

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: HILLTOP POINTE, LP

FHFC Case No.: 2020-033VW

**ORDER GRANTING WAIVER OF RULES 67-21.014(2)(r)(6);
67-21.026(13)(e); and 67-48.0072(17)(f), FLORIDA
ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on June 11, 2020. Florida Housing Finance Corporation (“Florida Housing”). On May 12, 2020, Florida Housing received a “Petition for Waiver of Rules 67-21.014(2)(r)(6); 67-21.026(13)(e); and 67-48.0072(17)(f)” (the “Petition”). The Notice of the Petition was published on May 14, 2020, in Volume 46, Number 95, of the *Florida Administrative Register*. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (“Board”) of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. Hilltop Pointe, LP (“Petitioner”) was selected to receive HOME funding under RFA 2019-109 (HOME Financing To Be Used For Rental

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Tom Blamery /DATE: 6/11/2020

Developments In Hurricane Michael Impacted Counties And In Rural Areas) to assist in the construction of Hilltop Pointe (“Development”).

3. Rules 67-21.014(2)(r)6., 67-21.026(13)(e), and 67-48.0072(17)(f), Fla. Admin. Code, identically provide:

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

4. Petitioner requests a waiver from the above Rules to permit its General Contractor (to conduct some self-performance work. On October 10, 2018, Bay County was severely impacted by Hurricane Michael, leading to the issuance of RFA 2019-109. The Royal American Companies (“RAC”), of which Developer is part, have developed affordable housing in Bay County since 1969, including work as a General Contractor.

5. Petitioner requests this partial waiver of the above Rules to permit self-performance by the RAC General Contractor based on the following:

- a) Due to the massive amount of rebuilding in the area, subcontractors are booked for extended periods of time;
- b) 80% of the Development site work is either materials or third-party work. Actual RAC labor dollars approximate \$155,000 and no GC profit, overhead or general requirements percentages will be applied to this amount;

- c) RAC could obtain only one competitive bid from another site work subcontractor, which was 17% more than if RAC self-performs a portion of the site work;
- d) RAC's self-performance of the Development site work will reduce the work cost by 20%, although RAC will make less profit.

6. Section 120.542(2), *Florida Statutes*, provides in pertinent part:

Variations 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 principles of fairness.

7. Granting the requested waiver would not impact other participants in funding programs administered by Florida Housing, nor would it detrimentally impact Florida Housing.

8. Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver is not granted.

9. Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

IT IS THEREFORE ORDERED: Petitioner's request for a waiver of Rules 67-21.014(2)(r)(6); 67-21.026(13)(e); and 67-48.0072(17)(f), Fla. Admin Code is hereby **GRANTED** to permit Developer's General Contractor to self-perform a portion of the site work as described in the Petition for the Development.

DONE and ORDERED this 11th day of June, 2020.

Florida Housing Finance Corporation



By: 
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
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NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.