STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: SOUTHWICK COMMONS, LTD. FHFC Case No.: 2025-004VW
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ORDER GRANTING WAIVER OF RULES 67-48.0072(12) AND (17)(f) AND 67-21.026(10) AND (13)(e), FLA. ADMIN. CODE (2020)

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on January 24, 2025. On January 8, 2025, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rules 67-48.0072(12) and (17)(f) (6/23/20) and 67-21.026(10) and (13)(e) (6-23-20) (the "Petition") from Southwick Commons, Ltd., (the "Petitioner"). The Petition requests authorization for two Guaranteed Maximum Price ("GMP") contracts and to allow one of Petitioner's General Contractors ("GC") to perform work normally performed by subcontractors, exceeding the de minimis amount allowed under applicable rules. Notice of the Petition was published on January 9, 2025, in Volume 51, Number 06, 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:

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/DATE: 1/27/2025

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

2. Petitioner successfully applied for funding to assist in the construction of Southwick Commons, a 192-unit development located in Orange County, Florida (the "Development").

3. Rule 67-48.0072(12), Fla. Admin. Code (2020), states, in relevant part:

> (12) For Competitive HC, SAIL, and HOME, the Corporation's assigned Credit Underwriter shall require a guaranteed maximum price construction contract, 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 and a CNA for rehabilitation units and review the Development's costs. If an EHCL Development has a General Contractor, the preceding requirement will also apply to the EHCL Development.

4. Rule 67-48.0072(17)(f), Fla. Admin. Code (2020), applies; however, on April 29, 2022, the Board approved an amendment to Rule 67-48.0072(17)(f), Fla. Admin. Code, effective retroactively to developments that had previously submitted applications under prior rule versions. Rule 67-48.0072(17)(f), Fla. Admin. Code, as amended, states, in relevant part:

> (17) The General Contractor must meet the following conditions:
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(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.

5. Rule 67-21.026(10), Fla. Admin. Code (2020), 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 CNA for rehabilitation units and review the Development's costs.

6. Rule 67-21.026(13)(e), Fla. Admin. Code (2020), applies; however on April 29, 2022, the Board approved an amendment to Rule 67-21.026(13)(e), Fla. Admin. Code, effective retroactively to developments that had previously submitted applications under prior rule versions. Rule 67-21.026(13)(e), Fla. Admin. Code, as amended, states, in relevant part:

> (13) The General Contractor must meet the following conditions:
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> ***
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> (e) 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.

7. Petitioner requests a waiver of Rules 67-48.0072(12) and 67-21.026(10) to allow for work performed under two GMP contracts. The GC for the Development, VCC, LLC ("VCC"), initially subcontracted with Jon M. Hall Company, LLC ("JMHC") for sitework on October 13, 2023. Subsequently, on April 14, 2024, Petitioner directly contracted with JMHC to perform sitework, saving $677,223.

8. Additionally, JMHC directly performed a portion of the sitework typically handled by subcontractors, exceeding the de minimis threshold set by Rule. Therefore, waivers of Rules 67-48.0072(17)(f) and 67-21.026(13)(e) are also required.

9. Petitioner adopted cost-saving measures to address rising costs and interest rates, including directly contracting for sitework that was originally subcontracted. Additionally, JMHC directly performed a portion of the sitework typically handled by subcontractors, exceeding the de minimis threshold set by Rule. The total contract amount for JMHC was $4,005,733.90, of which $2,493,011.00 was self-performed.

10. The petition states that the Development would not have survived the credit underwriting process and would not have been constructed. However, the credit underwriting report was completed on December 15, 2023, and was updated on March 6, 2024 (reported to Board as an Informational Item on March 26, 2024) with positive recommendations and both the original credit underwriting report and credit underwriting report update letter included all construction costs within one Guaranteed Maximum Price Contract with VCC. In addition, the loans closed on March 19, 2024. If the waiver is not granted at this time, the Applicant would not be able to continue moving forward with construction of the Development, and therefore, staff recommended additional conditions with the approval of this waiver. On January 13, 2025, staff received a credit underwriting update letter opining that the scope and cost of sitework was reasonable.

11. 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.

12. The Board also finds that Petitioner has demonstrated that the waiver is needed and that it would suffer a substantial hardship if the waiver is not granted.

13. 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 Rules 67-48.0072(12) and (17)(f) (6/23/20), as amended, and 67-21.026(10) and (13)(e) (6-23-20), as amended, is hereby **GRANTED** allowing Petitioner to have two GMPs, and to allow JMHC, as a general contractor, to self-perform work normally subcontracted and exceeding the de minimis amount. This waiver is conditioned upon the Petitioner's compliance with the following conditions:

1. No Developer Fee will be earned on the work/costs performed under the site contract with JMHC.

2. As part of the cost certification process, an independent CPA must confirm and/or verify all self-performed costs, which must also include an analysis and confirmation that any Contractor General Requirements, Contractor Overhead and Contractor Profit, whether these costs are included within cost line items or as a separate line item, do not exceed 14% of the actual construction costs, as required in Rules 67-21 and 67-48, F.A.C. The

independent CPA will be required to report the total amount of Contractor General Requirements, Contractor Overhead and Contractor Profit.

DONE and ORDERED this 24th day of January, 2025.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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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.