

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Boca Ciega Partner TC, LP.

FHFC Case No.: 2018-003VW

---

**ORDER GRANTING WAIVER OF  
R. 67-21.026(10), FLA. ADMIN. CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on January 26, 2018, pursuant to a “Petition for Waiver of Rule 67-21.026(10)” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on January 8, 2018, from Boca Ciega Partners TC, LP (“Petitioner”). Notice of the Petition was published on January 10, 2018, in Volume 44, Number 7, 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 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. In June 2015, Petitioner successfully applied for local bond financing and Non-Competitive Tax Credits from Florida Housing, to assist in the development of a townhome complex in Pinellas County.

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

1

Thomas Slattery /DATE: 1/26/18

3. R. 67-21.026.026(10), Fla. Admin. Code, provides:

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 requests a waiver of the above Rule to permit it to utilize an already extant stipulated sum construction contract in lieu of the guaranteed maximum price construction contract as required.

5. During the cost certification phase the Credit Underwriter assigned to this transaction determined that the Developer's contract with the General Contractor was a stipulated sum contract, contrary to what was required by the Rule above. This HUD Construction Contract had already been executed, and work under it performed, when the Corporation amended the Rule to disallow such contracts (the Rule was amended February 2, 2015). At the time the contract was executed, the Rule in place did in fact permit such contracts.

6. Section 120.542(2), Fla, Stat., provides in pertinent part:

Variations 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.

7. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner and would violate the principles of fairness. The Board further finds that granting this request furthers the Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizen of Florida. The Board also 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" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

**IT IS THEREFORE ORDERED:**

Petitioner's request for waiver of R. 67-21.026(10), Fla. Admin. Code, is hereby **GRANTED** to allow Petitioner to continue to use its existing stipulated sum construction contract in lieu of a guaranteed maximum price contract.

DONE and ORDERED this 26th day of January, 2018.

Florida Housing Finance Corporation



By:   
Chair

Copies to:

Hugh R. Brown, General Counsel  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329

Brantley Henderson, Acting Director of Multifamily Programs  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301

Daniel A. Felix, Esq.  
Downs Pham & Kuei LLP  
One Embarcadero Center, Suite 500  
San Francisco, CA 94111

Joint Administrative Procedures Committee  
Attention: Ms. Yvonne Wood  
120 Holland Building  
Tallahassee, Florida 32399-1300

### **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.**