STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Lakeview Tower Venture LP FHFC Case No.: 2024-012 VW
_____/

ORDER GRANTING WAIVER OF RULE 67-21.026(13)(e), FLA. ADMIN. CODE (2022)

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on March 26, 2024. On March 1, 2024, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Florida Administrative Rule 67-21.026(13)(e) (the "Petition") from Lakeview Tower Venture LP (the "Petitioner") to allow the Petitioner's General Contractor to self-perform work valued at 5.5% of the construction contract. Notice of the Petition was published March 5, 2024, in Volume 50, Number 45, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised on the premises, the Board 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
Ann Flamont DATE: 3/27/2024

2. Petitioner successfully applied for funding to assist in the acquisition and rehabilitation of the Lakeview Tower Apartments, a 156-unit development located in Polk County, Florida (the "Development").

3. Rule 67-21.026(13)(e), Fla. Admin. Code (2020), applies; however, on April 29, 2022, the Board amended Rule 67-21.026(13)(e), Fla. Admin. Code, and made the rule retroactive to developments that had submitted applications under prior rules versions. Rule 67-21.026(13)(e), Fla. Admin. Code (2022) states in relevant part:

> (e). Ensure that no construction or inspection work is performed by the General Contractor, with the following exceptions:
>
> ***
>
> 2. The General Contractor may self-perform work of a de minimis amount, defined for purposes of this subparagraph as the lesser of $350,000 or 5 percent of the construction contract.

4. Petitioner requests a waiver of the above rule to allow Petitioner's General Contractor ("GC") to self-perform 5.5% of the total construction contract, for a total of $333,340.00, on overage of $31,919.99. As justification for its request, Petitioner states that it issued a Notice to Proceed to the GC on November 13, 2020, during the COVID-19 pandemic (Pandemic). Petitioner states that the occupied renovations of the Development (which housed the elderly), were significantly impacted by the need to perform work with limited to no, contact with residents. The GC self-

performing 5.5% of the overall work allowed the Project to make up lost time, reduced increased costs, and limited exposure to residents by reducing the need for subcontractors. The work was completed within the Guaranteed Maximum Price (GMP) value and no increased costs were incurred.

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

6. 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.

7. 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," would still be achieved if the waiver is granted. §420.5099, Fla. Stat.

IT IS THEREFORE ORDERED that Petitioner's request for waiver of Rule 67-21.026(13)(e), Fla. Admin. Code (2022), is hereby **GRANTED** to allow the Development's general contractor to self-perform work exceeding the de minimis amount. This waiver is conditioned upon the Petitioner's compliance with the following:

(1) All costs for the GC attributable to affordable units will be at cost with no built-in profit;

(2) The GC Fee on the Self-Perform labor scope identified in the Petition will be capped at 14% on the first $301,421 (5% of the total contract work); and

(3) The GC Fee on the Self-Perform labor scope identified in the Petition on the $31,919 overage, shall be limited to 10% (or $1,276.76).

DONE and ORDERED this 26th day of March, 2024.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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

Laura Cox, on Behalf of the Office of the General Counsel
Rhonda Morris, Assistant General Counsel
Melissa Levy, Managing Director of Multifamily Programs
Florida Housing Finance Corporation
Laura.Cox@floridahousing.org
Rhonda.Morris@floridahousing.org
Melissa.Levy@floridahousing.org

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.