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FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

WHFT LL Workforce, Ltd.,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2026-067VW
Application No. 2025-345S
RFA No. 2024-213

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-48.0072(12), F.A.C. (08/27/2024) AND RULE 67-21.026(10), F.A.C. (08/27/2024)

Petitioner WHFT LL Workforce, Ltd., a Florida limited partnership ("Petitioner") submits this Petition to Respondent Florida Housing Finance Corporation (the "Corporation") for a waiver of Rules 67-48.0072(12) and 67-21.026(10), Florida Administrative Code ("F.A.C.") (eff. 08/27/2024) (collectively, the "Rules") requiring a singular guaranteed maximum price construction contract ("GMP"). The underlying development comprises Phase II of three closely sequential phases of a massive undertaking that is intended to provide 1,000 units, nine residential buildings and three parking garages. Significantly larger than most developments financed by the Corporation, the development needs a General Contractor ("GC") that specializes in: (a) concrete structures; (b) major site development matters, and (c) stick built construction. Unable to retain the services of a single GC that could provide the requisite mastery of this full scope on a cost-effective basis, a waiver of the Rules was requested, and granted by the Corporation's Board, for Phase I on March 28, 2025. Petitioner is facing the same issues for Phase II and must enter into separate GMPs with the same two GCs that were previously fully and properly vetted by the underwriter in conjunction with Phase I. Petitioner will also enter into a Dispute Resolution

Agreement with the two GCs under the same terms governing Phase I. 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:

Jonathan L. Wolf
1105 Kensington Park Dr. Suite 200
Altamonte Springs, FL 32714
Telephone: 407.333.3233 ext 202
FAX: N/A
Email: jwolf@wendovergroup.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.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
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Bridget Smitha
Stearns, Weaver, Miller, Weissler,
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106 E. College Ave. Suite 700
Tallahassee, FL 32301
Telephone: (850)329-4852
Facsimile: (850) 329-4864
E-Mail: bsmitha@stearnsweaver.com

B. THE DEVELOPMENT

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

- Development Name: Catchlight Crossings Live Local Workforce
- Development Address: 5621 Destination Pkwy Orlando FL 32819
- County: Orange County
- Developer: WHFT LL Workforce Developer, LLC
- Number of Units: 84 Units (New Construction)[1]

[1] Petitioner is in the process of requesting Corporation approval to increase the total units to 129 and to allow a corresponding change in set-asides and unit mix.

- Type: Mid-Rise (5-6 Stories)
- Set Asides: 5 units (5.952%) @ 30% AMI; 13 units (15.476%) @ 50% AMI; and 66 units (78.571%) @ 80% AMI[2]
- Demographics: Family
- Original Funding Awarded: The pending amount of $12,185,521 (SAIL Base Loan $11,793,621 plus ELI loan $391,900) is anticipated to be finalized once the credit underwriting report is completed and approved (an estimated SAIL Loan of $7,998,000)

C. PERMANENCY

4. The waiver being sought is permanent in nature.

D. RULES FROM WHICH WAIVER IS SOUGHT

5. Petitioner requests a waiver from Rule 67-48.0072(12), F.A.C. (08/27/2024), which provides, in relevant part, as follows:

> For Competitive HC, SAIL, and HOME, the Corporation's assigned Credit Underwriter shall require a guaranteed maximum price construction contract, which may include change orders for changes in cost or changes in the scope of work, or both, if all parties agree, and shall order, at the Applicant's sole expense, and review a pre-construction analysis for all new construction units and a CNA for rehabilitation units and review the Development's costs.

Petitioner also seeks a waiver of Rule 67-21.026(10), F.A.C. (08/27/2024), which states in pertinent part:

> (10) The Corporation's assigned Credit Underwriter shall require a guaranteed maximum price construction contract, acceptable to the Corporation, which may include change orders for changes in cost or changes in the scope of work, or both, if all parties agree, and shall order, at the Applicant's sole expense, and review a pre-construction analysis for all new construction units or a CNA for rehabilitation units and review the Development's costs.

[2] Petitioner is in the process of requesting Corporation approval to change the set asides to reflect 33 units (25.581%) @ 30% AMI; 31 units (24.031%) @ 50% AMI; and 65 units (50.388%) @ 80% AMI.

E. STATUTES IMPLEMENTED BY THE RULES

6. The Rules implement, among other sections of the Florida Housing Finance Corporation Act (the "Act"), Section 420.5087 (State Apartment Incentive Loan Program), Section 420.509 (Multifamily Mortgage 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 is one of three closely sequential phases of a massive undertaking that is intended to provide 1,000 units. Specifically, Petitioner anticipates the project will involve nine residential buildings and three parking garages:

- Phase I: 3 residential buildings, plus 1 concrete parking garage
- Phase II: 4 residential buildings, plus 2 concrete parking garages
- Phase III: 2 residential buildings (1 wood frame and 1 concrete frame)

Being substantially larger than developments typically financed by the Corporation, the Development required a GC that specializes in: (i) concrete structures; (ii) major site development matters, and (iii) stick built construction. Unfortunately, Petitioner was unable to retain the services of a single GC that could provide the requisite mastery of this full scope on a cost-effective basis.

8. Accordingly, the CUR for Phase I provided that: (i) WELBRO Building Corporation ("WELBRO") would provide the parking garage, hardscape and site finishes pursuant to an executed AIA Document A102-2017 Standard Form of Agreement where the basis of payment was the Cost of the Work plus a Fee with a Guaranteed Maximum Price dated September 23, 2024, in the amount of $13,926,078; (ii) WELBRO would also provide the site work as Petitioner executed AIA Document A102-2017 Standard Form of Agreement where the basis of

payment is the Cost of the Work plus a Fee with a Guaranteed Maximum Price dated June 23, 2023, in the amount of $19,283,380; and (iii) LandSouth Construction LLC ("LandSouth") would provide the vertical work pursuant to an executed AIA Document A102-2017 Standard Form of Agreement where the basis of payment was the Cost of the Work plus a Fee with a Guaranteed Maximum Price dated September 20, 2024, in the amount of $67,664,344.27. In conjunction with that CUR, each of the two GCs went through extensive underwriting, including review of the GMPs and the plans as part of the Plan and Cost Review. As such, the GCs were fully and properly vetted by the underwriter.

9. The work performed by WELBRO for Phase I had to appear in a GMP separate from the GMP with LandSouth because WELBRO could not bond over LandSouth's work (and vice versa) without unnecessarily incurring additional bond fees of approximately $300-500k.[3] Additionally, Rules 67-48.0072(17)(e) and 67-21.026(13)(d), F.A.C., prohibit a GC from subcontracting its duties to manage and control the construction. Thus, WELBRO was prohibited from subcontracting its duties to manage and control the vertical work, even though it lacked LandSouth's stick built construction experience. Conversely, LandSouth was prohibited from subcontracting its duties to manage and control the site work, parking garage, hardscape and site finishes, even though it lacked WELBRO's experience in these areas. Moreover, Rules 67-48.0072(17)(g) and 67-21.026(13)(f), F.A.C., prohibited the GC from subcontracting work that exceeded the cap stated therein. Because the contracts identified in the Phase I CUR would have exceeded the cap set by the Rules, neither GC could act as a subcontractor for the other. For the

[3] For example, if LandSouth performed as a subcontractor for WELBRO, WHFT Affordable II, Ltd. would have to pay for their work, as well as for their performance bond. With a bond fee of 0.8%, WHFT Affordable II, Ltd. would needlessly have incurred additional bond fees of approximately $500k for Phase I.

foregoing reasons, WHFT Affordable II, Ltd. had to enter into more than one GMP for Phase I and filed a petition on March 6, 2025 requesting a waiver of the Rules in order to do so.

10. That petition stated that a waiver of the Rules would not prejudice the Development or the Corporation; rather, the use of more than one GMP would result in substantial cost savings. By contracting directly with the GC for Phase I, WHFT Affordable II, Ltd. received the same scope and work as if it had been subcontracted while eliminating the markup for contractor overhead, conditions and profits for any work self-performed by the GC. Additionally, WHFT Affordable II, Ltd. avoided needless bond fees.

11. Based on the foregoing, the Corporation's Board granted a waiver of the Rules in conjunction with Phase I on March 28, 2025. *See In Re: WHFT Affordable II, Ltd.*, FHFC Case No.: 2025-013VW. The Board's Order specifically recognized: "Due to the Development's complexity, including the need for specialized construction expertise, requiring a singular guaranteed maximum price construction contract would be impractical in this instance if the waiver is not granted. This waiver was expressly conditioned upon WHFT Affordable II, Ltd.'s receipt of an agreement, acceptable to Florida Housing, its counsel, and its servicer, that included provisions addressing a process for resolving disputes between the general contractors. *Id.* Accordingly, WHFT Affordable II, Ltd., entered into a Dispute Resolution Agreement with the two GCs.

12. Petitioner is now actively negotiating the GMPs for Phase II, and for the same reasons outlined above, must enter into two separate GMPs. Accordingly, for the same reasons the Board granted a waiver of the Rules for Phase I, Petitioner respectfully requests a waiver in relation to Phase II. As a condition thereof, Petitioner entered into a Dispute Resolution Agreement with the two GCs.

13. Under Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., 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.

14. 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 129 affordable housing units will be preserved and made available for the target population in Orange 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.

15. 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 WHFT LL Workforce, Ltd., respectfully requests that the Corporation:

a. Grant Petitioner the requested permanent waiver from Rules 67-48.0072(12) and 67-21.026(10), F.A.C. (eff. 08/27/2024) such that Petitioner may proceed with two separate guaranteed maximum price construction contracts;

b. Grant the Petition and all the relief requested therein; and

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

Respectfully submitted,

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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 a copy served by e-mail on the Joint Administrative Procedures Committee, JAPC@leg.state.fl.us, this 14th day of October, 2026.

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