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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

WHFT Affordable II, Ltd.,
a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2025-013VW
Application No. 2025-157BS / 2021-562C
RFA No. 2024-216

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

AMENDED[1] PETITION FOR WAIVER OF RULE 67-48.0072(12), F.A.C. (6/28/23) AND RULE 67-21.026(10), F.A.C. (6/28/23)

Petitioner WHFT Affordable II, 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. 6/28/23) (collectively, the "Rules") requiring a singular guaranteed maximum price construction contract ("GMP"). As recognized in the final credit underwriting report ("CUR"), Petitioner has entered into GMPs with two separate General Contractors ("GC"): a GC that specializes in stick built construction, and a GC that specializes in concrete structures (for the parking garage and underground work) and major site development. Because Rules 67-48.0072(17)(e) and 67-21.026(13)(d), F.A.C., prohibit the GC from subcontracting its duties to manage and control the construction, and Rules 67-48.0072(17)(g) and 67-21.026(13)(f), F.A.C., prohibit the GC from subcontracting work that exceeds the cap stated therein, neither GC could serve as a subcontractor for the other. Additionally, neither GC could bond over the other's work without unnecessarily incurring additional and duplicative fees of $300-500k, thereby necessitating more

[1] This Amended Petition is being filed for the sole purpose of referencing the June 28, 2023 version of the Rules as opposed to the July 7, 2024 version. The language of the Rules is the same as between the two versions.

than one GMP. 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
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Tallahassee, FL 32301
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E-Mail: bsmitha@stearnsweaver.com

B. THE DEVELOPMENT

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

- Development Name: Catchlight Crossings
- Development Address: 5621 Destination Pkwy, Orlando, FL, 32819
- County: Orange County
- Developer: WHFT Affordable II Developer, LLC
- Number of Units: 300 Units (New Construction)
- Type: Mid-Rise (5-6 Stories)

- Set Asides: 30 units (10.00%) @ 50% AMI; 140 units (46.67%) @ 60% AMI; and 84 units (28.00%) @ 80% AMI
- Demographics: Family
- Funding: $25,000,000 SAIL; $70,000,000 MMRN; $6,178,895 4% HC (annually)

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. (6/28/23), which provides, in relevant part, as follows:

> (12) 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. (6/28/23), 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.

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 (Phase I) 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. Accordingly, the CUR provides that: (i) Welbro Building Corporation ("Welbro") will 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 is 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 will 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") will provide the vertical work pursuant to an 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 September 20, 2024, in the amount of $67,664,344.27. In conjunction with the CUR, each of the two GCs contemplated went through extensive underwriting, including review of the GMPs and

the plans as part of the Plan and Cost Review. As such, the GCs have already been fully and properly vetted by the underwriter.

8. The work performed by Welbro 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.[2] 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 would be prohibited from subcontracting its duties to manage and control the vertical work, even though it lacks LandSouth's stick built construction experience. Conversely, LandSouth would be prohibited from subcontracting its duties to manage and control the site work, parking garage, hardscape and site finishes, even though it lacks Welbro's experience in these areas. Moreover, Rules 67-48.0072(17)(g) and 67-21.026(13)(f), F.A.C., prohibit the GC from subcontracting work that exceeds the cap stated therein. Because the contracts identified in the CUR would exceed the cap set by the Rules, neither GC could act as a subcontractor for the other. For the foregoing reasons, Petitioner must enter into more than one GMP and respectfully requests a waiver of the Rules in order to do so.

9. A waiver of the Rules would not prejudice the Development or the Corporation. Indeed, the use of more than one GMP will result in substantial cost savings. By contracting directly with the GC, Petitioner will receive 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.[3] Additionally, Petitioner will avoid needless bond fees.

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[2] For example, if LandSouth performed as a subcontractor for Welbro, Petitioner would have to pay for their work, as well as for their performance bond. With a bond fee of 0.8%, Petitioner would needlessly incur additional bond fees of approximately $500k.

[3] The CUR expressly provides: "Contractor may self-perform minor portions of the work without bidding such work as long as the Contractor only charges the cost of the work and no additional fee, overhead or general conditions are charged." *See* CUR, p. A-12. Where the GC controls its own labor pool, there is no downtime or scheduling gaps as the GC's labor can immediately flow

10. 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.

11. 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 300 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.

12. 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 Affordable II, 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. 6/28/23) such that Petitioner may proceed with the guaranteed maximum price construction contracts identified in the CUR;

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

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from one project to the next within the same development. In contrast, where the work is subcontracted, the GC must wait for the subcontractor to have room in its schedule to come to the development.

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 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 20th of March, 2025.

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