

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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HTG ORCHID LAKE, LTD.,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2026-042VW
Application No. 2021-293CSN
RFA 2021-103

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.023(7), F.A.C. (6.23.20) AND RFA 2021-103

Petitioner, HTG Orchid Lake, Ltd., a Florida limited partnership (the “Petitioner”) pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code (“F.A.C.”), submits its Petition to Respondent, Florida Housing Finance Corporation (the “Corporation”), for a waiver of Rule 67-48.023(7), F.A.C., effective June 23, 2020 (“Rule”), as well as certain provisions of RFA 2021-103 (Housing Credit and SAIL Financing for Homeless Housing Developments Located in Medium and Large Counties) (“RFA”). Specifically, Petitioner requests a waiver of the requirement that the Certified Public Accountant (“CPA”) obtain a direct cost confirmation from ACM Development, LLC (“ACM”), the largest subcontractor by dollar volume on the project. In lieu of direct confirmation, the CPA verified ACM’s costs through an alternative procedure: review of pay applications and invoices on file. This alternative verification was necessitated solely by ACM’s cessation of operations, a circumstance outside the control of Petitioner or the General Contractor (“GC”). In support of this request, Petitioner states as follows:

A. THE PETITIONER.

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

Matthew A. Rieger
HTG Orchid Lake, Ltd
3225 Aviation Ave, 6th Floor
Coconut Grove, FL 33133
Telephone: (305)860-8188
Fax: N/A
Email: mattr@htgf.com

2. The name, address, telephone, and facsimile numbers of Petitioner's counsel are:

Brian J. McDonough, Esquire
Stearns Weaver Miller Weissler
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150 West Flagler Street
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B. DEVELOPMENT BACKGROUND.

3. The following information pertains to the development ("Development") underlying Petitioner's application:

- Development Name: Orchid Lake
- Development Address: 1490 Dignity Circle, Cocoa, FL 32922
- County: Brevard
- Developers: HTG Orchid Lake Developer, LLC and HfH Orchid Lake Developer, LLC
- Number of Units: 90 (new construction)
- Type: Garden
- Set Asides: 85% of units at or below 60% AMI and 15% at or below 33%.
- Demographics: Homeless individuals and families

- Funding: 9% HC request of \$1,700,000 annually; \$4,751,050 SAIL; \$380,000 ELI; \$556,500 NHTF; and \$4.3M SAIL CHIRP loan

C. RULE AND RFA PROVISION FROM WHICH WAIVER IS SOUGHT.

4. Rule 67-48.023(7), F.A.C. (6/23/20) 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.

Id.

5. Applicable to the Final Cost Certification Application ("FCCAP"), the RFA provides:

In accordance with Rule 67-48.023, F.A.C., the Final Cost Certification Application Package (Form FCCAP), Rev. April 2020, shall be used by an Applicant to itemize all expenses incurred in association with construction or Rehabilitation of a Housing Credit Development, including Developer and General Contractor fees as described in Rule 67 48.0072, F.A.C. . . . The FCCAP shall be completed, executed and submitted to the Corporation in both hard copy format and electronic files of the Microsoft Excel spreadsheets for the Housing Credit Development Final Cost Certification (DFCC) and the General Contractor Cost Certification (GCCC) included in the form package, along with the executed Extended Use Agreement and appropriate recording fees, 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 for both the DFCC and GCCC, an unmodified audit report prepared by an independent certified public accountant for both the DFCC and GCCC, photographs of the completed Development, the monitoring fee, and documentation of the placed-in-service date as specified in the Form FCCAP instructions. The Final Housing Credit Allocation

will not be issued until such time as all required items are received and processed by the Corporation.

See RFA, Ex. C, 5.c. (emphasis added).

6. Per the Form FCCAP, Rev. April 2020:

The General Contractor shall provide at least the following information to the Certified Public Accountant:

- 1) Completed Florida Housing's General Contractor cost certification forms, including any required descriptions of costs (see Attachment A: Trade Item Captions and Definitions);
- 2) Copy of construction contract and any change orders;
- 3) Listing of all sub-contractors utilized on the job, with amounts paid or to be paid;
- 4) Listing of all other costs and fees paid and/or incurred for the HC Development by the general contractor.
- 5) Listing of all sub-contractors related to the General Contractor utilized on the job.
- 6) Listing of all sub-contractors that are related or affiliated with any other sub-contractor utilized on the job.

The Certified Public Accountant performing the audit of the General Contractor's cost certification must send the following confirmation requests to the three largest dollar sub-contractors:

- 1) Confirm the construction contract amount;
- 2) Confirm any change orders;
- 3) Confirm what additional costs were incurred outside of the contract, if any;
- 4) Confirm the type of services provided (trade breakdown);
- 5) Confirm amounts paid to date and balance(s), if any, to be paid;
- 6) Request to clarify if it is related to the General Contractor; and
- 7) Request to clarify if it is related or affiliated to any other sub-contractor utilized on the job.

In addition, the Certified Public Accountant must randomly select other sub-contractors sufficient in number (but in no event less than five other sub-contractors), when taken together with the three largest dollar sub-contractors, to account for at least 40% of the total contract construction cost, and verify the amounts paid to each sub-contractor by reviewing check copies, contract documents, change orders, and other supporting information to verify amounts included within the cost certification for each sub-contractor selected. Florida Housing reserves the right to require a higher standard of requirements for the audit from the Certified Public Accountant than those provided herein when there is a contractual agreement between Florida Housing and another entity or individual involved in the delivery of the HC Development where such agreement calls for

such a higher standard requirement. The affected entity or individual would be required to inform the General Contractor of the higher standard requirement.

Id. at p. 2-3.

D. STATUTES IMPLEMENTED.

7. The Rule from which waiver is sought implements the statute governing the allocation of federal low-income housing tax credits (Section 420.5099, Florida Statutes).

E. JUSTIFICATION.

8. Petitioner timely submitted its Application for the Development on March 10, 2021.

9. The Development is a newly constructed affordable housing development.

10. The General Contractor for the project was Hennessy Construction Services Corp.

11. The Total Actual Construction Costs, as reflected in the General Contractor Cost Certification (“GCCC”), are \$18,107,677.

12. ACM served as the top subcontractor on the project, performing earthwork, site utilities, and roads/paving work across multiple trade line items, with total certified costs of \$2,106,838, representing approximately 11.64% of Total Actual Construction Costs.

13. Unfortunately, Petitioner’s CPA was unable to obtain a direct cost confirmation from ACM because ACM ceased business operations during the course of construction and is no longer in business. Despite multiple outreach attempts, the CPA received no response to its confirmation request.

14. In lieu of direct confirmation, the CPA verified ACM’s costs through an alternative procedure: review of pay applications and invoices on file.

15. The CPA performed the following alternative and supplemental verification procedures in connection with the GCCC:

- ACM (\$2,106,838 / 11.64%): Costs verified through review of pay applications and invoices, as ACM is **no longer in business** and was unable to return the required cost confirmation.
- Exact Plumbing, Inc. (\$1,888,167 / 10.43%): Cost confirmation obtained **directly** from the **second largest** subcontractor by dollar volume.
- Southern Integrated Systems, LLC (\$1,652,935 / 9.13%): Cost confirmation obtained **directly** from the **third largest** subcontractor by dollar volume.
- 84 Lumber Company (\$1,506,911 / 8.32%): Cost confirmation obtained **directly** from the **fourth largest** subcontractor by dollar volume.
- Wellington Professional Stucco & Drywall, Inc. (\$1,140,000 / 6.30%): Cost confirmation obtained **directly** from the **fifth largest** subcontractor by dollar volume.

In total, the CPA confirmed or verified \$9,458,509 in subcontractor costs, representing approximately 52% of Total Actual Construction Costs. The confirmed costs for the 4th and 5th largest subcontractors (*i.e.*, 84 Lumber Company and Wellington Professional Stucco & Drywall, Inc.), for which direct confirmations were obtained, represent a combined 14.62% of total project costs— exceeding the 11.64% share attributable to ACM. This provides substantial independent corroboration of the accuracy of the overall certified cost figures.

16. Petitioner respectfully submits that the circumstances described herein necessitating the waiver - namely, the dissolution of ACM during construction and the CPA's use of pay applications and invoices as a verified substitute procedure – were beyond Petitioner's control. Petitioner further submits that the supplemental direct confirmations obtained from the 4th and 5th largest subcontractors, representing a combined share of project costs greater than ACM's share, demonstrate the integrity of the certified costs notwithstanding the inability to obtain ACM's direct confirmation. To wit, the purpose of the Rule will be satisfied if this requested waiver is granted.

17. Under Section 120.542, Florida Statutes, Florida Housing has the authority to grant waivers to, or variances from, its requirements when strict application of the requirements would

lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, Section 120.542(2) states:

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. For purposes of this section, “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.

The controlling statutes and the Corporation’s Rules are designed to allow the flexibility necessary to provide relief when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Granting the requested variance in this instance would allow Petitioner to finalize the cost certification process and pursue issuance of the housing credits.

18. Additionally, by granting this waiver, the Corporation would recognize the goal of increasing private investment and participation in increasing the supply of affordable housing and promote the principles of fundamental fairness in developing affordable rental housing. The purpose of the underlying statute, which is to “encourage development of low-income housing in the state” as identified in Section 420.5099(2), Fla. Stat., would still be achieved if the variance is granted.

19. The Corporation has jurisdiction to grant a waiver of the Rule and Petitioner meets the standard for a waiver of the Rule.

20. Petitioner would suffer a substantial hardship if this Petition is denied. Specifically, Petitioner will lose the opportunity to access a large portion of the tax credit equity financing available to the Development if the Petition is not granted. Further, Petitioner would be required to repay all of the capital contribution previously made by the tax credit investor, with interest and

penalties, thus causing the Development to fail and for the lender to likely foreclose. Petitioner is unable, through no fault of its own, to obtain the information required by the FCCAP. Accordingly, absent the Corporation granting this Petition, it cannot issue Form 8609 to Petitioner. Failure or material delay in securing Form 8609 triggers severe financial penalties, risks the loss of the tax credit equity financing, and would force the repayment of capital contributions already made by the Investor Limited Partner.

21. As demonstrated above, the requested waiver serves the purposes of Section 420.5099, Florida Statutes, and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to low income persons and households. Further, by granting the requested waiver, the Corporation would recognize principles of fundamental fairness in the development of affordable rental housing.

22. A representative of Petitioner is available to answer any questions should the Corporation require additional information.

F. WAIVER IS PERMANENT.

23. The waiver being sought is permanent in nature.

G. ACTION REQUESTED.

24. Petitioner respectfully requests that the Corporation:

- a. Grant this Petition and all the relief requested therein;
- b. Grant a waiver of Rule 67-48.023(7), F.A.C. (6/23/2020), and the RFA, to permit the CPA to perform alternative verification procedures rather than obtain a direct cost confirmation from the subcontractor that, prior to its dissolution, operated in the form of ACM Development, LLC;

- c. Award such further relief as may be deemed appropriate.

Respectfully submitted,

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ALHADEFF & SITTERSON, P.A.
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By: s/ Brian J. McDonough
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served via e-mail for filing with the Corporation Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with a copy served by U.S. Mail on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 22nd day of July, 2026.

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