

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**FHFC CASE NO.: 2026-033VW
APPLICATION NO.: 2023-194C**

BDG BANYAN EAST TOWN, LLC,

Petitioner,
vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

**PETITION FOR WAIVER OF RULES 67-48.0072 (17) (i),
F.A.C. (May 18, 2021)**

BDG Banyan East Town, LLC, a Florida limited liability company (the “Petitioner”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for a waiver of, or variance from, Rule 67-48.0072(17)(i), Florida Administrative Code (“F.A.C.”) (effective May 18, 2021) (the “Rule”), to permit the General Contractor (as defined below) to subcontract an affiliated subcontractor in connection with the construction of the Development (as defined below). This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code. In support thereof, Petitioner states as follows:

A. THE PETITIONER

1. The mailing address, telephone number and email of the Petitioner is as follows:

BDG Banyan East Town, LLC
Attn: Scott Zimmerman
501 N Magnolia Ave
Orlando, Florida 32801

Telephone: (407) 447-1780 Ext. 2001
Email: szimmerman@agpmanager.com

2. The address and telephone number of Petitioner's counsel are:

Nicholas W. Heckman, Esq.
Nelson Mullins Riley & Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: 407-669-4241
Email: nick.heckman@nelsonmullins.com

3. On or before August 26 2021, Petitioner timely submitted an application in response to RFA 2021-201 for Housing Credit Financing for Affordable Housing Developments Located in Medium and Small Counties (the "RFA") (the "Application") to finance the construction of a multifamily affordable housing development to be known as Banyan East Town Apartments (the "Development"), located in Altamonte Springs, Florida. Construction of the Development was completed on or around February 11, 2025.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

4. The Petitioner requests a waiver of, or variance from, Rule 67-48.0072(17)(i) and (i), F.A.C., (effective May 18, 2021), which provides in part:

Rule 67-48.0072(17)(i)

“(i) 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.’”

C. STATUTES IMPLEMENTED BY THE RULE

5. The Rule is implementing, among other provisions of the Florida Housing Finance Corporation Act (the “Act”), the statute that designated the Corporation as the State of Florida’s housing credit agency and authorizes it to establish procedures for allocating and administering low-income housing tax credits. See Fla. Stat. §420.5099.

6. Florida Housing has the authority pursuant to Section 120.542(1), Fla. Stat., 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 hardship¹ 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), Fla. Stat.

D. JUSTIFICATION FOR PETITIONER’S REQUESTED WAIVER

7. Petitioner is seeking a waiver of Rule 67-48.0072(17)(i) to permit subcontracting with an affiliate of the general contractor, for the reasons set forth below.

8. On June 21, 2023, Petitioner engaged Walker & Company, Inc. (“General Contractor”), to serve as general contractor for the construction of the Development. During construction, General Contractor solicited bids through a competitive bidding process for qualified subcontractors to perform the following services for the Development: carpentry work; the

¹ “Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. Further, “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. See Section 120.542, *Fla. Stat.*

installation of interior and exterior doors; door hardware; access panels; mailboxes; mirrors; shelving; toilet accessories; and fire extinguishers.

9. General Contractor received only two bids during the procurement process and selected Integrated Door, LLC, an affiliate of General Contractor (“Subcontractor”), as it submitted the most competitive bid, and has demonstrated to General Contractor on prior deals to be reliable, cost-effective and the ability to perform the necessary scope of work within in the term of the bid. Subcontractor and General Contractor have common ownership principals². The decision was not based solely on cost savings, but also on the anticipated quality of the work product. Many established subcontractors performing this type of work in Central Florida have been acquired by large national firms, which has led to concerns regarding work quality, timeliness and project scheduling. As mentioned above, the Subcontractor has consistently delivered quality workmanship and timely performance.

10. The alternative bid received during the procurement process was higher in cost than the bid from Subcontractor, although the bids were equivalent and comparable with regards to scope of work to be performed. The bid received from Subcontractor totaled \$740,000 and the alternative bid from the other subcontractor totaled \$743,074.05.

11. Since the submission of the Application, the Petitioner has encountered numerous complications that lead to an unforeseen increase in costs to the budget arising from unforeseen regulatory and permitting requirements imposed by the City of Altamonte Springs (the “City”), Seminole County, and the St. Johns River Water Management District. Due to the unforeseen

² The ownership of General Contractor is as follows: (1) Lance Walker Jr. (“Walker Jr.”) owns a 65% equity interest in General Contractor; (2) Lance Walker Sr. owns a 10% equity interest in General Contractor; and (3) Alan Fredrickson (“Fredrickson”) owns a 25% equity interest in General Contractor. The ownership interest of Subcontractor is as follows: (1) Michael Spraggins owns a 51% equity interest in Subcontractor; (2) Jeff Agar owns a 5% equity interest in Subcontractor; (3) Walker Jr. owns a 39% equity interest in Subcontractor; and (4) Fredrickson owns a 5% equity interest in Subcontractor.

increases in costs to the Development, Petitioner (and General Contractor on Petitioner's behalf) actively undertook efforts to control expenses to ensure the success of the Development. At the time, General Contractor selected Subcontractor because it submitted the most competitively priced bid and saved the Development approximately \$3,074.05 dollars; however, the General Contractor, as mentioned above, chose Subcontractor as many established subcontractors performing this type of work in Central Florida have been acquired by large national firms. The General Contractor was concerned that if they chose the other subcontractor, the ultimate cost of the subcontract could have substantially increased over time as and could have ultimately affected the work product and timeliness of the Development being completed. Utilizing Subcontractor enabled the Development to proceed without additional delays and helped mitigate costs during the construction of the Development.

12. The Petitioner respectfully requests waiver of the Rule to permit Petitioner's general contractor to subcontract with an affiliated entity of the general contractor in connection with the construction of the Development as set forth herein. If Petitioner is not granted a waiver of the Rule, Petitioner will suffer substantial hardship to Petitioner, as such denial would otherwise put the Development in significant jeopardy of failure as Petitioner would likely lose its credits as it would be unable to receive its form 8609s and the extended use agreement required by Petitioner's tax credit investor under its operating agreement, which would further trigger a default thereunder and its financing documents, when the affiliated subcontractor was selected simply because it had the most competitive bid, would meet construction timelines, deliver an excellent work product, and maintain their budget without material cost increases. Therefore, by granting the requested waiver, the Florida Housing will prevent Petitioner from suffering substantial hardship that may occur should the additional extension not be granted.

13. Petitioner believes that a waiver of this Rule will serve the purposes of Section 420.5099, Fla. Stat. and the Act that are implemented by Chapter 67-48 F.A.C., as one of the goals is for the proceeds of Florida Housing financing to be used to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households. The Act was passed in order to create inducements and opportunities for private and public investment in rental housing to increase the supply of affordable housing for low-income persons and households. By granting this Petition, Florida Housing would recognize the goal of increasing the supply of affordable housing units via the construction of new developments throughout Florida.

14. In this instance, Petitioner meets the standards for a waiver of the Rule. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive funding in the RFA or Florida Housing and will ensure that 92 affordable units will be made available for individuals and families in Seminole County, Florida.

E. TYPE OF WAIVER

15. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

16. For the reasons set forth herein, the Petitioner respectfully requests the Corporation (i) grant a waiver of, or variance from, Rule 67-48.0072(17)(i) (2021) to permit Petitioner's general contractor to subcontract with an affiliated entity of the general contractor in connection with the construction of the Development as set forth herein; (ii) grant this Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted this 1st day of June 2026



Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356
Nelson Mullins Riley & Scarborough LLP
390 N. Orange Ave., Suite 1400
Orlando, Florida 32801
Telephone: 407-669-4241
Email: nick.heckman@nelsonmullins.com

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
Email: corporationclerk@floridahousing.org

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

This 1st day of June 2026.

By: _____



Nicholas W. Heckman, Esq.
Fla. Bar No. 0127356