has utilized in other application for 4% Housing Credits with the Corporation, and for which Petitioner seeks the Corporation's consent. Specifically, Petitioner seeks consent for the following changes to the Organizational Structure, (i) changing the name of FRH Manager from 'FRH Affordable Manager LLC' to 'FRH Vehicle Manager LLC', (ii) making Residential the sole member of FRH GP and FRH Manager instead of Holdings, this is merely a streamlining of ownership as Residential is already the 100% owner of Holdings and as such this change simply removes an intermediary level of ownership and has no impact on the actual ownership, (iii) the reallocation of ownership in the Developer to 5% held by FRH II and 95% held by CSJV, which merely reflects the agreed on economic arrangement between FRH II and CSJV and pertains to only a 4% change in ownership of the Developer, (iv) replacement of Gregory Pinkalla as a manager of Residential with Richard Boyton, which reflects Gregory Pinkalla's retirement and the appointment of Richard Boyton in his stead (who has been

disclosed to and approved as manager principal by the Corporation in the aforementioned other transactions), (v) replacement of Mitch Pleis and Julie Donegan as managers of Residential with Orintheo Swanigan and Christopher Preston, while this would ostensibly be a material change in control of Residential, these two manager board seats are within the discretion of CALSTRS to fill in its ordinary course of business and as such, while the specific individuals would be changing, actual control would remain materially the same via CALSTRS (vi) the addition of Richard Boyton as a sixteen and 2/3 percent (16.6667%) member of Management (making the prior members' new ownership percentages, Gregory Pinkalla (33.3333%), Jon A. MacDonald (16.6667%), Shant Koumriqian (16.6667%) and Thomas Brunson (16.6667%)), which does not impact any control of the Petitioner or Manager and relates to a less than 1% ultimate ownership in the general partner of Petitioner (and of the Developer itself); and (vii) the addition of the following employee profit sharing entities into the ownership of FRH II at the indicated ownership percentages: FRH 2021 PP LLC – JM Series (0% promote member), FRH 2021 PP LLC – AHF T1-T10 Series (0% promote member), FRH CI LLC – AHF LP3 Series (80%), FRH CI LLC – AHF GP1 Series (5%) (collectively, the "Profit-Sharing Entities") with the new ownership of Holdings being 15%, this change is solely to implement an employee profit sharing structure and has no impact on control of the Developer or Petitioner which is expanded on further in conjunction with the rule waiver justification laid out below, the Profit-Sharing Entities being a key facet of the need for the rule waiver. In connection with the foregoing a revised Principal Disclosure has been attached hereto as Exhibit B (prepared on the assumption that the rule waiver request is likewise granted).

10. As mentioned above, it is in connection with the admission of the Profit-Sharing Entities specifically, that Petitioner is seeking a further waiver from Rule 67-21.0025(7)(c),

F.A.C. (2019), which requires that the Petitioner disclose all natural persons that constitute the ownership of a principal. The Profit Sharing Entities own, collectively, less than a 5% ultimate interest in the general partner of Petitioner (and of the Developer itself), with ownership of the Profit-Sharing Entities made up completely by employees/contractors (or trusts established by an employee/contractors). As the Profit-Sharing Entities are utilized to provide compensation to employees, changes in ownership of the Profit-Sharing Entities are intrinsically tied to changes to the employees, and therefore it would not be practical or reasonable for them to be included in the Principal Disclosure Form as principals of the Petitioner. To do so would require Petitioner to effectively consult with the Corporation on its hiring, firing and other employment practices on an ongoing basis. Further the ultimate owners of the Profit-Sharing Entities, explicitly have no ability to control the investments or to exercise meaningful control of the Profit-Sharing Entities, such control being vested in the manager of the Profit-Sharing Entities, FRH Manager, the natural person principals of which are still fully disclosed to the Corporation. 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.

11. A waiver of the Rule and approval of the change in Organizational Structure, will permit Petitioner to continue its application 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 continue the preservation and rehabilitation of these much needed 160 affordable units in West Palm Beach, Florida. Petitioner acquired the Development on July 24, 2019. While the Development is currently encumbered by certain rent restrictions, the re-syndication of the Development will result in rent restrictions at the Development being extended.

12. 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 continue its application for non-competitive housing credits, 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 actively participating in its programs. However, strict application of the Rule would lead to the unintended result that an employer utilizing employee-profit sharing entities in its deal structure as a means by which to compensate its employees would make their general employment practices subject to Corporation consent in order 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 continue its application for and obtain 4% housing credits and, as such, will not be able to maintain 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 actively involved in its programs. Petitioner is still able to provide to the Corporation disclosure all principals and has provided a revised Principal Disclosure in connection herewith (except with regards to the CalSTRS public pension in connection with the Prior Waiver, and the requested waivers for the Profit-Sharing Entities herein).

13. 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 the waiver of the Corporation's requirement that all natural persons that constitute the ownership of a principal be disclosed, Petitioner will be able to continue its application for non-competitive housing credits, as requested in this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

F. ACTION REQUESTED

14. For the reasons set forth herein, Petitioner respectfully requests the Board (i) grant the requested consent request with respect to the modifications of the Organizational Structure; (ii) grant the requested waiver of the Corporation's rule which requires that all natural persons that constitute the ownership of a principal be disclosed; (iii) grant the Petition and all of the relief requested herein; and (iv) grant such further relief as it may deem appropriate.

Respectfully submitted,



Andrew Bennett, Esq.
Fla. Bar No. 0125189
Hollie A. Croft, Esq.
Fla. Bar No. 886181
NELSON MULLINS RILEY & SCARBOROUGH
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Telephone: (407) 839-4200
Facsimile: (407) 425-8377
Email: drew.bennett@nelsonmullins.com
hollie.croft@nelsonmullins.com
COUNSEL FOR PETITIONER

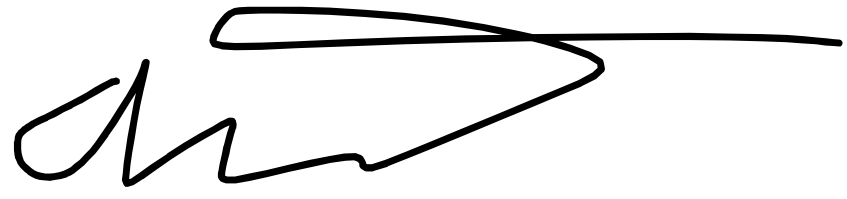
CERTIFICATE OF SERVICE

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 7th day of August, 2024.



Andrew Bennett, Esq.
Fla. Bar No. 0125189