STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

AMBAR TRAIL, LTD.,
A Florida Limited Partnership,

Petitioner

vs.

Case No. 2024-036VW
Application No.: 2020-436BS/2019-545C
RFA 2019-116

FLORIDA HOUSING FINANCE CORPORATION,

Respondent

PETITION FOR WAIVER OF RULES 67-21.026(13)(e) AND 67-48.0072(17)(f) F.A.C. (7-11-19)

Petitioner Ambar Trail, Ltd., a Florida limited partnership ("Petitioner") submits its Petition to Respondent Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's general prohibition against the General Contractor ("GC") performing construction or inspection work that is normally performed by subcontractors. *See* Rules and 67-21.026(13)(e) and 67-48.0072(17)(f), Florida Administrative Code ("F.A.C.") (eff. 7-11-19) (the "Rules"). Because so many construction projects were delayed or slowed to a crawl during the COVID-19 pandemic, a significant backlog of construction work accrued. Accordingly, the GC was unable to secure subcontracts for labor and equipment related to certain work within a schedule that would satisfy the timing requirements. Due to this lack of availability, the GC performed the work itself. The self-performed work (including work for which the GC holds an underground utilities and excavation license and owns the related heavy equipment) likely resulted in significant cost-savings given that the post-COVID high demand for labor and equipment drove up prices during the nine-month period between execution of the GC contract and the notice to proceed with construction. Petitioner therefore respectfully requests a waiver of the Rules. In

support thereof, Petitioner states as follows:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for Petitioner and its qualified representative for Petitioner's application are:

Ambar Trail, Ltd.
3030 Hartley Road, Suite 310
Jacksonville, FL 32257
Attention: Elena Adames
Telephone: 305-216-1894
Facsimile: N/A
E-Mail: eadames@ambarco.com

2. The name, address, telephone and facsimile numbers for Petitioner's attorneys are:

Brian J. McDonough, Esq.
Stearns, Weaver, Miller, Weissler,
Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Telephone: (305) 789-3350
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bmcdonough@stearnsweaver.com

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Stearns, Weaver, Miller, Weissler,
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Tallahassee, FL 32301
Telephone: (850)329-4852
Facsimile: (850) 329-4864
E-Mail: bsmitha@stearnsweaver.com

B. THE DEVELOPMENT

3. Petitioner timely submitted its application on December 30, 2019 in response to Request for Applications 2019-116 SAIL Financing Of Affordable Multifamily Housing Developments to Be Used in Conjunction with Tax-Exempt Bonds and Non-Competitive Housing Credits (the "RFA") with respect to the following development:

- Development Name: Ambar Trail (the "Development")
- Developers: Ambar3, LLC
- County of Development: Miami-Dade
- Number of Units: 210
- Type: Mid-Rise, 4-stories

- Set Asides 11 units (5.24%) at or below 40% AMI, 188 units (89.52%) at or below 60% AMI, and 11 units (5.24%) at or below 80% AMI.
- Demographics: Family
- Funding Amounts: $5,000,000 in SAIL funding, $32,000,000 MMRB, $2,279,803 4% HC (annual allocation), and $2,500,000.00 Self-Sourced: Bond Financing.

C. PERMANENCY

4. The waiver being sought is permanent in nature.

D. RULES FROM WHICH WAIVER IS SOUGHT

5. Petitioner requests a waiver from the Rules, which provide, in relevant part, as follows:

> (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;

Rule 67-48.0072(17)(f), F.A.C. (7/11/19)

> (13) The General Contractor must meet the following conditions:
> ***
> (e) Ensure that no construction or inspection work that is normally performed by subcontractors is performed by the General Contractor;

Rule 67-21.026(13)(e), F.A.C. (7/11/19)

E. STATUTES IMPLEMENTED BY THE RULES

6. The Rules implement, among other sections of the Florida Housing Finance Corporation Act (the "Act"), Section 420.5087 (State Apartment Incentive Loan Program), 420.5089 (HOME Investment Partnership Program; HOME Investment Partnership Fund), and 420.5099 (Allocation of the low-income housing tax credit, Florida Statutes. Per Section 420.5099(1)-(2), Fla. Stat., the Corporation acts as the State's housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

F. JUSTIFICATION FOR WAIVER

7. In 2020, during the COVID-19 pandemic, many restrictions were put in place that delayed the start of construction projects and/or substantially delayed progress on then-existing projects. Accordingly, when the GC contract was executed in December 2020, subcontractors were hungry for work and submitted competitive bids. However, the GC was unable to obtain the notice to proceed with construction for the Development until September 2021. In that nine-month interim, the COVID-19 restrictions were loosened and/or eliminated, creating a construction boom. With a larger than normal amount of construction going on at that time due to the COVID-19 backlog, the high demand drove up the costs of subcontracting work, including renting equipment. As a result, the GC had subcontractors that would not agree to perform the work for the amount estimated in the GC contract back in December 2020. These subcontractors instead opted to work on other more lucrative projects. Because the GC was competing with other projects for the same pool of labor and equipment, there were instances where the GC could not find subcontractors that could perform the work within the requisite timeframes.

8. Due to the lack of available subcontractors, and to avoid delays that would prevent satisfying the placed-in-service deadline, the GC self-performed that work. The GC had the requisite experience to provide comparable, or even more proficient, labor. In addition to the GC license, the GC also holds an underground utilities and excavation license, and owns heavy equipment used to perform work under such licenses. Because the cost to rent such equipment was substantially inflated given the post-COVID demand, and because the GC's self-performance eliminated mark-ups from middlemen, it was likely more cost effective for the GC to self-perform, even if such equipment and labor had been available. This is particularly true where nearly half of the work performed by the GC pertained to equipment rental (*i.e.*, concrete equipment rental of $438,938 and earthwork equipment rental of $44,266). Despite the substantial industry-wide

increase in labor and equipment costs in 2021, the GC essentially performed the work for the amounts budgeted back in December 2020.

9. Additionally, even if the GC could have retained a subcontractor, having that work instead performed by the GC prevented interruptions that would have otherwise caused delay. This is because, where the GC controls its own labor pool, there is no downtime or scheduling gaps as the GC's labor can immediately flow from one project to the next within the same Development. In contrast, where the work is subcontracted, the GC must wait for the subcontractor to have room in its schedule to come to the Development.

10. Neither the Development, the Corporation, nor any other applicant would be prejudiced if this request is granted.

11. Under Section 120.542(1), Florida Statutes, and Chapter 28-104, Florida Administrative Code, the Corporation has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers must be granted when: (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* Section 120.542(2), Florida Statutes.

12. If the requested waiver is not granted, Petitioner will suffer a substantial and unnecessary economic and operational hardship.

13. In this instance, Petitioner meets the standards for the requested waiver. The requested waiver will not adversely impact the Development or the Corporation and will ensure that 210 affordable housing units will be preserved and made available for the target population in Miami-Dade County, Florida. Further, the waiver will serve the purposes of the Statute and the

Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State.

14. The requested waiver will not adversely affect the Corporation, the Development, or any other applicant.

15. Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

G. RELIEF REQUESTED

WHEREFORE, Petitioner Ambar Trail, Ltd, respectfully requests that the Corporation:

a. Grant Petitioner the requested permanent waiver from Rules and 67-21.026(13)(e) and 67-48.0072(17)(f), (July 11, 2019) such that the General Contractor may perform construction or inspection work that is normally performed by subcontractors.

b. Grant the Petition and all the relief requested therein; and

c. Award such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
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Miami, Florida 33131
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By: *s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The Petition is being served via e-mail for filing with the Corporation Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 17th of June, 2024.

*s/ Brian J. McDonough*_____
BRIAN J. MCDONOUGH, ESQ.