STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2023-062VW
APPLICATION NO. 2020-501C

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FLORIDA HOUSING FINANCE CORPORATION

414 EAST PINE STREET, LP,

Petitioner

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-21.026(13)(e)

414 EAST PINE STREET, LP, a Florida limited partnership ("**Petitioner**"), by and through its undersigned counsel, hereby petitions Respondent, the FLORIDA HOUSING FINANCE CORPORATION (the "**Corporation**") for a waiver of Rule 67-21.026(13)(e), Florida Administrative Code ("F.A.C."), relating to the work that a General Contractor ("**GC**") may self-perform. This Petition is filed pursuant to Section 120.542, Florida Statutes ("F.S."), and Chapter 28-104, F.A.C. In support of its Petition, the Petitioner states:

A. THE PETITIONER

1. The address, telephone number, facsimile number and e-mail address of the Petitioner are:

414 EAST PINE STREET, LP
101 S. Terry Avenue
Orlando, Florida 32805
Telephone: (407) 648-1623
Attention: Orlando Neighborhood Improvement Corporation, c/o Alfred Arzuga
Email: Arzuaga@orlandoneighborhood.org

2. For purposes of this Petition, the address, telephone number, facsimile number and e-mail address of Petitioner's counsel is:

Yisell Rodriguez, Esq.
Nelson Mullins Riley & Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: (407) 669-4290
Facsimile: (407) 425-8377
Email: yisell.rodriguez@nelsonmullins.com

B. THE DEVELOPMENT

3. Petitioner is the owner of that certain 197-unit multifamily residential development commonly known as Baptist Terrace, located within Orange County, Florida (the "**Development**"). Petitioner's acquisition, rehabilitation, installation and equipping of the Development was financed, in part, by a loan in the principal amount of up to $21,500,000 (the "**Loan**") from the Orange County Housing Finance Authority (the "**OHFA**") that was financed by the proceeds of multifamily housing revenue bonds (the "**Bonds**"). On July 1, 2020, the OHFA issued the Bonds and disbursed a portion of the Loan to Petitioner. On June 29, 2020 Petitioner submitted its Non-Competitive 4% Application Package (Rev. 04-2020) for Non-Competitive Housing Credits (the "**Application**") and requested an annual amount of $1,250,412 in Housing Credits to assist in financing the acquisition and rehabilitation of the Development.

C. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

D. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver from Rule 67-21.026(13)(e), F.A.C. (2020) (the "**Rule**"), which requires that a GC meet certain conditions. The specific provisions of the Rule from which Petitioner is seeking a waiver are as follows:

> (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

6. On April 29, 2022, during the rule development process, the Board made a change allowing the General Contractor to conduct a restricted amount of work on their own as follows: "*Ensure that no construction or inspection work is performed by the General Contractor, with the following exceptions: (i) the General Contractor may perform its duties to manage and control the construction of the Development; and (ii) the General Contractor may self-perform work of a de minimis amount, defined for purposes of this paragraph as the lesser of $350,000 or 5 percent of the construction contract*." The Board decided to apply the updated 2022 version of the Rule retroactively to projects that had submitted applications under older rules. Therefore, even though the Development initially applied under the 2020 version of the Rule, it is now subject to the recently approved 2022 Rule based on the Board's decision.

E. STATUTES IMPLEMENTED BY THE RULE

7. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the Housing Tax Credit Program and the Multifamily Mortgage Revenue Bonds Program. See §§ 420.509, 420.5099, F.S.

8. The Corporation has the authority pursuant to Section 120.542(1), F.S., and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended results in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), F. S.

F. JUSTIFICATION FOR GRANTING THE WAIVER OF THE RULE

9. Petitioner is seeking a waiver from 67-21.026(13)(e), F.A.C. (2022), which limits the amount of work a GC may perform to a de minimis amount. When Petitioner initially began the rehabilitation of the Development, the GC did not intend on self-performing any work. The COVID-19 Pandemic had an immediate and detrimental effect on both the construction industry and this Development. This resulted in labor shortages and disruptions in the supply chain. Due to the limited availability of materials, finding and hiring subcontractors became a difficult and expensive undertaking. The COVID-19 Pandemic caused a significant shortage of subcontractor labor to the point where certain parts of the project did not receive any bids. Subcontractors encountered difficulties in adhering to the project schedule and experienced various setbacks, including the need for quarantine measures.

10. The total cost of the self-performed work was $475,902.51, which exceeds the de minimis amount by $125,902.51. There were no additional fees included in this amount. The GC did not apply any profit, overhead, or any type of administrative fees to any of the self-performed work. Below is a breakdown of the costs and the self-performed work, along with the rationale for the GC's self-performance:

- $3,000 for setting up and removing safety barriers during parking lot work. The GC had to perform this work due to a shortage of subcontractor labor.
- $600 for general site cleanup of lawns and plantings. The GC had to perform this work due to a shortage of subcontractor labor.
- $13,641 to assist with interior demolition and clean up. The GC had to assist because the subcontractors were quarantined due to COVID.
- $8,583 for concrete patching in apartments and slab work at sewer line replacement. The GC had to perform this work because a concrete subcontractor was unable to perform small repair work over multiple phases.
- $224,652 for framing, blocking and miscellaneous rough carpentry. Because of COVID implications, the original subcontractor was unable to meet the required schedule and the GC had to perform the work.
- $17,613 for installation of handrails in corridors. The GC had to perform this work because no subcontractor bids were received.
- $49,968 for fire caulking and labeling penetrations. The GC had to perform this work because no subcontractor bids were received.
- $25,158 for installation of new doors, hardware, and frames. The GC had to perform this work due to a shortage of subcontractor labor.
- $56,062 for miscellaneous drywall patching and skim coat. The GC had to perform this work because the drywall subcontractor did not include this change order in their original quote and declined to perform the work.
- $5,960 to clean, repair and repaint shuffleboard court. The GC had to perform this work due to a shortage of subcontractor labor.

- $52,151 for installation of toilet accessories. The GC had to perform this work because no subcontractor bids were received.
- $9,258 to assist team with offloading and placing cabinets and tops. Due to limited resources from COVID quarantines, GC had to assist to meet schedule.
- $9,258 for appliance installation. GC had to assist because the subcontractor was understaffed due to COVID.

11. In this instance, Petitioner meets the standards for a waiver of the Rule. Unless the Rule is waived to allow the Petitioner to continue with the Development and obtain Form 8609, as is required for allocation of non-competitive housing credits, certain unreasonable, unfair and unintended results will occur, resulting in a substantial hardship to the Petitioner and the Development. The delays associated with requiring Petitioner to hire subcontractors to perform the above tasks would have delayed the rehabilitation of the Development, causing a substantial economic hardship to the Petitioner and the elderly population of Orange County. The requested waiver will not adversely impact the Development or the Corporation and will ensure that the 197 affordable housing units of the Development will be preserved and made available for the target population in Orange County.

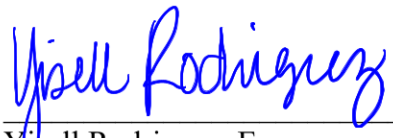
12. The requested waiver of the Rule serves the purpose of the Statute that is implemented by the Rule. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in facilities for persons of low-income. The purpose of the creation of the Housing Tax Credit Program and Multifamily Mortgage Revenue Bonds Program is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting the waiver of the Corporation's limitation on GC self-performance, Petitioner will be able to move forward and obtain Form 8609 for non-

competitive housing credits with all its eligible rehabilitation costs accounted for, as requested in this Petition, and the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

G. ACTION REQUESTED

13. For the reasons set forth herein, Petitioner respectfully requests the Corporation (i) grant the requested waiver of Rule 67-21.026(13)(e); (ii) grant the Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,



Yisell Rodriguez, Esq.
Fla. Bar No. 117915
Nelson Mullins Riley & Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, FL 32801
Telephone: (407) 669-4290
Facsimile: (407) 425-8377
Email: yisell.rodriguez@nelsonmullins.com
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

This 14th day of July, 2023.

Yisell Rodriguez, Esq.
Fla. Bar No. 117915