STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: HARPER'S POINTE, L.P. FHFC Case No.: 2023-033VW
_____/

ORDER GRANTING WAIVER OF
RULE 67-48.0072(17)(f)2., 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 July 21, 2023. On May 3, 2023, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-48.0072(17)(f)2., to Allow Minor Exceedance of General Contractor Self-Performance of Work (the "Petition") from Harper's Pointe, L.P. (the "Petitioner") to allow the development's general contractor to self-perform work over the de minimis amount allowed by rule. Notice of the Petition was published on May 5, 2023, in Volume 49, Number 88, 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: 7/21/2023

2. Petitioner successfully applied for funding to assist in the construction of Harper's Pointe, a 66-unit development located in Alachua County, Florida (the "Development").

3. Rule 67-48.0072(f)2, Fla. Admin. Code (2017), applies; however, on April 29, 2022, this Board approved an amendment to Rule 67-48.0072(17)(f)2., Fla. Admin. Code, effective retroactively to developments that had previously submitted applications under prior rule versions. Rule 67-48.0072(f)2., Fla. Admin. Code, as amended, states, in relevant part:

> (17) The General Contractor must meet the following conditions:
>
> (f) Ensure that no construction or inspection work is performed by the General Contractor, with the following exceptions:
>
> 1. The General Contractor may perform its duties to manage and control the construction of the Development; and
>
> 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 requested a waiver of the referenced rule to allow Petitioner's General Contractor ("GC") to self-perform work over the de minimis amount. Petitioner states that its GC self-performed work in the amount of $359,410, $9,410 over the $350,000 allowed by the Rule. The $359,410 in self-performed work did not include any profit or overhead for

the General Contractor. Further, the total General Contractor Fee was less than 5.8% of the total construction cost (14% is allowed).

5. As justification for its request, Petitioner states that the subcontractor retained for framing and exterior siding installation had difficulty passing city inspections. Petitioner's GC was forced to self-perform portions of the subcontractor's work to maintain the project schedule. Petitioner states that the ongoing COVID epidemic further complicated the situation.

6. Staff requested AmeriNat, the underwriter on this transaction, provide Florida Housing with a recommendation on the cost incurred by the GC. Staff received a recommendation on June 16, 2023. AmeriNat, in conjunction with GLE Associates, inc., the construction consultant, made a positive recommendation to approve the self-performed work.

7. 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.

8. 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.

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.

9. 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 a waiver of Rule 67-48.0072(17)(f)2., Fla. Admin. Code (2022), is hereby **GRANTED** to allow the Development's general contractor to self-perform work exceeding the de minimus amount.

DONE and ORDERED this 21st day of July, 2023.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

M. Christopher Bryant
Oertel, Fernandez, Bryant & Atkinson, P.A.
cbryant@ohfc.com

Betty Zachem, Interim General Counsel
Melissa Levy, Managing Director of Multifamily Programs
Florida Housing Finance Corporation
Betty.Zachem@floridahousing.org
Melissa.Levy@floridahousing.org

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