STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: SP GARDENS, LLC FHFC Case No.: 2021-004VW

_____/

ORDER GRANTING WAIVER FROM RULE 67-48.023(5), and 67-48.023(7), 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 March 12, 2021. On January 28, 20201 Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rules 67-48.023(5), 67-48.023(7), RFA 2015-107 Exhibit C Paragraph 12(c) and the Final Cost Certification Application Package Requirement to Confirm Certain Items with the Three Largest Dollar Subcontractors (the "Petition") to waive the Final Cost Certification Application Package's ("Form FCCAP") requirement that the certified public accountant auditing the General Contractor Cost Certification confirm certain items with the general contractor's three largest dollar subcontractors. Notice of the Petition was published on February 1, 2021, in Volume 47, Number 20, 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:

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
/DATE 3/12/2021

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner successfully applied for competitive housing credits under RFA 2015-107 (the "RFA") to finance the construction of an affordable housing complex to be known as Laburnum Gardens, in Hillsborough County, Florida (the "Development").

3. Rule 67-48.023(5), Fla. Admin. Code provides in relevant part that "[e]ach Housing Credit Development shall complete the final cost certification process as required in a competitive solicitation."

4. Rule 67-48.023(7), Fla. Admin. Code, provides:

> Final cost certification documentation shall be submitted 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 67-48.0072, F.A.C., along with the executed Extended Use Agreement, 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, an unmodified audit report prepared by an independent certified public accountant, photographs of the completed Development, the monitoring fee, and documentation of the placed-in-service date as specified in the competitive solicitation. The Final Housing Credit Allocation will not be issued until such time as all items required by a competitive solicitation are received and processed by the Corporation.

5. RFA 2015-107, Exhibit C, Paragraph 12, in relevant part, requires that as a condition of receiving Housing Credits, applicants must use

the Form FCCAP to "itemize all expenses incurred in association with constriction or Rehabilitation of a Housing Credit Development, including Developer and General Contractor fees…"

6. Petitioner requests waiver of the above cited Rules and section of the RFA to allow Petitioner's certified public accountant to confirm items with the fourth largest dollar subcontractor.

7. To assist the certified public accountant in completing an audit of the General Contractor Cost Certification (the "GCCC"), each applicant's general contractor must provide a list of all subcontractors to be used on the job along with the amounts paid or to be paid to the subcontractors. According to the GCCC, the certificated public accountant must ask the three largest dollar subcontractors to confirm 1) the construction contract amount, 2) any change orders, 3) additional costs incurred outside o the contract, if any, 4) the type of services provided (trade breakdown), and 5) amounts paid to date and balance(s), if any, to be paid. In addition the certified public accountant must randomly select a sufficient amount of other subcontractors, that when taken together with the three largest dollar subcontractors, account for at least 40 percent of the total construction cost, and review certain documentation to verify the amounts paid to each subcontractor.

8. Petitioner request a waiver from the requirement in the Form FCCAP that the certified public accountant send the required confirmation requests to the three largest dollar subcontractors. According to Petitioner, one of the three largest dollar subcontractors, Silva Group Construction, Inc., is unwilling to comply with these requests. Petitioner asserts that the certified public accountant cannot receive the required confirmation requests of this entity and seeks to send these confirmation requests instead to the fourth largest dollar subcontractor.

9. According to Petitioner, Silva Group Constructing, Inc. is in active litigation with the general contractor regarding the final subcontract amount and payment. Petitioner states that legal counsel for both parties have advised that there should be no communication and Silva Group Construction, Inc. has been unwilling to communicate with the certified public accountant. Thus, the certified public accountant cannot perform the required confirmation procedure with Silva group Construction, Inc.

10. Petitioner states that despite Silva Group Construction Inc's unresponsiveness, the certified public accountant was able to verify amounts paid to Silva Group Construction, Inc. by reviewing check copies, contract documents, change orders, and other supporting information.

11. Petitioner requests that the fourth largest dollar subcontractor, ACE Electrical Service of N. Florida, which will still confirm the various cost-related items outlined in the Form FCCAP with subcontractors representing a similar percentage of the total construction cost (33.1 percent as compared to 33.5 percent of the total construction cost when including Silva Group Construction, Inc. Additionally, Petitioner asserts that the certified public accountant was able to verify a substantial portion (approximately 51 percent) of the costs for subcontractors for the development, including amounts paid to Silva Group Construction, Inc.

12. 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.

13. The Board finds that granting the requested waiver would not impact other participants in funding programs administered by Florida Housing, nor would it detrimentally impact Florida Housing.

14. 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.

15. 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" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

IT IS THEREFORE ORDERED: Petitioner's request for a waiver of Rules 67-48.023(5), 67-48.023(7), Fla. Admin. Code, RFA 2015-107 Exhibit C Paragraph 12(c), and the Final Cost Certification Application Package Requirement to Confirm Certain Items with the Three Largest Dollar Subcontractors, is hereby **GRANTED** to allow Petitioner's certified public accountant to confirm items with the fourth largest dollar subcontractor, ACE Electrical Service of N. Florida.

DONE and ORDERED this 12th day of January 2021.

FLORIDA HOUSING FINANCE CORPORATION Tallahassee Florida

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
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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.