RECEIVED

MAY 21 2025 4:02 PM

FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

PINE GROVE VOA AFFORDABLE HOUSING, LP, a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2025-022VW
Application No. 2023-513C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

PETITION FOR WAIYER OF RULE 67-21.026(10), F.A.C. (6/28/23)

Pine Grove VOA Affordable Housing, LP, a Florida limited partnership ("Petitioner"), by and through its undersigned counsel, hereby respectfully petitions Respondent, Florida Housing Finance Corporation (the "Florida Housing") pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code ("F.A.C."), for a waiver of Rule 67-21.026(10), F.A.C. (6/28/23) (the "Rule"), which requires that all construction costs are included in the guaranteed maximum price construction contract ("GMP Contract"). The waiver is sought to permit roofing costs to be excluded from the GMP Contract. After the work identified in the GMP Contract was substantially complete, and the General Contractor ("GC") was winding down to move on to another project, Petitioner engaged a roofing company to remove and replace the roof. By contracting directly with the roofing company, Petitioner recognized significant cost-savings in the form of avoiding GC mark ups (no additional markup or fees were included in the roofing contract – Petitioner paid the amount quoted for labor and material). Oversight by a separate GC was not required because the roof work was inspected (and approved) by the Alachua County Department of Growth Management. Petitioner therefore respectfully requests a Rule waiver and states as follows in support:

A. THE PETITIONER

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

Dejernette Beaty[1]
Volunteers of America National Services
1660 Duke Street
Alexandria, VA 22314
Phone: (703)341-5081
Fax: N/A
E-mail: DBeaty@voa.org

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

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street
Suite 2200
Miami, Florida 33130
Telephone: 305-789-3350
Fax: 305-789-3395
Email: Bmcdonough@stearnsweaver.com

Bridget Smitha
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
106 East College Avenue, Suite 700
Tallahassee, FL 32301
Telephone: 850-329-4852
Fax: 850-329-4844
Email: BSmitha@stearnsweaver.com

B. DEVELOPMENT BACKGROUND

3. The following information pertains to the development underlying Petitioner's application:

- Development Name: Pine Grove Apartments
- Development Address: 1901 NE 2nd Street, Gainesville, FL 32609
- County: Alachua

[1] Kimberly King was identified as the authorized principal representative in the Application. Petitioner submitted a formal request on May 20, 2025, to change the authorized principal representative for the Development to Dejernette Beaty.

- Developer: Volunteers of America National Services
- Number of Units: 97 units (acquisition/rehabilitation)
- Type: Garden-style apartments
- Set Asides: 20% at or below 50% AMI and 80% at or below 60% AMI
- Demographics: Elderly Non-ALF
- Funding: $584,058 Non-Competitive (4%) HC (annual amount)

C. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

D. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver of Rule 67-21.026(10), F.A.C., entitled "HC Credit Underwriting Procedures," effective June 28, 2023, which provides in pertinent part:

> 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. STATUTE IMPLEMENTED BY THE RULE.

6. The Rule implements Section 420.5099 (Allocation of the low-income housing tax credit) of the Florida Housing Finance Corporation Act (the "Act").[2] The Act designates Florida Housing as the State of Florida's housing credit agency within the meaning of Section 42(h)(8)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for, and is authorized to establish procedures for, the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). *See* § 420.5099(1) and (2), Fla. Stat.

[2] The Act is set forth in Sections 420.50 through 420.55 of the Florida Statutes.

Accordingly, the, Rule implements, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the HC Program. *Id*.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

7. Petitioner submitted its non-competitive application package on or about November 7, 2023 and was invited to enter credit underwriting on February 28, 2024.

8. The Development's rehabilitation primarily involved interior work. The budget for the Development from the sources available at closing was therefore consumed by the interior work, minor exterior work, and some roof work on an auxiliary building. Accordingly, the scope of the original statement of work and the GMP were limited to these items. It was only after Petitioner had sufficient realized savings on the GMP that it decided to evaluate and undertake roof work (*i.e.*, shingle roof replacement) for the main building.

9. At that point, the rehab was substantially complete and the GC was winding down its work at the Development and moving on to a new project. Because the main building roof work was not initially contemplated, no permits had yet been applied for. Since Petitioner knew the permitting for the roof work would take a lot of time, Petitioner could not hold the GC in place after its work was complete.[3] First, although idle, having the GC remain on site for an additional four months would have caused Petitioner to incur costs that would have eaten through the remaining funds needed to perform the roof work. Second, the additional General Conditions would have exceeded the permissible limit.

10. Petitioner determined it would be faster and more cost-effective to complete the roof work for the main building directly through Worthmann LLC ("Worthmann"). The new roof work was beyond the scope of the original GMP and not work traditionally overseen by a

[3] The GC finished its work and discontinued its presence at the Development in approximately March 2023 and the roofing work did not begin until July 2023.

separate GC. Accordingly, Petitioner entered into an agreement directly with Worthmann on June 26, 2023 to remove and replace the existing roof. There were no additional markups or fees added to the labor and material quote. In all, Worthmann completed work valued at $127,518.38[4] outside of the GMP, which comprised 3.9% of the total construction cost.[5]

11. Excluding the roof cost from the GC Contract saved money by avoiding a markup by the GC. Petitioner also avoided additional General Conditions costs by not holding the GC in place after the GC's work was complete.

12. No separate oversight from the GC was required because the roof work was inspected (and approved) by the Alachua County permitting office (*i.e.*, the Department of Growth Management).

13. Forcing Petitioner to include the roof work costs in the GC Contract at this late stage would cause substantial hardship to Petitioner as the work has already been completed and paid. If this Petition is denied, Petitioner would lose those credits assigned to the contract amount, and a portion of the sources they anticipated in closing the project, thereby negatively impacting the financial feasibility of the Development. This could have a cascading effect on the ability of Petitioner's non-profit sponsor to provide additional affordable housing projects in Florida.

14. Petitioner respectfully requests a Rule waiver to allow the roof costs to be paid outside of the GMP Contract.

15. 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

---

[4] $114, 858.84 via invoice dated July 30, 2023 plus a $12,659.54 deposit via invoice dated June 29, 2023. The work commenced on or about July 5, 2023 and was completed within a month.

[5] The total construction cost was $3,196,117.

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,[6] and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Fla. Stat.

16. In this instance, Petitioner meets the standards for a waiver of the Rule. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 97 affordable housing units will be made available for the target population in Alachua County, Florida. The requested 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. By granting this waiver, and further ensuring the rehabilitation of 97 affordable housing units in Alachua County, 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 housing. *See* § 420.5099(2), Fla. Stat.

17. The foregoing demonstrates the hardship and other circumstances justifying this Petition.

18. Should Florida Housing require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

---

[6] "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. *See* § 120.542(2), Fla. Stat.

G. ACTION REQUESTED

19. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested waiver to permit the roof costs to be excluded from the guaranteed maximum price construction contract; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, 22nd Floor
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@stearnsweaver.com

Counsel for Petitioner

By: */s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by electronic transmission for filing with the Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with a copy served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 21st day of May, 2025.

By: */s/ Brian J. McDonough*
Brian J. McDonough, Esq.