STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

The Park at Palo Alto, LLC

Petitioner,

FHFC CASE NO. 2021-032VW
Application No. 2020-068BR

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULES 67-21.014(2)(r)(6); 67-21.026(13)(e)

Petitioner The Park at Palo Alto, LLC (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing") for a partial waiver of Rules 67-21.014(2)(r)(6); and 67-21.026(13)(e), Florida Administrative Code ("F.A.C.") (the "Rule"), as incorporated and adopted by the 2019 Qualified Allocation Plan ("2019 QAP"), pertaining to the scope of work a general contractor can perform ("GC Self Performance"). In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone and facsimile numbers for Petitioner and its qualified representative are:

The Park at Palo Alto, LLC
1002 West 23rd Street,
Suite 400
Panama City, FL 32405
Attn: Joseph F. Chapman, IV
Telephone: 850-769-8981

Fax: 850-914-8445
E-mail: joey.chapman@royalamerican.com

2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel is:

James A. Boyd, Jr., General Counsel
Royal American Development, Inc.
1002 West 23rd Street
Suite 400
Panama City, FL 32405
850-769-8981 (Phone)
850-914-8445 (Facsimile)
Email: jim.boyd@royalamerican.com

3. On October 9, 2019, Petitioner timely submitted its Application in response to RFA 2019-111 for RRLP Financing To Be Used For Rental Developments In Hurricane Michael Impacted Counties (the "RFA") to assist in the construction of a 120-unit development located in Panama City, Bay County, Florida (the "Development"). Petitioner requested RRLP Financing in the amount of $8,400,000, ELI Financing in the amount of $820,200, and Non-Competitive Tax-Exempt Bonds in the original amount of $10,000,000 which has now increased to $12,500,000.00 based on a request that was reviewed and approved on 3/4/2021. The Development received the requested allocation of RRLP and ELI Financing and Non-Competitive Tax-Exempt Bonds ("FHFC Financing") and was invited to credit underwriting on March 11, 2020.

B. WAIVER IS PERMANENT

4. The partial waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a partial waiver of Rules 67-21.014(2)(r)(6); 67-21.026(13)(e), F.A.C. as adopted by Subsection III of the 2019 QAP, which provides as follows:

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

6. The Rule prevents GC Self-Performance of work that might not otherwise be generally performed by a general contractor.

D. STATUTES IMPLEMENTED BY THE RULE AND THE 2019 QAP

7. The 2019 QAP and the Rule implemented, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statutes relating to the allocation of Low-Income Housing Tax Credits contained in Section 420.5099 of the Florida Statutes. *See §420.5099, Fla. Stat. (2019)* (the "Statute").

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND SUBSECTION III OF THE 2019 QAP.

8. As mentioned above, Petitioner requests a partial waiver of the Rule prohibiting GC Self-Performance.

9. On October 10, 2019 Bay County, Florida was devasted by Hurricane Michael, a Category Five Hurricane. Affordable housing was in short supply prior to Hurricane Michael's impact and Bay County's limited affordable housing stock was disproportionately impacted by Hurricane Michael's devastation. In response to Bay County's and the surrounding Counties' need to replace Hurricane Michael destroyed affordable housing stock, Florida Housing issued the RFA.

10. The Royal American Companies ("RAC"), based in Bay County, Florida, has been developing; building; and managing affordable housing in Bay County (and throughout the Southeast) since 1969. RAC not only performs as the General Contractor ("GC") for all RAC developments, RAC also actively bids on and performs extensive GC work for unrelated third parties.

While RAC operates as a traditional GC in areas outside of North Florida, within the geographic confines of RAC's home territory as GC RAC normally performs all site work.

11. Due to the following issues, it is critical that RAC is granted a partial rule waiver to allow for the self-performance of the Development's site work:

a) Due to the massive amount of rebuilding Bay County is experiencing, all 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.

b) As can be seen from Exhibit 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.

c) 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. See attached Exhibit B.

d) As delineated in Exhibit 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.

12. Under Section §120.542(1), *Fla. Stat.*, and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would:

(1) create a substantial hardship or, violate principles of fairness,[1] and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. §120.542(2), *Fla. Stat.* (2019).

13. In this instance, Petitioner meets the standards for a waiver of the Rule, and its prohibition against GC Self-Performance provided in the Rules 67-21.014(2)(r)(6); 67-21.026(13)(e). The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 120 new affordable family housing units will be constructed timely; in a cost-effective manner; and made available for the target population in Bay County, Florida. The strict application of the Rules 67-21.014(2)(r)(6); 67-21.026(13)(e); and their prohibition against GC Self-Performance will create substantial hardship for Petitioner because it would substantially increase the cost of the Development and significantly delay the delivery of the Development. 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. In addition, Florida Housing has granted similar requested waivers to RAC in the past.

14. As mentioned above, the requested waiver serves the purpose of the Statute because one of the primary goals of the Statute is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida for low-income households. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income and recognizing the economic realities and

[1] "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. 120.542(2), Fla. Stat. (2019)

principles of fundamental fairness in developing affordable rental housing. See §420.5099(2), *Fla. Stat.* (2019).

F. ACTION REQUESTED

WHEREFORE, Petitioner The Park at Palo Alto, LLC respectfully requests Florida Housing:

A. Grant this Petition and all of the relief requested herein;

B. Grant the requested partial waiver of Rules 67-21.014(2)(r)(6); 67-21.026(13)(e) as adopted by Subsection III of the 2019 QAP; and

C. Grant such further relief as it may deem appropriate.

Respectfully submitted on May 25, 2021

James A. Boyd, Jr.
Florida Bar No. 994405
General Counsel
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Counsel for Petitioner, The Park at Palo Alto, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition for Waiver is being filed by electronic filing (with a copy by U.S. Mail) with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301 this 25 day of May, 2021.

James A. Boyd, Jr.