STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2023-023VW
APPLICATION NO. 2022-509C

RECEIVED
FEB 21 2023 2:16 PM
FLORIDA HOUSING FINANCE CORPORATION

THE MOORINGS AFFORDABLE LLC,

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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

THE MOORINGS AFFORDABLE LLC, a Florida limited liability company ("**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 (2022), 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. 04-2022) (the "**NCA**") adopted and incorporated by reference into Rule 67-21.003(1)(b), Florida Administrative Code (2022) (the

"**Structure Requirement**"). This Petition is filed pursuant to Section 120.542 of the Florida Statutes (2022) and Chapter 28-104 of the Florida Administrative Code (2022). 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:

The Moorings Affordable LLC
566 W. Lake St, Suite 400, Chicago, IL 60661
c/o Kevin Beard
(o) 312-382-3231
(f) 312-382-3220
kbeard@evergreenreg.com

2. For purposes of this Petition, the address, telephone number, facsimile number and email 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) 669-4200
Facsimile: (407) 425-8377
Email: hollie.croft@nelsonmullins.com

3. Petitioner previously submitted an application to the Housing Finance Authority of Escambia County, Florida for an issuance of multifamily housing revenue bonds (the "**Bonds**") to be used for the rehabilitation of that certain 200-unit multifamily housing development commonly known as The Moorings, located at 8491 Old Spanish Trail, Pensacola, Florida 32514 (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. (2022) 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. (2022) which adopts and incorporates the Non-Competitive Application Package (Rev. 04-2022) (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 (2022), 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. (2022), which provides in relevant part:

"**(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).

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. 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**.

> 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).

D. STATUTES IMPLEMENTED BY THE RULE

10. 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.* (2022) (the "**Statute**").

11. 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

12. 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".

13. 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.

14. Petitioner 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 fourth or fifth principal disclosure level before a natural person is ultimately disclosed. The Petitioner's 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, which would not be an equitable outcome for the purpose of the Rule. As such, the need to disclose all natural persons by the third principal disclosure level creates a substantial hardship for Petitioner's managing member joint venture enterprise as it is intended to enter into multiple transactions for the development of affordable housing but, it cannot be used to create a viable ownership structure if it is required to adhere to Rule. Further, 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. 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 level for Petitioner to maintain a viable and consistent deal structure. Therefore, Petitioner is requesting waiver of the requirement that all natural persons are disclosure by the third principal disclosure level.

15. 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.

16. 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 200 affordable units in Pensacola, Florida. Petitioner has already committed to acquiring the Development pursuant to a purchase and sale agreement entered into on February 18, 2022 with the intent to undergo acquisition and rehabilitation of the Development. 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.

17. 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 an entity that is otherwise willing to fully disclose the natural persons involved in its ownership structure, 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 fourth (or fifth) principal disclosure levels.

18. 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.

F. ACTION REQUESTED

19. 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 Petition and all of the relief requested herein; and (i*v*) grant such further relief as it may deem appropriate.

Respectfully submitted on the 21st day of February, 2023.

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 21st day of February, 2023.



Andrew Bennett, Esq.
Fla. Bar No. 0125189