STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Casa Devon Venture LP FHFC CASE NO.: 2022-042VW

_____/

ORDER GRANTING WAIVER OF
RULE 67-21.0026(13)(e), F.A.C.

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 16, 2022, pursuant to an "Amended Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on July 13, 2022, from Casa Devon Venture LP ("Petitioner"). Notice of the Petition was published on July 14, 2022, in Volume 48, Number 136, of the Florida Administrative Register. Florida Housing has received no comments concerning the Petition. After careful review of the record and being otherwise fully advised on 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 was selected to receive 4% housing tax credits to assist in acquiring and rehabilitating a 210-unit development serving elderly persons in Miami-Dade County, Florida.

3. Rule 67-21.026(13)(e), Fla. Admin. Code, provides as follows:

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
DATE: 9/19/22

(13) The General Contractor must meet the following conditions:

....

(e) Ensure that no construction or inspection work that is normally performed by subcontractors is performed by the General Contractor.

4. On December 17, 2019, Petitioner and NEI General Contracting, Inc. ("NEI") entered into a Cost plus Fee construction contract with a guaranteed maximum price. As a result of multiple issues arising out of the COVID-19 pandemic, Petitioner states that NEI was required to self-performed certain portions of the contractual work that would normally be performed by subcontractors in order to make up time lost on the project's schedule and prevent additional project costs.

5. NEI's self-performed work totaled $677,084, which included a) general COVID-19 protocols, including sanitation stations, temperature screening, site signage, additional cleaning of work areas, construction of temporary separation walls, and a full-time elevator operator; b) final unit cleaning and punch list completion; c) wire shelving installation; d) general demolition labor; and e) demolition and finishing associated with Miami-Dade County COVID inspection delays.

6. In order to avoid any potential for or appearance of unjust enrichment of the General Contractor if this waiver is granted, Florida Housing has stipulated

four specific conditions in granting this waiver. These conditions are specified below.

7. 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.

8. 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.

9. Petitioner has demonstrated that the waiver is needed in order to efficiently serve the elderly community. 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.

10. 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.

IT IS THEREFORE ORDERED:

Petitioner's request for a waiver of Rule 67-21.026(13)(e), Fla. Admin. Code, is hereby **GRANTED** to allow the General Contractor to perform some work normally performed by subcontractors. This approval is limited to the costs described above and is conditioned upon Petitioner's compliance with the following conditions:

A. The general contractor has included no profit in the cost of the self-performed work described above.

B. The general contractor's fee for the self-performed work described above will be limited to 14% of the cost of work for the first $350,000 and 10% for any self-performed work over $350,000.

C. In addition to verifying the amount paid to the general contractor for the self-performed work based on the steps prescribed in the GCCC instructions, an independent CPA will confirm/audit all labor and equipment hours and rates and material invoices for the self-performed work described above.

D. As part of the cost certification process, in addition to confirming/auditing all self-performed work as noted in item 3, an independent CPA will confirm and/or verify an additional 40% of the development's costs per the final cost certification application package.

DONE and ORDERED this 16th day of September, 2022.

Florida Housing Finance Corporation

By: _____
Chair

Copies furnished to:

Hugh R. Brown, General Counsel
Marisa Button, Managing Director of Multifamily Programs
Florida Housing Finance Corporation
Hugh.Brown@floridahousing.org
Marisa.Button@floridahousing.org

Lawrence E. Sellers, Jr.
Holland & Knight LLP
Larry.sellers@hklaw.com

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

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.