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FLORIDA HOUSING FINANCE CORPORATION

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

The Park at Palo Alto, LLC

Petitioner,

FHFC CASE NO. 2025-015VW
Application No. 2019-552C

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

PETITION FOR WAIVER OF RULES 67-21.014(2)(r)(6) and 67-21.026(13)(e)

Petitioner The Park at Palo Alto, LLC (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing") for a partial waiver of Rules 67-21.014(2)(r)(6) and 67-21.026(13)(e), Florida Administrative Code ("F.A.C.") (the "Rule"), as incorporated and adopted by the 2019 Qualified Allocation Plan ("2019 QAP"), pertaining to the scope of work a general contractor can perform ("GC Self-Performance"). In support, Petitioner states as follows:

A. THE PETITIONER

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

The Park at Palo Alto, LLC
1022 West 23rd Street,
Suite 300
Panama City, FL 32405
Attn: Joseph F. Chapman, IV
Telephone: 850-769-8981
E-mail: joey.chapman@royalamerican.com

2. The address, telephone and e-mail address of Petitioner's counsel is:

Cecilia Redding Boyd
Florida Bar No. 0004030
Boyd Law Office, P.A.
211 East Fourth Street
Panama City, FL 32401
Tel: (850)872-8514
Email: cboyd@boydlawofficepa.com

3. On October 9, 2019, Petitioner timely submitted its Application in response to RFA 2019-111 for RRLP Financing To Be Used For Rental Developments In Hurricane Michael Impacted Counties (the "RFA") to assist in the construction of a 120-unit development located in Panama City, Bay County, Florida (the "Development"). Petitioner requested RRLP Financing in the amount of $8,400,000, ELI Financing in the amount of $820,200, an annual 4% HC Allocation of $1,177,022 and Non-Competitive Tax-Exempt Bonds in the original amount of $10,000,000 which increased to $12,500,000.00 based on a request that was reviewed and approved on March 4, 2021. The Development received the requested allocation of RRLP and ELI Financing and Non-Competitive Tax-Exempt Bonds ("FHFC Financing") and was invited to credit underwriting on March 11, 2020.

4. On May 26, 2021, Petitioner filed a Petition for Waiver of Rules 67-21.014(2)(r)(6) and 67-21.026(13)(e) seeking a rule waiver to allow its General Contractor (the "GC") to conduct self-performance work, and the Board granted the waiver in the estimated amount of $352,308.

B. WAIVER IS PERMANENT

5. The partial waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

6. Petitioner requests a partial waiver of Rules 67-21.014(2)(r)(6) and 67-21.026(13)(e), F.A.C. as adopted by Subsection III of the 2019 QAP, which identically provide:

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

7. Subsequently, Rules 67-21.014(2)(r)(6) and 67-21.026(13)(e), F.A.C. were amended to identically provide:

The General Contractor may self-perform work of a de minimis amount, defined for purposes of this subparagraph as the lesser of $350,000 or 5 percent of the construction contract;

8. Petitioner requests a partial waiver of the above Rules to permit the GC to conduct self-performance work in excess of the de minimis amount automatically allowed.

D. STATUTES IMPLEMENTED BY THE RULE AND THE 2019 QAP

9. The 2019 QAP and the Rule implemented, among other sections of the Florida Housing Finance Corporation Act (the "Act"), the statutes relating to the allocation of Low-Income Housing Tax Credits contained in Section 420.5099 of the Florida Statutes. *See §420.5099, Fla. Stat. (2019)* (the "Statute").

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND SUBSECTION III OF THE 2019 QAP.

10. Petitioner requests a partial waiver of the Rule prohibiting GC Self-Performance.

11. Construction of the Development has now been completed, and the cost of the portion of the Contract that was self-performed by the GC was more than originally estimated. According to the cost certification submitted to and currently under review by Florida Housing, the total payment to the GC was $506,655. This amount includes $458,755 for labor expenses and $47,900 for sand provided for the Project.[1] The total paid to the GC exceeded the previously approved amount of

[1] The GC dug the sand from another construction site and rented a sifter to filter the sand. The GC did not charge for any labor incurred in digging or filtering the sand or for the rental of the sifter. The sand was transported to the site free of charge by a third-party subcontractor working on the Project. The GC charged $2.00 per cubic yard to the owner for the sand which was a reasonable rate for the product in the relevant market at the relevant time.

$352,308 by $154,347. The attached Exhibit A shows the estimated costs and the actual costs of the self-performed work. As justification for the increased costs, Petitioner would show:

a.) The Development was originally engineered to include a wet pond. The wet pond did not function as engineered and had to be converted to a dry pond, resulting in additional costs for excavation, fill, grading and erosion control.

b.) The unit cleaning labor was not included in the original estimate for self-performed work because the GC expected to subcontract that work out to a third party. However, the work had to be self-performed because no third-party provider was available to perform the work at the necessary time.

c.) Unexpected sidewalk, curb and gutter work was required, and it was necessary to self-perform because a third-party provider was not available to perform the work on the schedule necessary to ensure timely completion of the Development.

12. As justification for the need for the GC's self-performance, Petitioner would show:

a.) The Development replaces an apartment complex that was completely destroyed on October 10, 2018 by Hurricane Michael, a Category Five Hurricane. Affordable housing was in short supply prior to Hurricane Michael's impact, and Bay County's limited affordable housing stock was disproportionately impacted by Hurricane Michael's devastation. The funding provided by the RFA was in specific response to the area's need to replace Hurricane Michael destroyed affordable housing stock.

b.) The GC is headquartered in and performs substantial work in Panama City for its affiliated entities and for unrelated third parties. The GC often self-performs under its construction contracts because other local third-party providers are unavailable unqualified or unwilling to perform the work.

c.) Due to the massive amount of rebuilding Bay County was experiencing as a result of Hurricane Michael, subcontractors were booked for extended periods of time. The GC's ability to self-perform site work ensured the Development was built as timely as possible.

d.) Actual GC labor incurred was $458,755 and payment to the GC for materials was $47,900. The GC has not received and will not receive any profit, overhead or general requirement percentages on those amounts.

e.) The saving achieved through the GC's self-performance and the accompanying savings on profit and overhead resulted in a reduced overall cost of the Development and less profit to the GC.

13. The requested waiver will not impact other participants in funding programs administered by Florida Housing, and it will not detrimentally impact Florida Housing.

13. Under Section §120.542(1), *Fla. Stat.*, 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: (1) create a substantial hardship or, violate principles of fairness,[2] 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.* (2019).

14. In this instance, Petitioner meets the standards for a waiver of the Rule, and its prohibition against GC Self-Performance provided in the Rules 67-21.014(2)(r)(6); 67-21.026(13)(e). The requested waiver will not adversely impact the Development or Florida Housing and will ensure that

[2] "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. 120.542(2), Fla. Stat. (2019)

120 new affordable family housing units will be constructed timely; in a cost-effective manner; and made available for the target population in Bay County, Florida. The strict application of the Rules 67-21.014(2)(r)(6); 67-21.026(13)(e); and their prohibition against GC Self-Performance will create substantial hardship for Petitioner because it would substantially increase the cost of the Development and significantly delay the delivery of the Development. 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. In addition, Florida Housing has granted similar requested waivers to RAC in the past.

15. As mentioned above, the requested waiver serves the purpose of the Statute because one of the primary goals of the Statute is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida for low-income households. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, Florida Housing would 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 rental housing. See §420.5099(2), *Fla. Stat*. (2019).

14. ACTION REQUESTED

WHEREFORE, Petitioner The Park at Palo Alto, LLC respectfully requests Florida Housing:

A. Grant this Petition and all of the relief requested herein;

B. Grant the requested partial waiver of Rules 67-21.014(2)(r)(6) and 67-21.026(13)(e) as adopted by Subsection III of the 2019 QAP and allow the GP

Self-Performance for an additional $106,447 for labor and $47,900 for material provided; and

C. Grant such further relief as it may deem appropriate.

Respectfully submitted on March 11, 2025.

/s/ *Cecilia Redding Boyd*
Cecilia Redding Boyd
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211 East Fourth Street
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Counsel for Petitioner, The Park at Palo Alto, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition for Waiver is being filed by electronic filing (with a copy by U.S. Mail) with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301 and a copy has been served on the Joint Administrative Procedures Committee at joint.admin.procedures@leg.state.fl.us this 11th day of March, 2025.

/s/ *Cecilia Redding Boyd*
Cecilia Redding Boyd

Exhibit A

The Park at Palo Alto Self Performing Work

Royal American Construction Co., Inc.

Description of Work	Est. Labor	Actual	Total Additional Costs
Supervision	75,000.00		(75,000.00)
Group Ins/401K/ESOP	40,664.00		(40,664.00)
Layout			
Mobilization			
Grading	62,114.00	191,331.08	129,217.08
Erosion Control	2,837.00	17,899.30	15,062.30
Paving Asphalt	23,133.00	24,289.27	1,156.27
Curb & Gutter Concrete		54,908.53	54,908.53
Striping/Pavement Markers			
Sanitary Sewer	19,535.00	28,970.49	9,435.49
Water	50,173.00	41,647.90	(8,525.10)
Storm Sewer	64,317.00	42,274.61	(22,042.39)
Fencing			
Sod	14,535.00	2,738.61	(11,796.39)
Punch Out/Final Clean		54,695.21	54,695.21
Sand		47,900.00	47,900.00
TOTALS	**352,308.00**	**506,655.00**	**154,347.00**