STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Orlando Leased Housing Associates XI, LLLP

FHFC Case No.: 2023-082VW

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ORDER GRANTING WAIVER OF RULE 67-21.026(10), FLA. ADMIN. CODE (2018)

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on October 27, 2023. On October 5, 2023, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-21.026(10), F.A.C. (2018) (the "Petition") from Orlando Leased Housing Associates XI, LLLP (the "Petitioner") to relieve Petitioner of the requirement to perform all rehabilitation work under a guaranteed maximum price ("GMP") contract. Notice of the Petition was published October 6, 2023, in Volume 49, Number 195, 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

DATE: 10/30/23

2. Petitioner successfully applied for funding to assist in the construction of the Chapel Trace Apartments, a 312-unit development located in Orange County, Florida (the "Development").

3. Rule 67-21.026(10), Fla. Admin. Code (2018), states in relevant part:

> (10) The Corporation's assigned Credit Underwriter shall require a guaranteed maximum price construction contract, acceptable to the Corporation, which may include change orders for changes in cost or changes in the scope of work, or both, if all parties agree, and shall order, at the Applicant's sole expense, and review a pre-construction analysis for all new construction units or a physical needs assessment for rehabilitation units and review the Development's costs.

4. Petitioner seeks a waiver of the above rule to relieve Petitioner of the requirement to perform all rehabilitation work under a guaranteed maximum price ("GMP") contract. Initially, Petitioner states that it intended that all construction work be completed under its GMP Contract with its Contractor as required under the above Rule. However, Petitioner explains that unforeseen weather delays combined with the emergence of COVID-19 delayed the project well past the expected completion date. The extended timeline meant that the rehabilitation wouldn't accrue sufficient construction costs to qualify for the anticipated tax credits for 2019. To alleviate this financial strain on the Development, the Petitioner states that it opted to prepay $807,428.45 in construction costs outside the GMP contract directly

to the Contractor instead of using its construction loan and GMP contract (the "Prepaid Amount"). A Change Order was thereafter issued to reduce the GMP to account for the Prepaid Amount. Petitioner states that all work was otherwise paid through the GMP contract to the Contractor. Petitioner states that the work performed under the Prepaid Amount was otherwise in compliance with the Corporation's rules, and Petitioner realized no cost savings.

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(10), Fla. Admin. Code (2018), is hereby **GRANTED** to

waive the requirement to perform all rehabilitation work under a GMP contract.

DONE and ORDERED this 27th day of October, 2023.

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.