STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: Goodlette Arms Preservation, LP FHFC Case No.: 2024-069VW
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ORDER GRANTING WAIVER OF RULES 67-21.027(6), 67-21.026(12)(b), & 67-21.003(1)(b), FLA. ADMIN. CODE (2020); AND A PORTION OF THE NON-COMPETITIVE APPLICATION INSTRUCTIONS (2020)

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on October 22, 2024. On October 4, 2024, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rules 67-21.027(6), 67-21.003(1)(b) and 67-21.026(12)(b) (6/23/20) and the Non-Competitive Application Instructions (Rev. 04-2020) (the "Petition") from Goodlette Arms Preservation, LP ("Petitioner") to allow:

(1) submission of Petitioner's Final Cost Certification Application Package ("FCCAP") with an Agreed Upon Procedures Report ("AUP") approved by the Corporation in lieu of (i) the General Contractor Cost Certification ("GCCC"); (ii) a certified public accountant opinion letter; and/or (iii) an audit report prepared by an independent certified public accountant; and

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
Ann F. Mamon 10/22/2024

(2) Petitioner to exceed the General Contractor's fee maximum of 14% of actual construction cost.

Notice of the Petition was published October 7, 2024, in Volume 50, Number 196, 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.

2. Petitioner successfully applied for funding to assist in the acquisition and rehabilitation of Goodlette Arms Apartments, a 250-unit development located in Collier County, Florida (the "Development").

3. Rule 67-21.027(6), Fla. Admin. Code (2020), provides in relevant part:

> The Final Cost Certification Application Package (Form FCCAP) shall be used by an Applicant to itemize all expenses incurred in association with construction or Rehabilitation of a Housing Credit Development, including Developer's and General Contractor's fees as described in rule 67-21.026, F.A.C. Such form package shall be completed, executed and submitted to the Corporation in both hard copy format and electronic files of the Microsoft Excel spreadsheets for the HC Development Final Cost Certification (DFCC) and the General Contractor Cost Certification (GCCC) included in the form package, along with the executed Extended Use Agreement and appropriate recording fees, IRS Tax Information Authorization Form 8821 for all Financial Beneficiaries if requested by the Corporation, a copy

> of the syndication agreement disclosing the rate and all terms, the required certified public accountant opinion letter for both the DFCC and GCCC, an unmodified audit report prepared by an independent certified public accountant for both the DFCC and GCCC, photographs of the completed Development, the monitoring fee, and documentation of the placed-in-service date as specified in the Form FCCAP instructions. The Final Housing Credit Allocation will not be issued until such time as all required items are received and processed by the Corporation. The Final Cost Certification Application Package (Form FCCAP) is adopted and incorporated herein by reference, effective 04-2020, and is available on the Corporation's website under the Multifamily Programs link labeled Non-Competitive Funding Programs or from http://www.flrules.org/Gateway/reference.asp?No=Ref-1217, or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1321.

4. Rule 67-21.026(12)(b), Fla. Admin. Code (2020), provides in relevant part:

> The Developer Fee and General Contractor fee shall be limited to: ... The General Contractor's fee shall be limited to a maximum of 14 percent of the actual construction costs. For the purpose of any necessity to prepare a HUD subsidy layering review, if there exists an Identity of Interest as defined herein between the Applicant or Developer and the General Contractor, the allowable fees shall in no case exceed the amount allowable pursuant to the HUD subsidy layering review requirements.

5. Rule 67-21.003(1)(b), Fla. Admin. Code (2020), incorporates the Non-Competitive Application Instructions (2020) ("NCA") by reference. The NCA provides in relevant part:

> General Contractor's fee is limited to 14% of actual construction cost (for Application purposes, this is represented by Al. 1. Column 3), rounded down to nearest dollar. The General Contractor's fee must be disclosed. The General Contractor's fee includes General Conditions, Overhead, and Profit. A General Contractor's Cost Certification will need to be completed prior to the issuance of IRS form 8609 and that certification may further restrict the overall General Contractor's fee. It is advised to review that certification process as early as possible.
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> A 1.2. General Contractor Fee see Note (3) (Max 14% of A 1.1., column 3)

6. Petitioner first requests a waiver of the above rules to allow submission of Petitioner's FCCAP with an AUP approved by the Corporation in lieu of (i) the GCCC; (ii) a certified public accountant opinion letter; and/or (iii) an audit report prepared by an independent certified public accountant. As justification for its request, Petitioner states that before the Development was completed by its General Contractor, J4 Development, Inc. ("J4"), J4 discontinued its business operations, and its principals declared bankruptcy. Some subcontractors have claimed they have not been fully paid, but Petitioner does not have access to J4's files to verify the amount paid to each respective subcontractor, outstanding sums, or the scope of work. Discussions are ongoing.

7. Petitioner states that J4 and its surety, Liberty Mutual, were sent notices of default and termination and a Petitioner has sent a demand for relief

under the bond to the surety. To date, the surety has not agreed to compensate Petitioner for any losses. However, Petitioner completed the work, and the Development is now complete.

8. Despite multiple requests, Petitioner states that J4 has failed to provide the information necessary to complete the FCCAP. The FCCAP requires the completion and inclusion of the GCCC, and a CPA opinion letter and audit report for the GCCC without any modifications which cannot be fully completed without input from J4. Petitioner states that it cannot satisfy the technical requirements of the Rule as it is unable to obtain the J4's signature for the GCCC and J4's accounting firm will not finalize the CPA opinion letter without J4's cooperation.

9. Petitioner also requests a waiver to allow Petitioner to exceed the General Contractor's fee maximum of 14%. On June 1, 2023, Petitioner paid $12,613,774.74 to J4, which was the total amount due under the contract after the setoff. Because Petitioner does not have access to J4's files, Petitioner states that it cannot substantiate all of J4's costs. Since Petitioner can only include costs that could be substantiated in the GCCC, which total only $10,894,960, the lower cost of work value caused the General Contractor's fee to exceed the 14% GC cap by 7.81%.

10. 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.

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

12. 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 Rules 67-21.027(6), 67-21.003(1)(b) and 67-21.026(12)(b), Fla. Admin. Code (2020), and the referenced portion of the Non-Competitive Application Instructions (2020) is hereby **GRANTED** to allow Petitioner to:

(1) Submit its Final Cost Certification Application Package utilizing Agreed Upon Procedures that will be developed with, and approved by, Florida Housing Staff to provide assurance of the reasonableness and accuracy of costs in lieu of (i) the General Contractor Cost Certification; (ii) a certified public accountant opinion letter; and/or (iii) an audit report prepared by an independent certified public accountant. Florida Housing Staff

will determine the acceptability of the content of the Agreed Upon Procedures report when the report is completed. and

(2) Exceed the General Contractor's fee maximum of 14% of actual construction cost. The amount over 14% shall be paid out of Developer's profit and reflected as a subset of the Developer Fee on the Development Final Cost Certification.

DONE and ORDERED this 22nd day of October, 2024.

Florida Housing Finance Corporation

By: _____
Sandra Einhorn, Vice Chair

Copies furnished to:

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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.