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IN RE: BLUE CASL ORLANDO, LLC.

FHFC CASE NO. 2025-017VW
Application No. 2018-532C
Application No. 2019-166BS
RFA No. 2018-116

AMENDED PETITION FOR WAIVER OF FLORIDA ADMINISTRATIVE CODE RULES 67-21.026(13)(e) AND 67-48.0072(17)(f)

Petitioner, Blue CASL Orlando, LLC., as Applicant/Owner, pursuant to section 120.542, Florida Statutes, ("F.S.") and chapter 28-104, Florida Administrative Code, ("F.A.C.") petitions Florida Housing Finance Corporation (Florida Housing) for a waiver pertaining to the scope of work a general contractor may perform ("GC Self Performance") in Rules 67-21.026(13)(e) and 67-48.0072(17)(f), F.A.C. (2018 as amended) In support of this Petition, Petitioners state:

A. Petitioners and the Development

1. The name, address, telephone, and email address for the Petitioner are:

Blue CASL Orlando, LLC.
180 Fountain Parkway North, Suite 100
St. Petersburg, FL 33716
Telephone: (813) 384-4825
Email: swilson@blueskycommunities.com

Petitioner Fairlawn Village is the Applicant/Owner.

2. The contact information for the Petitioner's counsel is:

Michael Donaldson
Carlton Fields
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On behalf of Blue CASL Orlando, LLC

3. On November 27, 2018, Petitioner submitted an application in response to RFA 2018-116 for SAIL Financing of Affordable Multifamily Housing Developments to Be Used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits. (the "RFA") and was assigned Application No.2018-532C and No. 2019-166BS the "Application") seeking SAIL in the amount of $6,250,000, ELI loan in the amount of $600,000, NHTF loan in the amount of $1,308,000, MMRB in the amount of $12,000,000, and Housing Credits in the amount of $906,999 to assist in the construction of a 116-unit development located in Orlando, Florida, known as Fairlawn Village (the "Development"). The Applicant received an invitation into credit underwriting from Florida Housing on May 16, 2019, which was accepted by Applicant on May 16, 2019.

4. Here is the requested background information regarding the Development:

Application Number:	2018-532C 2019-166BS
RFA No.	2018-116
Development Name:	Fairlawn Village
Applicant/Borrower:	Blue CASL Orlando, LLC
Developer/Principal:	Blue Sky Communities, LLC
Developer/Principal:	CASL Developer, LLC
Number of units:	116
County of Development:	Orange
Development/Type:	Mid-Rise Garden Apartments
Set Asides:	116 units at or below 60%
Demographics:	Family
Funding Amounts:	Housing Credits $906,999

B. Type of Waiver

5. The waiver being sought is permanent in nature.

C. Rule For Which a Waiver Is Requested

6. Petitioner requests a waiver from Rules 67-21.026(13)(e) and 67-48.0072(17)(f), F.AC., which both require the General Contractor to meet the following condition:

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

7. To the extent necessary under the Rules and Florida law, Applicant also requests a waiver for the comparable language set forth in the Applicant's certification and acknowledgement form.

8. The Rule, as well as the Applicant's certification and acknowledgement form, prevents GC Self-Performance of work normally performed by subcontractors.

9. On April 29, 2022, during the 2022 rule development process, , the Florida Housing Board of Directors approved a change in these rules to allow the General Contractor to self-perform a limited amount of work as follows: (f) Ensure that no construction or inspection work is performed by the General Contractor, with the following exceptions: (i) the General Contractor may perform its duties to manage and control the construction of the Development; and (ii) the General Contractor may self-perform work of a de minimis amount, defined for purposes of this paragraph as the lesser of $350,000 or 5 percent of the construction contract.

10. As part of the Board's action, the Board also approved the rule to be retroactively applied to Developments that had previously submitted applications under prior rule versions. The amount of work that was self-performed on the Fairlawn Village Development exceeds the de minimis amount as defined in the 2022 rule, and therefore, based on this Board action, a rule waiver and approval is required.

D. Statutes Implemented by the Rule

11. The Rule implements, among other sections of the Florida Housing Finance Corporation Act, section 420.5089, F.S., relating to the State Apartment Incentive Loan Program, and section 420.5099, F.S., relating to the allocation of Low-Income Housing Tax Credits.

E. Justification for Granting the Requested Waiver From the Rule

12. Under Section 120.542(1), F.S., 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), F.S. 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 principals 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, "principals 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.

13. Petitioner is the Applicant for the Fairlawn Village Project ("Project") and is subject to the Rule. Petitioner requests a waiver of the Rule, as well as any equivalent requirement in the Applicant's certification and acknowledgement form, prohibiting GC Self-Performance for certain scopes of work on the Project.

14. Petitioner on February 6, 2020, entered into a Standard Form Construction Contract Agreement with NDC Construction Company ("NDC"), where the basis of the payment

is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price ("Fairlawn Village Contract").

15. Due to the COVID-19 pandemic, the construction industry experienced extended labor shortages. NDC Construction responded to the shortages and the uncertain subcontractor labor and supervision market by stepping in to coordinate material installation typically performed by the subcontractors. In many cases NDC performed the punch and completion work when no labor was available. This work includes, but is not limited to rough carpentry, trim carpentry, drywall, stucco, painting, flooring, caulking, and other specialties.

16. Specifically, $442,737 was the amount of self-performed work done as follows:

55,342.00	Rough Capentry
55,337.00	Finish Carpentry
55,342.00	Doors
55,342.00	Drywall
55,342.00	Resilient Flooring
55,342.00	Painting and Decorating
55,342.00	Appliances
55,342.00	Specialties
442,731.00	

17. NDC Construction used billable rates that are standard practice in a GMP construction contract for the punch list labor that is performed. Punch list labor was performed by NDC employees. These rates are across the board average rates that the labor hours cost the project. These rates are inclusive of all standard allowable labor expenses and no additional fees or profit was built into these figures.

16. Under Section 120.542(1), F.S., 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: (l) 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. § 120.542(2), F.S. (2025).

17. In this instance, Petitioner meets the standards for a waiver of the Rule, and its prohibition against GC Self-Performance provided in the Rule. The requested waiver will not adversely affect the Development or Florida Housing and will ensure that 120 much needed affordable housing units will be made available for a vulnerable segment of the population in Orange County, Florida.

18. The strict application of the Rule and the prohibition against GC Self-Performance will create a substantial hardship for Petitioner because it would substantially increase the cost of the Project and delay the delivery of these much-needed units in Orange County if additional subcontracted labor is required to be hired. 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. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income.

19. By granting this waiver, Florida Housing will recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income and recognizing the economic realities and principles of fundamental fairness in developing affordable housing. See s. 420.5099(2), *F.S.*

F. Action Requested

WHEREFORE, the Petitioner respectfully requests that Florida Housing:

(i) Grant the requested waiver of Rules 67-21.026(13)(e) and 67-48.0072(17)(f), F.A.C. (2018 as amended) and to the extent required, the Applicant's certification and acknowledgement form, for the scopes of work identified herein, as applicable;

(ii) Grant this Petition and all of the relief requested herein, including but not limited to NDC's ability to recover its legally identified markup pursuant to Rules 67-21.025(12)(b) and 67-48.0072(16)(b), F.A.C. and the Fairlawn Village Contract; and

(iii) Grant such further relief as may be deemed appropriate.

Respectfully submitted this 15th day of April 2025.

Respectfully submitted,

/s/ Michael P. Donaldson

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Counsel for Blue CASL Orlando, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Petition for Waiver is being served by electronic transmission for filing with Ana McGlamory, Agency Clerk (CorporationClerk@floridahousing.org) and Ethan Katz, Assistant General Counsel (ethan.katz@floridahousing.org) for the Florida Housing Finance Corporation, at 227 North Bronough Street, Tallahassee, Florida 32301, with a copy served via electronic transmission on the Joint Administrative Procedures Committee, at (JAPC@leg.state.fl.us), at 680 Pepper Building, 111 W. Madison Street, Tallahassee, FL 32399, this 15th day of April 2025.

/s/ Michael P. Donaldson
Attorney