STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

In Re: THE PARK AT PALO ALTO, LLC FHFC Case No.: 2021-032VW

_____/

ORDER GRANTING WAIVER OF RULES 67-21.014(2)(r)(6); 67-21.026(13)(e), FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on June 18, 2021. Florida Housing Finance Corporation ("Florida Housing"). On May 26, 2021, Florida Housing received a "Petition for Waiver of Rules 67-21.014(2)(r)(6); 67-21.026(13)(e)" (the "Petition"). The Notice of the Petition was published on May 27, 2021, in Volume 47, Number 103, 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 ("Board") of Florida Housing hereby finds:

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

2. The Park at Palo Alto, LLC ("Petitioner") was selected to receive RRLP funding under RFA 2019-111 (Rental Recovery Loan Program ("RRLP") Financing To Be Used For Rental Developments In Hurricane

FILED WITH THE CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION
DATE: 6/18/2021

Michael Impacted Counties) to assist in the construction of The Park at Palo Alto ("Development").

3. Rules 67-21.014(2)(r)(6); 67-21.026(13)(e), Fla. Admin. Code, identically provide:

> Ensure that no construction or inspection work that is normally performed by subcontractors is performed by the General Contractor…

4. Petitioner requests a partial waiver of the above Rules to permit its third-party General Contractor to conduct some self-performance work. On October 10, 2019, Bay County was severely impacted by Hurricane Michael, leading to the issuance of RFA 2019-111. The Royal American Companies ("RAC"), the General Contractor for this Development, have developed affordable housing in Bay County since 1969. This includes work as a General Contractor for all RAC developments and for third parties.

5. Petitioner requests this partial waiver of the above Rules to permit self-performance of a portion of the site work by the RAC General Contractor based on the following:

Due to the massive amount of rebuilding in the area, subcontractors are booked for extended periods of time. RAC's ability to self-perform site work will ensure the Development is built as timely as possible;

a) 80% of the Development's site work is either materials or third-party work. Actual RAC labor dollars are approximately $352,308.00 and no GC profit, overhead or general requirements percentages will be applied to this amount;

b) RAC was able to get only one competitive bid from another site work subcontractor, which is 10% more than if RAC self-performs a portion of the site work;

c) RAC's self-performance will reduce Site Work cost by $153,480.00. In fact, by allowing RAC's self-performance of the Development's Site Work, RAC will make less profit.

6. 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.

7. Granting the requested waiver would not impact other participants in funding programs administered by Florida Housing, nor would it detrimentally impact Florida Housing.

8. 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.

9. 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 partial waiver of Rules 67-21.014(2)(r)(6); 67-21.026(13)(e), Fla. Admin Code is hereby **GRANTED** to permit Developer's General Contractor to self-perform a portion of the site work as described in the Petition for the Development.

DONE and ORDERED this 18th day of June, 2021.

Florida Housing Finance Corporation

By: _____
Chairperson

Copies furnished to:

Hugh R. Brown, General Counsel
Hugh.Brown@floridahousing.org

Marisa Button, Director of Multifamily Programs
Marisa.Button@floridahousing.org

James A. Boyd, Jr., General Counsel
Jim.boyd@royalamerican.com

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.