

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: LOFTS ON LEMON  
DEVELOPMENT PARTNERS, LLC

FHFC CASE NO.: 2019-092VW

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**ORDER GRANTING WAIVER OF RULE 67-48.002(95) AND APPROVAL  
OF CHANGE OF PRINCIPALS OF THE APPLICANT AND  
DEVELOPERS**

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” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on October 15, 2019, from Lofts on Lemon Development Partners, LLC (“Petitioner”). Notice of the Petition was published on October 17, 2019, in Volume 45, Number 203, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. Florida Housing also received a letter from Petitioner on October 15, 2019 requesting Board approval to remove and replace two co-Developers and associated Principals and to replace certain Principals of the Applicant entity members. 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.

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

*Tom: Alamy* DATE: 10/31/19

2. Petitioner successfully applied for an award of 9% Housing Tax Credits under Request for Applications 2017-111 (the “RFA”) to assist in the construction of 76 Mid-rise apartments for low-income families in Sarasota County, Florida, known as Lofts on Lemon.

3. Rule 67-48.002(95), Fla. Admin. Code (2017), defines and incorporates by reference the following provision of the 2016 QAP at Section II.2:

K. ...where a Development has not been placed in service by the date required or it is apparent that a Development will not be placed in service by the date required, and such failure is due to circumstances beyond the Applicant’s control, **and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service**, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may allocate such Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service...

4. Petitioner was awarded 2018 tax credits and was issued its new carryover agreement on December 27, 2018. Under the terms of the agreement and federal regulations, Petitioner is required to meet the “10% test” by December 27, 2019, and to place the development in service by December 31, 2020. Petitioner requests a waiver of the above Rule and bolded selection of the QAP provision above to permit it to exchange its tax credits now rather than in the last calendar quarter of 2020.

5. Petitioner has encountered substantial delay due to issues, which have arisen between the co-Developers and the Sarasota public housing authority (the

“PHA”), including the resignation of a key member of the co-Developer’s team. The PHA is proposing to replace these entities with a new co-Developer in addition to the replacement of certain applicant entity principals. With the replacements, the Development team will need time to re-underwrite the development, obtain approvals from the Development’s lender and tax credit investor, and close on the financing. The time needed to meet these benchmarks will not allow the Development to satisfy the 10% test by December 27, 2019 or place the Development in service by December 31, 2020. Petitioner therefore requests a waiver of the timing requirements found in the 2016 QAP to permit Florida Housing to approve a tax credit exchange now and to allow the allocation of 2019 tax credits pursuant to that exchange.

6. The Board finds that granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

7. Section 120.542(2), Florida Statutes provides in pertinent part:

Variations 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.

8. Petitioner has demonstrated that the waiver is needed in order to efficiently serve persons. 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.

9. The Board finds that strict application of the above Rule 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.

10. Rule 67-48.004(3)(b), Fla. Admin. Code (2017), provides:

(3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:

\* \* \*

(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;

11. Section Four 3.d.(3) of the RFA provides:

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 Carryover Allocation Agreement is in effect. Once the Carryover Allocation Agreement has been executed by all parties, (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.

12. Petitioner's Application package listed Lofts on Lemon Development Partners, LLC as the Applicant with Lofts on Lemon GP, LLC as the 46% member, Lofts on Lemon SHA, LLC as the 34% member and DB GP Anders Development, LLC as the 20% member. Petitioner requests permission to change the Principals of the Applicant, which would replace all members of the Applicant entity except for Lofts on Lemon SHA, LLC (an instrumentality of the PHA). This change would also remove all natural person principals of the exiting members except for Joseph Chambers. The members of the new Applicant entity will be Lofts on Lemon SHA, LLC and Lemon I Fortis Development, LLC. The managing members of Lemon I Fortis Development, LLC will be Darren Smith, Timothy Henzy, and Joseph Chambers.

13. Petitioner's Application package listed Gardner Capital Development Florida, LLC, SHA Affordable Development, LLC, and DB Development Florida, LLC as the co-Developers. The changes in the Developer entities will include removal of Gardner Capital Development Florida, LLC and DB Development Florida, LLC as co-Developers and the addition of Lemon I Fortis Development, LLC as a co-Developer. Additionally, one of the Board members of the PHA is being replaced. Organizational charts of the current and proposed Applicant and co-Developers are attached as Exhibit A.

**IT IS THEREFORE ORDERED:**

Petitioner's request for a waiver of Rule 67-48.002(95), Fla. Admin. Code (2017), and the incorporated 2016 QAP provision is hereby **GRANTED** to permit Petitioner to exchange its 2018 tax credits for an allocation of 2019 tax credits.

Petitioner's request to change the Principals of the Developers as specified above pursuant to Rule 67-48.004(3)(b), Fla. Admin. Code, is hereby **GRANTED**.

Petitioner's request to waive the requirements of Section Four 3.d.(3) of RFA 2017-111 and allow it to change the Principals of the Applicant as specified above is hereby **GRANTED**.

DONE and ORDERED this 31<sup>st</sup> day of October, 2019.



Florida Housing Finance Corporation

By:

  
Chair

**Copies furnished to:**

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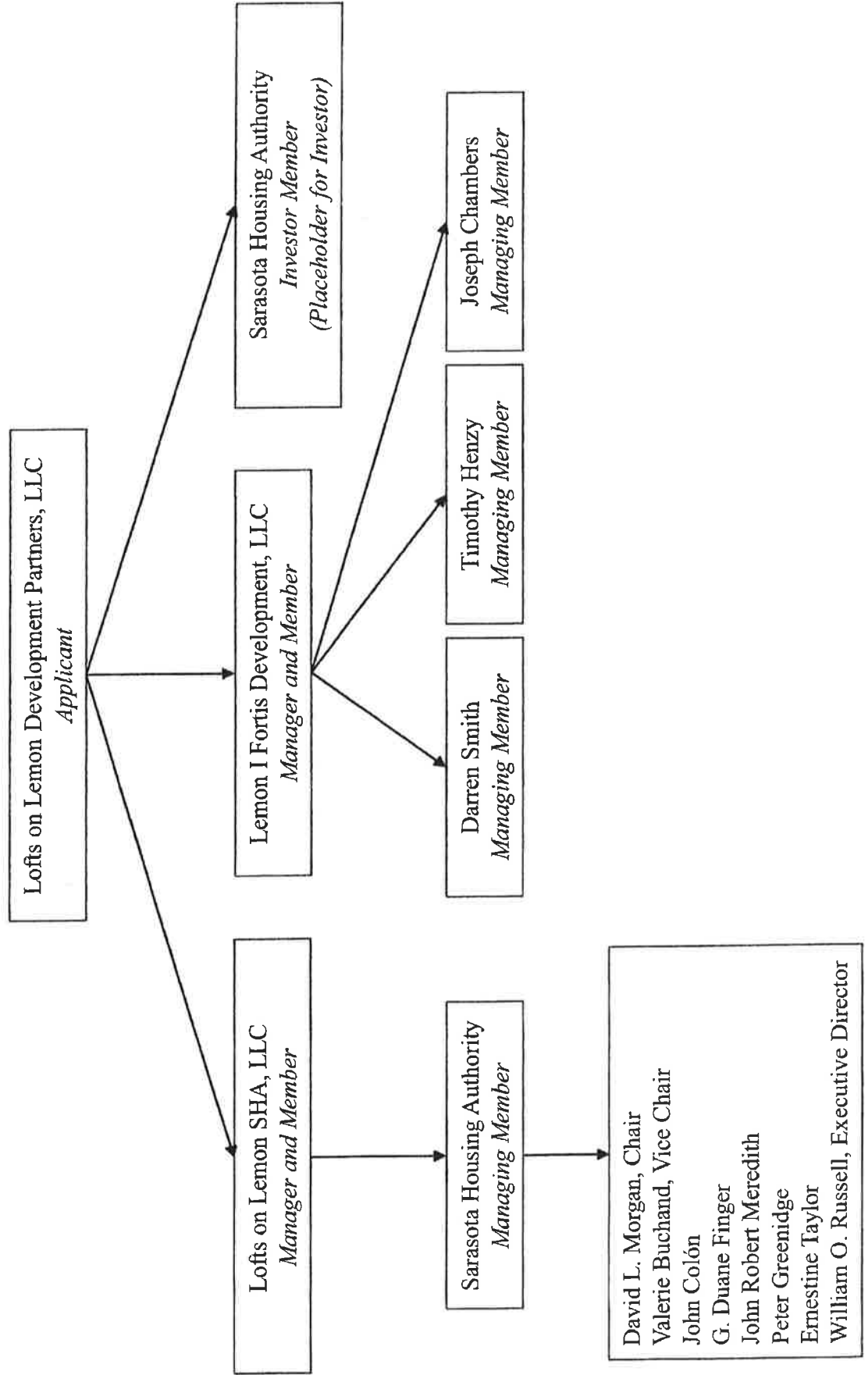
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## **NOTICE OF RIGHT TO JUDICIAL REVIEW**

**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.**

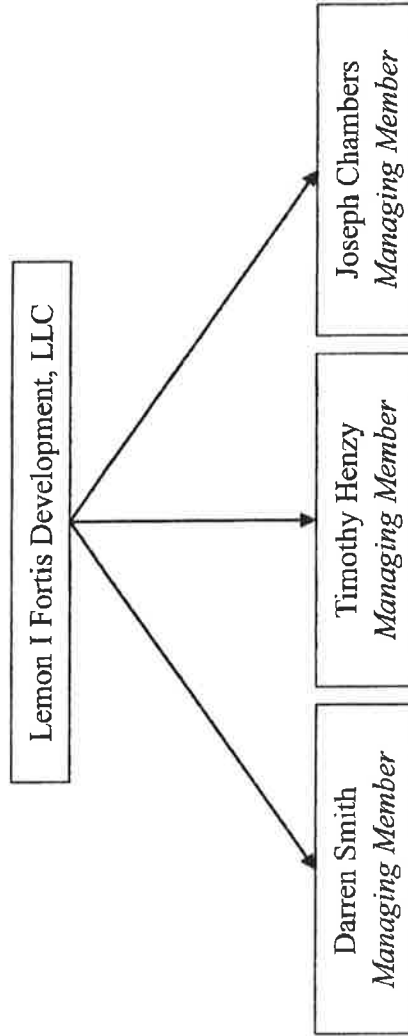
**ORGANIZATIONAL CHART – APPLICANT ENTITY  
LOFTS ON LEMON  
PROPOSED**





ORGANIZATIONAL CHART - DEVELOPER ENTITIES  
LOFTS ON LEMON  
PROPOSED

CO-DEVELOPER 1



CO-DEVELOPER 2

