STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Ashley Square Jacksonville, Ltd FHFC CASE NO.: 2022-003VW

_____/

ORDER GRANTING WAIVER OF
RULES 67-48.0072(17)(f) AND 67-21.026(13)(e)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on January 21, 2022, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on January 5, 2022, from Ashley Square Jacksonville, Ltd ("Petitioner"). Notice of the Petition was published on January 6, 2022, in Volume 48, Number 04, of the Florida Administrative Register. Florida Housing has received no comments concerning the Petition. On January 13, 2022 Florida Housing received an amended Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

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

2. Petitioner was selected to receive SAIL funding in conjunction with noncompetitive Housing Tax Credits, ELI loan and NHTF funding to assist in the construction of a 120-unit development serving elderly persons in Duval County.

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/DATE: 1/21/2022

3. Rule 67-48.0072(17)(f), Fla. Admin. Code (2018) provides as follows for Developments using SAIL funding:

> (17) The General Contractor must meet the following conditions:
> * * *
> (f) Ensure that no construction or inspection work that is normally performed by subcontractors is performed by the General Contractor;

4. Rule 67-21.026(13)(e), Fla. Admin. Code (2018) provides the identical requirement for Developments using noncompetitive housing tax credits.

5. On May 15, 2020, Petitioner entered into a "cost plus" contract with the General Contractor, NEI (the Ashley Square Contract). NEI had obtained numerous bids from various potential subcontractors prior to executing the contract. The Development did not achieve financial closure until November 20, 2020, by which point lumber prices had risen dramatically because of the COVID pandemic. As a result, the rough carpentry costs for NEI were at least $600,000 higher than originally anticipated. In order to mitigate this cost increase, NEI negotiated different contracts with separate entities and provided in-house labor at a cost of $175,173.74. These labor costs were calculated at the agreed upon labor rates provided for in the Ashley Square Contract. This approach reduced the costs of rough carpentry but still resulted in approximately $500,000 higher costs than originally anticipated.

6. In an effort to offset the remaining $500,000 of economic impact, NEI is proposing to self-perform the following work that is normally performed by subcontractors:

- Windows: $71,894
- Cabinets: $67,433
- SWPPP Maintenance: $59,360
- Drywall/Painting: $72,000

7. In order to avoid any potential for or appearance of unjust enrichment of the General Contractor if this waiver is granted, Petitioner has agreed to four specific conditions. These conditions are specified below.

8. The Board finds that granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

9. Section 120.542(2), Florida Statutes provides in pertinent part:

> Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

10. Petitioner has demonstrated that the waiver is needed in order to efficiently serve elderly persons. Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income

housing in the state" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

11. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

Petitioner's request for a waiver of Rules 67-48.0072(17)(f) and 67-21.026(13)(e), Fla. Admin. Code (2018) is hereby **GRANTED** to to allow the General Contractor to perform some work normally performed by subcontractors. This approval is limited to the costs for carpentry, windows, cabinets, SWPPP maintenance, and drywall/painting specified above. The approval of this waiver is not intended to prohibit Petitioner's General Contractor from performing work not normally performed by subcontractors. This waiver is conditioned upon Petitioner's compliance with the following conditions:

A. All costs for the Self-Perform Labor attributable to affordable units will be at cost with no profit built in.

B. The GC Fee on the Self-Perform labor scope identified in the Petition will be capped at 10%.

C. In addition to verifying the amount paid to the General Contractor for the Self-Perform labor based on the steps prescribed in the GCCC instructions, an independent CPA will confirm/audit all labor hours and rates for all Self-Perform labor identified in this Petition.

D. As part of the cost certification process, in addition to confirming/auditing all Self-Perform labor noted in item C, an independent CPA will confirm and/or verify an additional 40% of the development's costs per the final cost certification application package.

DONE and ORDERED this 21st day of January, 2022.

FLORIDA HOUSING FINANCE CORPORATION Tallahassee Florida

Florida Housing Finance Corporation

By: _____
Chair

Copies furnished to:

Hugh R. Brown, General Counsel
Marisa Button, Managing Director of Multifamily Programs
Florida Housing Finance Corporation
Hugh.Brown@floridahousing.org
Marisa.Button@floridahousing.org

Michael Donaldson
Carlton Fields
mdonaldson@carltonfields.com

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.