

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: FAIRFIELD ABBEY
PARK, LP

FHFC CASE NO.: 2019-089VW

**ORDER GRANTING WAIVER OF RULES
67-21.0025(7)(c) and 67-21.003(1)(b), F.A.C.**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on October 31, 2019, pursuant to a Petition for Waiver of Rules 67-21.0025(7)(c) and 67-21.003(1)(b), (“Petition”) filed by Fairfield Abbey Park, LP (“Petitioner” or “Fairfield Abbey”) on October 11, 2019. Notice of the Petition was published on October 14, 2019, in Volume 45, Number 200, 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 (the “Board”) of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. Petitioner applied for non-competitive 4% housing credits to assist in the acquisition and rehabilitation of Brenton at Abbey Park, a 160-unit multifamily housing development in West Palm Beach, Florida (the “Development”).
3. Rule 67-21.0025(7), Fla. Admin. Code, provides in relevant part:

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Wm. J. Lamoreaux 10/31/19

(7) Disclosure of the Principals of the Applicant must comply with the following:

(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

4. Rule 67-21.003(1)(b), Fla. Admin. Code, 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. 04-2019) is adopted and incorporated herein by reference...**

(emphasis added).

5. Section A.6.a of the Non-Competitive Application Package provides, in relevant part:

6. Principals Disclosure of the Applicant and for each Developer

- a. **Provide the Principals of the Applicant and Developer(s) Disclosure Form (Rev. 05-2019) (“Principal Disclosure Form”), as “Exhibit 3” to the Application form.** The Principals Disclosure Form is available on the Website at <https://www.floridahousing.org/programs/developers-multifamily-programs/non-competitive>.

The Principal Disclosure Form must identify, pursuant to subsection 67-21.002(86), 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. **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.**

(emphasis added).

6. Petitioner previously submitted an application to the Housing Finance Authority of Palm Beach County, Florida (the "HFA") for an issuance of a multifamily housing revenue note to be used for the acquisition and rehabilitation of Brenton at Abbey Park. Petitioner asserts it is in the process of closing with the HFA, which is scheduled to occur around November 21, 2019. Petitioner has recently applied to Florida Housing for an allocation of non-competitive, 4% housing credits for the Development. Petitioner requests a waiver of the above cited Rules and Non-Competitive Application Package requirements which require Petitioner to disclose a natural person principal by the third principal disclosure level when submitting the Principal Disclosure Form in connection with the Non-Competitive Application Package.

7. Petitioner asserts that it is unable to meet the requirements 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 940,000, and therefore, it is not practical or feasible to include all 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.

8. The waiver of the above cited Rules and Non-Competitive Application Package requirement will permit Petitioner to apply for non-competitive housing credits to finance a portion of the rehabilitation of the Development. Petitioner asserts that without this additional source of investor equity, the Petitioner will not have sufficient funds to preserve and rehabilitate the much needed 160 units of affordable housing. Petitioner states that it has already invested its own funds by acquiring the Development and that the Development is currently encumbered by a SAIL Land Use Restriction Agreement until 2058, and the re-syndication of the Development will extend the rent restrictions for an additional 30 years.

9. The Board finds that granting the waiver will not impact other participants in funding programs administered by Florida Housing, nor would it detrimentally impact Florida Housing or the Development.

10. 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.

11. Petitioner has demonstrated that the waiver is necessary and, if the waiver were not granted, Petitioner would suffer a substantial hardship. Petitioner has also demonstrated that the purpose of the underlying statute, which is to “encourage development of low-income housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

12. The Board finds that strict application of the above Rules and RFA provision under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

Petitioner's request for a waiver of Rules 67-21.0025(7)(c) and 67-21.003(1)(b), Fla. Admin. Code and Section A.6.a of the Non-Competitive Application Package, is hereby **GRANTED** to allow Petitioner to have a public pension fund in its corporate structure without the requirement to disclose all natural person Principals by the third principal disclosure level on the Principal Disclosure Form.

DONE and ORDERED this 31st day of October, 2019.

Florida Housing Finance Corporation



By:

[Handwritten Signature]
Chair

Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
Joint.admin.procedures@leg.state.fl.us

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.