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FLORIDA HOUSING FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

Solimar Associates, Ltd.,
a Florida limited partnership,

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC CASE NO. 2024-039VW
Application No. 2019-027BS / 2018-540C
RFA No. 2018-114

PETITION FOR WAIVER OF RULES 67-21.026(13)(g), 67-21.014(2)(r)8., AND 67-48.0072(17)(h) F.A.C. (7-8-18)

Petitioner Solimar Associates, 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 subcontracting a construction cost to an entity that has common ownership or is an Affiliate of the General Contractor ("GC"). *See* Rules and 67-21.026(13)(g), 67-21.014(2)(r)8., and 67-48.0072(17)(h), Florida Administrative Code ("F.A.C.") (eff. 7-8-18) (the "Rules"). In the cost certification review process, it was discovered that approximately $7,900 of repair work was performed by a subcontractor whose qualifying agent was previously also the qualifying agent for the general contractor for the development. Petitioner therefore respectfully requests a waiver of the Rules and states as follows in support:

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:

Leon Wolfe
2100 Hollywood Blvd
Hollywood, FL 33020
Telephone: 305.443.8288

FAX: 305.443.9339
Email: Lenny.Wolfe@CornerstoneGrp.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.
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Facsimile: (850) 329-4864
E-Mail: bsmitha@stearnsweaver.com

B. THE DEVELOPMENT

3. The following information pertains to the development ("Development"):

- Development Name: Solimar
- Development Address: 825 NW 5th Ave, Florida City, 33034
- County: Miami-Dade County
- Developer: Cornerstone Group Partners, LLC; Florida Community Development Corporation
- Number of Units: 180 Unit (New Construction)
- Type: Garden Apartments
- Set Asides: 18.889% (34 units) at or below 30% AMI; 26.111% (47 units) at or below 60% AMI; 55% (99 units) at or below 70% AMI
- Demographics: Family
- Funding: MMRB loan in the amount of $22,500,000 (prior to redemption), a SAIL Loan in the amount of $8,075,000, and an annual 4% HC allocation in the amount of $1,626,192. It also received Surtax funds from Miami-Dade County.

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:
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> ***
>
> (h) Ensure that no construction cost is subcontracted to any entity that has common ownership or is an Affiliate of the General Contractor or the Developer. For purposes of this paragraph, "Affiliate" has the meaning given it in subsection 67-48.002(5), F.A.C., except that the term "Applicant" therein shall mean "General Contractor."

Rule 67-48.0072(17)(h), F.A.C. (7-8-18)

> (13) The General Contractor must meet the following conditions:
>
> ***
>
> (g) Ensure that no construction cost is subcontracted to any entity that has common ownership or is an Affiliate of with the General Contractor or the Developer. For purposes of this paragraph, "Affiliate" has the meaning given it in subsection 67- 21.002(5), F.A.C., except that the term "Applicant" therein shall mean "General Contractor."

Rule 67-21.026(13)(g), F.A.C. (7-8-18)

> (r) . . . . The General Contractor must meet the following conditions: . . . .
>
> ***
>
> 8. Ensure that no construction cost is subcontracted to any entity that has common ownership or is an Affiliate of the General Contractor or the Developer. For purposes of this paragraph, "Affiliate" has the meaning given it in subsection 67-21.002(5), F.A.C., except that the term "Applicant" therein shall mean "General Contractor.

Rule 67-21.014(2)(r)8., F.A.C. (7-8-18).

E. STATUTES IMPLEMENTED BY THE RULES

6. The Rules implement, among other sections of the Florida Housing Finance Corporation Act (the "Act"), Section 420.507 (Powers of the corporation), Section 420.508 (Special powers; multifamily and single-family projects), Section 420.5087 (State Apartment Incentive Loan Program), Section 420.5089 (HOME Investment Partnership Program; HOME

Investment Partnership Fund), Section 420.509 (Revenue bonds), and Section 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. The Development completed construction in 2022.

8. The Development utilized a subcontractor, A-Line Construction ("A-Line"), who was paid approximately $7,900 to perform repair work on brick pavers at the driveway. The pavers were sinking in various locations, while others were also damaged from use during construction. Unfortunately, Downrite Engineering, Corp. could not get their subcontractor to return to the project to make the repairs. A-Line was hired to remove, regrade, and reinstall the pavers that were sinking, and to replace the broken pavers. At that time, A-Line's qualifying agent was Mike Brinegar, who also served as the qualifying agent for the general contractor for the Development's GC, Brookstone Construction, LLC ("Brookstone"). Mr. Brinegar was not involved in the selection of A-Line; rather, the Project Manager hired A-line to repair the pavers because A-Line was willing to perform a project having such a small scope and able to mobilize quickly to complete the repairs. Mr. Brinegar made no GC fee, nor a fee from A-Line. Mr. Brinegar is no longer the qualifying general contractor for Brookstone.

9. The principals of Brookstone are Jorge Lopez, Leon J. Wolfe and Mara S. Mades, who are also the principals of the ownership entity of the Development, as well as principals of the developer entity. Jorge Lopez, Leon J. Wolfe and Mara S. Mades are not owners, shareholders or officers of A-Line, and have never been involved with A-Line as either owners, shareholders or officers. A-Line was a third-party subcontractor with no affiliation to the Developer, nor its related construction, developer or ownership entities for the Development.

10. Petitioner did not learn of Mr. Brinegar's affiliation with A-Line until the cost certification review process.

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. 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 180 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.

13. 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 Solimar Associates, Ltd. respectfully requests that the Corporation:

a. Grant Petitioner the requested permanent waiver from Rules and 67-21.026(13)(g), 67-21.014(2)(r)8., and 67-48.0072(17)(h), F.A.C. (July 8, 2018) such that the General Contractor may subcontract a de minimis amount to an entity that was technically an Affiliate of the General Contractor;

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 25th of July, 2024.

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