STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Fairfield Running Brook II LP FHFC Case No.: 2024-002VW

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ORDER GRANTING WAIVER OF RULE 67-21.026(10), 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 February 16, 2024, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rule 67-21.026(10), F.A.C. (2022) (the "Petition") from Fairfield Running Brook II LP (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 February 20, 2024, in Volume 50, Number 35, 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 3/27/2024

2. Petitioner successfully applied for funding to assist in the acquisition and rehabilitation of the Running Brook Apartments, a 186-unit development located in Miami-Dade County, Florida (the "Development").

3. Rule 67-21.026(10), Fla. Admin. Code (2022), 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. In connection with the Agreement of Purchaser and Sale of Real Estate ("PSA"), the Seller conducted repairs required by the Petitioner to ensure the wellbeing of the Development and its residents (Immediate Repair Work), which the Petitioner agreed to reimburse the Seller after the closing of the PSA. Petitioner is requesting the waiver herein to reimburse the Seller $523,976.42 for the Immediate Repair Work. While the Immediate Repair Work was not performed under a GMP contract, Petitioner states: the type of work is customarily contracted directly by or reimbursed by a purchaser upon the acquisition of property; that neither the

Seller nor Petitioner (nor the general contractor under the GMP or Developer) has common ownership with, or is an affiliate of, the contractors that performed the Immediate Repair Work; that neither the Seller nor Petitioner (nor the general contractor under the GMP or Developer) performed any of the Immediate Repair Work; only the Seller oversaw the Immediate Repair Work; the cost of the Immediate Repair Work did not exceed the subcontractor limitations imposed by Florida Housing; and the only additional costs charged or received by the Seller, Petitioner, or Developer, was incurred by the Seller for the salaries paid to its construction management representatives.

5. Staff requested and received a satisfactory Agreed Upon Procedures performed by an independent Certified Public Accountant and a positive recommendation from Seltzer Management, Inc., that the cost associated with the work were reasonable and verified with invoices and receipts.

6. 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.

7. 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.

8. 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 (2022), is hereby **GRANTED** to waive the requirement to perform the Immediate Repair Work identified in the Petition under a GMP contract.

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



Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
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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.