STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: THE MOORINGS AFFORDABLE, LLC

FHFC Case No.: 2023-023VW

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ORDER GRANTING WAIVER OF RULES 67-21.0025(7)(c) and 67-21.003(1)(b), FLORIDA ADMINISTRATIVE CODE (2022)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on March 10, 2023. Florida Housing Finance Corporation ("Florida Housing") received the Petition for Waiver of Rule 67-21.0025(7)(c) and 67-21.003(1)(b) ("Petition") on February 21, 2023, from The Moorings Affordable LLC, a Florida limited liability company ("Petitioner"). The Notice of the Petition was published on February 23, 2023, in Volume 49, Number 37, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors ("Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner has applied for 4% Non-Competitive Housing Credits ("Housing Credits") to be used for a Tax-Exempt Bond-Financed Development where the bonds are issued by a County Housing Finance

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
DATE: 3/10/2023

Authority. The funding will be used for rehabilitation of a 200-unit multifamily housing rental development commonly known as The Moorings (the "Development"), located in Escambia County.

3. Petitioner requests a waiver of Rule 67-21.0025(7)(c), Florida Administrative Code (2022), which in relevant portion states:

> (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)

4. Petitioner also requests a waiver Rule 67-21.003(1)(b), Florida Administrative Code (2022), which incorporates by reference the Non-Competitive Application Package (Rev. 04/2022) (the "NCA"), and in relevant portion states:

(1) Unless otherwise set forth in a competitive solicitation pursuant to rule Chapter 67-60, F.A.C., Applicants shall apply for Non-Competitive HC or a combination of MMRB and Non-Competitive HC as set forth below. For purposes of this subsection only, the term NC Award shall refer to Non-Competitive HC or a combination of MMRB and Non-Competitive HC, and funding from the Predevelopment Loan Program (PLP) will not be considered to be other Corporation funding.

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(b) If the NC Award will not be 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. 04-2022) is adopted and incorporated herein by reference and consists of the forms and instructions available, without charge, on the Corporation's website under the Multifamily Programs link labeled Non-Competitive Programs or from http://www.flrules.org/Gateway/reference.asp?No=Ref-14387, which shall be completed and submitted to the Corporation in accordance with this rule chapter. (emphasis added)

5. A waiver of Section A.6.a. of the NCA is sought, which in relevant portion states:

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. Pursuant to subsection 67-21.002(86), any Principal that is not a natural person must be a legally formed entity as of the Application Deadline.* (emphasis added)

6. Petitioner also seeks waiver of the second funding option paragraph on page 1 of the NCA Instructions, which in relevant portion, states:

> 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)

7. Petitioner requests a waiver of the above Rules and NCA terms to allow 1) third disclosure level principals that are not natural persons; and 2) consideration of Petitioner's application before Petitioner's county bond transaction has completed credit underwriting.

8. Petitioner avers it cannot meet the requirement to have a natural person principal by the third principal disclosure level because the structure of its managing member consists of multiple corporate layers to accommodate the structuring of the ownership interests of its members, which in large part

would require going to the fifth principal disclosure level before a natural person is ultimately disclosed.

9. In support of its waiver request, Petitioner explains that its managing member is a joint venture owned by two unrelated third parties, specifically Belveron Partners and Evergreen Real Estate Group (through their respective affiliate entities) (the "MM Parties"), that have utilized this ownership structure in a number of transactions to provide affordable housing throughout the country. As the MM Parties are unrelated, each deal they conduct together as managing member needs to be legally distinct from the other deals they have already done and operated by a unique joint venture managing member. To remove the property specific intermediary entities from the structure, solely for disclosure purposes, would open the other deals the MM Parties have entered into and the MM Parties themselves to liability associated with this Development.

10. Further, Petitioner states that there are key entities involved in the upper tiers of these entities, including Bel Dev Pool LLC, Belveron Partners' employee-profit sharing entity, that are crucial to the willingness of the parties to engage in this transaction. Petitioner asserts that the intent of this structure is not to obfuscate the ultimate ownership of the managing member and all natural persons involved in said ownership are ultimately disclosed, it

is simply that such disclosure requires additional principal disclosure levels for Petitioner to maintain a viable and consistent deal structure. Therefore, Petitioner is requesting waiver of the requirement that all natural persons are disclosed by the third principal disclosure level.

11. Petitioner also requests that Florida Housing consider Petitioner's application before Petitioner's county bond transaction has completed credit underwriting. To complete its county bond credit underwriting process, Petitioner states that it must finalize its ownership structure, but it cannot finalize its ownership structure without this waiver. Thus, Petitioner requests a waiver of the requirement to submit a final Credit Underwriting Report with its application to prevent further delay to the closing and rehabilitation commencement of 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. The Board finds that granting the requested waivers would not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing.

14. The Board finds that Petitioner has demonstrated that it would suffer a substantial hardship if the waivers are not granted.

15. The Board finds that Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" would still be achieved if the waivers are granted. §420.5099, Fla. Stat.

IT IS THEREFORE ORDERED: Petitioner's request for waiver of Rule 67-21.003(1)(b), Florida Administrative Code (2022), and Rule 67-21.0025(7), Florida Administrative Code (2022), and the above-cited Sections of the Non-Competitive Application Package is hereby **GRANTED** to allow: (1) Petitioner to submit a 4% Housing Credit Application prior to the completion of the credit underwriting for the county bonds; and (2) Petitioner to disclose natural person Principals at the fifth principal disclosure level rather than at the third principal disclosure level.

DONE and ORDERED this 10th day of March, 2023.

Florida Housing Finance Corporation

FLORIDA HOUSING FINANCE CORPORATION Tallahassee Florida

By: _____
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL 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.