STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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IN RE: LAKEVIEW TOWER VENTURE LP

FHFC CASE NO. 2024-012VW
Application No. 2020-505C

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PETITION FOR WAIVER OF
FLORIDA ADMINISTRATIVE CODE RULE 67-21.026(13)(e)

Petitioner, Lakeview Tower Venture LP, as Applicant/Owner, pursuant to section 120.542, Florida Statutes, ("F.S.") and chapter 28-104, Florida Administrative Code, ("F.A.C."), petitions the Florida Housing Finance Corporation ("Florida Housing") for a waiver of Rule 67-21.026(13)(e), F.A.C., relating to the work that a General Contractor may perform. In support of this Petition, Petitioner states:

A. Petitioner and the Development

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

Lakeview Tower Venture LP
c/o Bryan Hartnett
2711 N. Sepulveda Blvd. #526
Manhattan Beach, CA 90266
Telephone: (424) 999-4588
Email: bHartnett@ahidevelopment.com

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

Lawrence E. Sellers, Jr.
Holland & Knight LLP
315 S Calhoun Street
Tallahassee, Florida 32301
Telephone: 850-425-5670
Email: larry.sellers@hklaw.com

3. On February 26, 2021, Petitioner received a Preliminary Determination for Housing Credits in the amount of $817,021.00.

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

Application Number:	2020-505C
Development Name:	Lakeview Tower Apartments
Applicant/Borrower:	Lakeview Tower Venture LP
Developer/Principal:	MRK Partners Inc. (Sydne Garchik)
Number of units:	156
County of Development:	Polk
Development/Type:	High Rise
Set Asides:	Income Average with 80 residential units
Demographics:	(51.28% at 40% AMI) and 76 residential
Funding Amounts:	units (48.71) at 80% of AMI, Elderly/Acquisition and Rehabilitation Housing Credits in the amount of $817,021.00.

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 Rule 67-21.026(13)(e), F.AC. (the "Rule"), which limits the type and amount of work a General Contractor may perform as follows:

> (e). Ensure that no construction or inspection work is performed by the General Contractor, with the following exceptions:
>
> 1. The General Contractor may perform its duties to manage and control the construction of the Development; and
> 2. 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.

D. Statutes Implemented by the Rule

7. The Rule implements, among other sections of the Florida Housing Finance Corporation Act ("the 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

8. 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) 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 principles 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 waive***r. 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.

9. Petitioner is the Applicant for the Lakeview Towers Apartments ("Project") and is subject, along with its General Contractor, NEI General Contracting, Inc. ("NEI"), to the Rule.

10. Petitioner on September 11th, 2020, entered into a Standard Form Construction Contract Agreement with NEI, where the basis of the payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price ("Lakeview Towers Apartments Contract").

11. Applicant issued the Notice To Proceed to NEI on November 13, 2020, just before the height of the COVID-19 pandemic. The Pandemic had an immediate, negative impact on the construction industry and this Project. Such impacts included, but were not limited to, labor shortages and supply chain disruptions. Occupied renovations, such as the Lakeview Towers Apartments Project (which houses the elderly, a particularly vulnerable segment of the population in Miami-Dade County), were significantly affected more than unoccupied projects, as the work had to be performed with limited, if not no, contact with the existing elderly residents. In addition, COVID-19 protocols were required to be developed and implemented to prevent the spread of the disease between NEI employees, NEI's subcontractor, and the existing elderly residents.

12. In an attempt to make up time lost on the schedule as a result of the COVID-19 Pandemic, to reduce the increased costs associated with material and labor shortages and to limit exposing the elderly residents to COVID, NEI was required to self-perform a small percentage (5.5%) of the overall value of the work associated with the Project. The total cost of the required self-perform work was $333,340. This work was completed within the Guaranteed Maximum Price (GMP) value and no increased costs to the Project were incurred.

13. Although the work self-performed was for the most part de minimus or work not normally subcontracted, the self-perform rule was amended in 2022 and the amount of self-performed work exceeds this new rule. The new rule would allow a maximum amount of self-performed work of $301,421, creating an overage of $31,919.

14. The required work that makes up the $333,340, in order to reduce delays, to reduce the increased costs associated with material and labor shortages and to limit exposing the elderly residents, is described below:

a. **Selective Demo - $6,520** - as part of the very early mobilization NEI was forced to do some minor demolition to prepare the mock up unit for renovation. This took place prior to the mobilization of the demolition subcontractor in order to maintain schedule.

b. **Finish Carpentry - $8,588** - this work involved minor repairs and adjustments to cabinets and installation of missing shelving not originally shown to be replaced.

c. **Drywall - $7,824** - similar to above this work was related to the mock up units and getting the work started prior to subcontractor mobilization. In order to maintain schedule, we completed some minor framing, drywall and drywall patching.

d. **Electrical - $7,824** - as part of a cost savings effort and to ensure material availability NEI purchased the light fixtures directly from a wholesale supplier. This required labor to off load, handle and deliver the lighting the units.

e. **Rough Carpentry - $302,584** - Approximately $125,532 of this cost was to provide an elevator operator during the renovation. This operator served all trades equally to be sure the project makes progress and to be sure the interaction between residents and workers was limited. Another $86,722 of this cost was made up of ongoing punchlist and minor repairs to the work that were backed charged to the subs where appropriate. The remaining $90,330 were miscellaneous expenses associated with building the bus shelter (that was added late to the project), installing wood blocking when missing (not in contract), installing some doors that were not originally scheduled to be replaced, among other de minimus work.

15. Requiring NEI to hire subcontractors to perform the above tasks would have delayed the Project and increased resident exposure to COVID thus causing a substantial economic hardship to the Applicant, NEI, and the elderly residents of the Casa Devon Apartments.

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 (1) the application of the rule would 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. .

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 156 much needed affordable housing units will be made available for a vulnerable segment of the population in Polk County, Florida. The strict application of the Rule and the prohibition against GC Self-Performance will create a substantial hardship for Petitioner because it would have increased the cost of the Project, would have delayed the delivery of these much-needed units in Polk County

and would have increased the risk of exposing elderly residents to COVID-19 if additional subcontracted labor were required to be hired.

18. Further, the waiver will serve the purposes of the referenced statutes 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, and particularly the development of low-income housing. See s. 420.5099(2), F.S.

19. Petitioner and NEI have been working together with FHFC staff and intend to comply with the purpose of the Rule in question and agree to the following conditions:

A. All costs for NEI Self-Perform Labor attributable to affordable units will be at cost with no built-in profit;

B. The GC Fee on the Self-Perform labor scope identified in the Petition will be capped at 14% on the first $301,421; and

C. The GC Fee on the Self-Perform labor scope identified in the Petition over and above $301,421 (i.e., $31,919) shall be limited to 10 percent or $1,276.76.[1]

F. <u>Action Requested</u>

WHEREFORE, Petitioner respectfully requests that Florida Housing:

(i) Grant the requested waiver of Rule 67-21.026(13)(e), and to the extent required, the Applicant's certification and acknowledgement form, for the amount identified herein, as applicable;

(ii) Grant this Petition and all of the relief requested herein, and all costs allowed by Rule 67-21.026(13)(e), F.A.C., and the Lakeview Towers Apartments Contract; and

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

[1] The revised GCCC shows a reduction in fee of $3,594.84 which exceeds the requirements.

Respectfully submitted this 1st day of March, 2024.

/s/Lawrence E. Sellers, Jr.
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Tallahassee, Florida 32301
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed on this 1st day of March, 2024, by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

Lawrence E. Sellers, Jr.
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