

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Civic Towers Senior, LLLP

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FHFC CASE NO.: 2020-044VW

**ORDER GRANTING VARIANCE FROM RULE 67-21.026(10)**

THIS CAUSE came on for consideration and final action before the Florida Housing Finance Corporation pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on July 1, 2020, from Civic Towers Senior, LLLP (“Petitioner”). Notice of the Petition was published on July 2, 2020, in Volume 46, Number 129 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, Florida Housing hereby finds:

1. Florida Housing has jurisdiction over the subject matter of this case and the parties hereto.
2. Petitioner successfully applied for non-competitive housing credits to assist in the acquisition and rehabilitation of Civic Towers Senior, a 151-unit elderly, affordably housing development in Miami, Florida (the “Development”).
3. Rule 67-21.026(10) Fla. Admin. Code, in relevant part, states “[t]he Corporation’s assigned Credit Underwriter shall require a guaranteed maximum price construction contract, acceptable to the Corporation,…”

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

ATMS/alamoiz /DATE: 7/17/2020

4. Petitioner requests waiver of the above cited rule to allow it to enter into a “cost plus” contract which does not provide for a guaranteed maximum price. Petitioner asserts that it initially entered into a guaranteed maximum contract for the rehabilitation work contemplated at the development. However, Petitioner states that while in the midst of rehabilitation, Hurricane Irma caused significant damage to the Development. As a result of the storm, Petitioner asserts that the envelope of the building was materially damaged and significant water intrusion traveled through the common areas and residential units causing building components to become saturated with moisture which led to damage, rot, and mold. Petitioner asserts that the City of Miami Building Department deemed the Development unsafe for occupancy and determined that the damaged portions of the building had to be brought up to code when rehabilitated which greatly expanded the original scope of rehabilitation work, lengthened the rehabilitation/construction timeline, and increased overall costs of the Development. Petitioner states that the damage added approximately \$8,000,000 in additional renovation hard costs, \$1,500,000 in additional soft costs and more than 12 months to the overall construction/rehabilitation timeline.

5. According to Petitioner, due to the significant increase and scope of work, it had to hire a new contractor, Thornton Construction Residential, LLC (“Thornton”). Petitioner states that Thornton was able to complete the Development

and enable residents to move back in. Petitioner asserts that given the post Hurricane Irma construction market, none of the contractors that it met with were willing to agree to a guaranteed maximum price construction contract. According to Petitioner, the construction contract with Thornton did not have a guaranteed maximum price but instead had a “control estimate” which was not exceeded. Petitioner states that pursuant to the terms of the construction contract, only costs actually incurred have been billed by the general contractor and therefore no cost savings have been billed by the general contractor and no cost savings have been taken as additional profit or otherwise been paid to the general contractor.

6. To the extent that amounts paid to Thornton exceed Corporation limits, Petitioner agrees to remove such costs from eligible basis and from costs submitted in the cost certification, and to compute the developer fee based on the foregoing information. Based on the figures presented in the draft General Contractor Cost Certification, the maximum General Contractor Fee of 14% under Florida Housing’s rule was exceeded; however, Petitioner agrees to remove such excess costs from the eligible basis and from costs submitted in the Development Final Cost Certification and therefore, no Developer Fee or Housing Credit Allocation would be generated from the excess fee.

7. Petitioner asserts that given the post Hurricane Irma construction market, it moved forward to the best of its abilities and funded a large portion of the

storm-related costs out of its own pocket. Petitioner states it developed a comprehensive recovery plan and contracted with Thornton, a quality general contractor, who committed to complying with the tight time frames and with “control estimate” figures in the contract. Petitioner asserts that a guaranteed maximum price contract was not a viable option in the midst of the above described crisis. However, Petitioner asserts that it established a fair and equitable contract to complete the additional work and return the residents to their homes without permanent displacement. Petitioner also asserts that the amount paid to Thornton, apart from the contractor fee portion (which costs have been excluded from the Developer Final Cost Certification), was no greater than that which would have been charged under a guaranteed maximum price contract; meaning that the “control estimate” figure contained in the contract was not exceeded, and represented the same amount which would have been contained in a guaranteed maximum price contract.

8. Florida Housing finds that granting the waiver will not impact other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

9. 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.

10. Petitioner has demonstrated that the requested waiver is necessary and 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.

11. Florida Housing finds that strict application of the above Rule under these circumstances would violate principles of fairness, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

**IT IS THEREFORE ORDERED:**

Petitioner's request for a waiver of Rule 67-21.026(10), Fla. Admin. Code, is hereby **GRANTED** to allow Petitioner to to utilize a cost plus contract without a guaranteed maximum price.

DONE and ORDERED this 17th day of July, 2020.

Florida Housing Finance Corporation



By:

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Chair

**Copies furnished to:**

Gary Cohen, Esq.  
[GCohen@shutts.com](mailto:GCohen@shutts.com)

Marisa Button, Director of Multifamily Programs  
[Marisa.Button@floridahousing.org](mailto:Marisa.Button@floridahousing.org)

Hugh R. Brown, Esq.  
[Hugh.Brown@floridahousing.org](mailto:Hugh.Brown@floridahousing.org)

Joint Administrative Procedures Committee  
Attention: Ms. Yvonne Wood  
[Joint.admin.procedures@leg.state.fl.us](mailto:Joint.admin.procedures@leg.state.fl.us)

**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.**