STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: ORLANDO LEASED HOUSING ASSOCIATES XI, LLLP

FHFC Case No.: 2021-024VW

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ORDER GRANTING WAIVER FROM RULE 67-21.027(6), FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on April 30, 2021. On April 11, 2021 Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-21.027(6) F.A.C. and the Final Cost Certification Application Package Requirement to Confirm Certain Items with the Three Largest Dollar Subcontractors (the "Petition). Notice of the Petition was published on April 14, 2021, in Volume 47, Number 72, 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 hereby finds:

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

2. Petitioner successfully applied for non-competitive housing credits, to assist in financing the rehabilitation of Chapel Trace Apartments,

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DATE: 4/30/2021

an affordable housing development in Orange County, Florida (the "Development").

3. Rule 67-21.027(6) Fla. Admin. Code, in relevant part, adopts and incorporates the Final Cost Certification Application Package ("Form FCCAP").

4. Specifically, Petitioner requests a waiver from the Form FCCAP's requirement that the certified public accountant auditing the General Contractor Cost Certification request confirmation of certain cost related items by the general contractor's three largest dollar subcontractors.

5. Each applicant requesting housing credits must use the Form FCCAP to itemize all expenses incurred in association with construction or rehabilitation of a housing credit development, including expenses associated with the general contractor's use of subcontractors. Among other things, each applicant must submit a General contractor Cost Certification and an unqualified audit report prepared by an independent certified public accountant for the General Contractor Cost Certification (the "GCCC").

6. The GCCC is used to establish the actual total costs incurred by the general contractor and assists Florida Housing in determining certain development costs and the amount of housing credits to allocate to the

development. Florida Housing will not allocate housing credits until all required items in the Form FCCAP are received and processed.

7. As part of the FCCAP process, the certified public accountant must confirm certain amounts with the three largest dollar subcontractors. Additionally, the certified public accountant must randomly select other subcontractors sufficient in number, but no less than five, that, when taken together with the three largest dollar subcontractors, account for at least 40 percent of the total construction costs. The certified public accountant must review certain documentation and verify the amounts paid to each of those subcontractors.

8. According to Petitioner, the certified public accountant was able to confirm the costs of two of the three largest dollar subcontractors. However, Petitioner states that the one of the three largest dollar subcontractors, Global Cross Sourcing, Inc. ("Global Cross") is no longer in business and the certified public accountant has been unable to confirm the costs of Global Cross.

9. According to Petitioner, the certified public accountant included Global Cross in its review of subcontractors that, when taken together with the three largest dollar subcontractors, account for at least 40 percent of the total contract construction costs, and verify the amounts paid to each

subcontractor by reviewing check copies, contract documents, change orders, and other supporting information to verify amounts included with the cost certification for each subcontract listed. Petitioner asserts that through that process the certified public accountant materially verified the amounts paid to Global Cross. Additionally, according to Petitioner, the certified public accountant did confirm the costs with the fourth, fifth, and sixth highest dollar amount subcontractors.

10. Petitioner requests that Florida Housing grant a waiver or variance and allow the certified public accountant to submit the required confirmation requests to the fourth largest dollar subcontractor, instead of Global Cross.

11. According to Petitioner, with the substitution of the fourth largest dollar subcontract for Global Cross, the certified public accountant was able to confirm the cost related items of the first, second, fourth, fifth, and sixth highest dollar subcontractors, along with three other subcontractors, which represents 44.24 percent of the total construction costs of the development.

12. Additionally, Petitioner states that the certified public accountant traced the costs attributable to Global Cross to the source documents, which would bring the total percentage of total construction costs either confirmed or tested to 51.95 percent. In essence, according to Petitioner, the certified

public accountant was able to verify a substantial portion (more than the required 40 percent) of total costs for subcontractors including Global Cross.

13. Petitioner asserts that without the requested waiver or variance, the certified public accountant will not be able to complete the required audit and Petitioner will not be able to submit a complete Form FCCAP, thereby jeopardizing its housing credit allocation and Petitioner's ability to rehabilitate the Development.

14. 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.

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

16. The Board also finds that Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver is not granted.

17. The Board further 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" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

IT IS THEREFORE ORDERED: Petitioner's request for a waiver of Rule 67-21.027(6), Fla. Admin. Code, and the requirement of the Final Cost Certification Application Package to confirm the construction costs of the general contractors three largest dollar subcontractors, is hereby **GRANTED** to allow Petitioner's certified public account to confirm costs of the general contractor's first, second, and fourth largest dollar amount subcontractors.

DONE and ORDERED this 30th day of April 2021.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

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