STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Orlando Leased Housing Associates VII, LLLP

FHFC Case No.: 2021-045VW

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ORDER GRANTING WAIVER FROM RULE 67-48.002(96), FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on July 31, 2021. On July 12, 2021 Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of the Rule 67-21.027(6) F.A.C. and the Final Cost Certification Application Package Requirement to Confirm Certain Items with the Three Largest Dollar Subcontractors (the "Petition"). Notice of the Petition was published on July 13, 2021, in Volume 47, Number 134, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in 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

Ms. Flamory DATE: 8/2/2021

2. Petitioner applied for non-competitive housing credits to assist in financing the rehabilitation of Landon Pointe Apartments, an affordable housing development in Orange County, Florida (the "Development").

3. Rule 67-21.027(6) Fla. Admin. Code, in relevant part, adopts and incorporates the Final Cost Certification Application Package ("Form FCCAP").

4. Specifically, Petitioner requests a waiver from the Form FCCAP's requirement that the certified public accountant auditing the General Contractor Cost Certification ("GCCC") request confirmation of certain cost related items by the general contractor's three largest dollar subcontractors. Each applicant requesting housing credits must use the Form FCCAP to itemize all expenses incurred in association with construction or rehabilitation of a housing credit development, including expenses associated with the general contractor's use of subcontractors. Among other things, each applicant must submit a GCCC and an unqualified audit report prepared by an independent certified public accountant.

5. The GCCC is used to establish the actual total costs incurred by the general contractor and assists Florida Housing in determining certain development costs and the amount of housing credits to allocate to the

development. Florida Housing will not allocate housing credits until all required items in the Form FCCAP are received and processed.

6. As part of the FCCAP process, the certified public accountant must confirm certain amounts with the three largest dollar subcontractors. Additionally, the certified public accountant must randomly select other subcontractors sufficient in number, but no less than five, that, when taken together with the three largest dollar subcontractors, account for at least 40 percent of the total construction costs. The certified public accountant must review certain documentation and verify the amounts paid to each of those subcontractors.

7. In 2019, Petitioner states that it submitted its final FCCAP along with the GCCC. In its GCCC the accountant stated that it was only able to confirm one of the three largest dollar subcontractors, National Supply. According to Petitioner, the certified public accountant was only able to perform invoice, lien waiver, and check copy testing for the second largest dollar subcontractor, Ferguson Facilities Supply ("Ferguson") as the general contractor stated that Ferguson was a supplies vendor and Ferguson would be unwilling or unable to provide the confirmation of the costs request. Additionally, Petitioner states that the certified public accountant also attempted to confirm the third largest dollar subcontractor, Born Again

Concrete ("Born Again"). However, the certified public accountant ultimately performed invoice, lien waiver, and check copy testing on Born Again's costs because it never received the requested confirmations.

8. Petitioner stated that the certified public accountant moved to the next largest dollar subcontractor, which was the general contractor's payroll. Since that was neither a subcontractor nor a supplies vendor, the certified public accountant moved to the fifth largest dollar subcontractor, DevCon MEP ("DevCon"). The certified public accountant was able to successfully confirm costs for DevCon.

9. According to Petitioner, the certified public accountant also received confirmations form five other randomly selected subcontractors which, when taken together with the confirmed subcontractors, National and DevCon, and the testing of Ferguson and Born Again, totaled 48.75 percent of the total construction costs either being confirmed or tested. Once Petitioner submitted the FCCP along with the GCCC, Florida Housing requested that multiple errors be corrected, one of which was to correct the general contractors cost breakdown to conform to Florida Housing's standards. Petitioner states that, at the time, the general contractor's accounting system was not able to perform such a task and it took many months to correct.

10. In March of 2021, the general contractor sent the certified public accountant an updated cost breakdown ("New Cost Breakdown"). Petitioner states that there were multiple errors in the New Cost Breakdown which caused the original confirmed and tested costs to no longer reconcile. The certified public accountant requested that the general contractor investigate and correct the errors in the New Cost Breakdown. In May of 2021, the general contractor provided the certified public accountant with a corrected version of the New Cost Breakdown. In its review, the certified public accountant noted that the top three largest subcontractors had changed to 1) Home Depot, 2) National, and 3) Ferguson. The certified public accountant sent confirmation requests to the top three largest dollar subcontractors and an additional six confirmations to randomly selected subcontractors. According to Petitioner, confirmation requests were not received from Home Depot and two of the six additional subcontractors.

11. In the absence of Home Depot's confirmation, the certified public accountant requested all invoices, lien waivers, and check copies from the general contractor to materially confirm Home Depot's costs. However, the general contractor stated that accounting support is offsite and will take some time to gather. While the general contractor is working on gathering the supporting documentation for Home Depot's costs, the certified public

accountant sent confirmation requests to Born Again, the fourth largest dollar subcontractor. According to Petitioner, the certified public accountant successfully received Born Again's confirmation in June of 2021.

12. Petitioner states that its certified public accountant was able to confirm two of the three largest dollar subcontractors and four of the top five largest dollar subcontractors, as required by the FCCAP. Petitioner requests that its certified public accountant be allowed to submit the required confirmation requests to the fourth largest dollar subcontractor instead of Home Depot. With the substitution of Born Again for Home Depot, the certified public accountant was able to confirm the various cost-related items required in the FCCAP with National, Ferguson, Born Again, DevCon, along with eight other randomly selected subcontractors which represent 51.42 percent of the total construction costs of the development. The certified public accountant also performed invoice, lien waiver, and check copy testing for another twelve subcontractors which represented 5.77 percent of the total construction costs. Thus, according to Petitioner, the total percentage of the construction costs confirmed or tested is 57.19 percent. As such, in accordance with the FCCAP's requirement to verify the amounts paid to the subcontractors accounting for at least 40 percent of the total construction

costs, the certified public accountant was still able to verify a substantial portion (more than 50 percent) of the costs for subcontractors for the project.

13. Petitioner asserts that without the requested waiver or variance, the certified public accountant will not be able to complete the required audit and Petitioner will not be able to submit a complete Form FCCAP, thereby jeopardizing its housing credit allocation and Petitioner's ability to rehabilitate the Development.

14. 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.

15. 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.

16. 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.

17. 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: Petitioner's request for a waiver of Rule 67-21.027(6), Fla. Admin. Code, and the requirement of the Final Cost Certification Application Package to confirm the construction costs of the general contractors three largest dollar subcontractors, is hereby **GRANTED** to allow Petitioner's certified public account to confirm costs of the general contractor's first, second, and fourth largest dollar amount subcontractors.

DONE and ORDERED this 31st day of July 2021.

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.