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**STATE OF FLORIDA**
**FLORIDA HOUSING FINANCE CORPORATION**

**IN RE: CATHEDRAL TOWNHOUSE, LTD.**

FHFC Case No.: 2022-032VW
**Application No. 2018-071C/2019-426C**
**RFA No. 2017-114**

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**PETITION FOR WAIVER OF**
**FLORIDA ADMINISTRATIVE CODE RULE 67-48.0072(17)(f)**

Petitioner, Cathedral Townhouse, Ltd., as Applicant/Owner, pursuant to section 120.542, Florida Statutes, ("F.S.") and chapter 28-104, Florida Administrative Code, ("F.A.C.") petitions Florida Housing Finance Corporation (Florida Housing) for a waiver pertaining to the scope of work a general contractor may perform ("GC Self Performance") in Rule 67-48.0072(17)(f), F.A.C. In support of this Petition, Petitioner's state:

## A. Petitioners and the Development

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

Cathedral Townhouse, Ltd.
5300 West Cypress Street
Suite 200
Tampa, Florida 33607
Telephone: (813) 384-4825
Email: swilson@blueskycommunities.com

Petitioner Cathedral Townhouse is the Applicant/Owner.

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

Michael Donaldson
Carlton Fields
215 S. Monroe Street, Suite 500
Tallahassee, Florida 32301
Telephone: 850-513-3613
Email: mdonaldson@carltonfields.com
On behalf of Cathedral Townhouse, Ltd.

3. On December 15, 2017, Petitioner submitted an application in response to RFA 2017-114 for Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments (the "RFA") and was assigned Application No. 2018-071C (the "Application") seeking Housing Credits in the amount of $1,660,000 to assist in the construction of a 177-unit development located in Duval County, Florida, known as Cathedral Townhouse (the "Development"). The Applicant received an invitation into credit underwriting from Florida Housing on July 30, 2018, which was accepted by Applicant on July 31, 2018.

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

| | |
|---|---|
| Application Number: | 2018-071C/2019-426C |
| RFA No. | 2017-114 |
| Development Name: | Cathedral Townhouse |
| Applicant/Borrower: | Cathedral Townhouse, Ltd. |
| Developer/Principal: | Cathedral Townhouse Redevelopment Associates, (Blue Sky Communities LLC & Cathedral Foundation of Jacksonville, Inc.) |
| Number of units: | 177 |
| County of Development: | Duval |
| Development/Type: | High Rise |
| Set Asides: | 20% of residential units at 33% of AMI, 72% of residential units at 60% of AMI |
| Demographics: | Elderly/Preservation |
| Funding Amounts: | Housing Credits in the amount of $1,660,000. |

## 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 67-48.0072(17)(f), F.AC., which requires the General Contractor to meet the following condition:

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

7. To the extent necessary under the Rules and Florida law, Applicant also requests a waiver for the comparable language set forth in the Applicant's certification and acknowledgement form.

8. The Rule, as well as the Applicant's certification and acknowledgement form, prevents GC Self-Performance of work normally performed by subcontractors.

**D. Statutes Implemented by the Rule**

9. The Rule implements, among other sections of the Florida Housing Finance Corporation 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**

10. 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.

11. Petitioner is the Applicant for the Cathedral Townhouse Project ("Project") and is subject to the Rules. Petitioner requests a waiver from the Rules, as well as any equivalent requirement in the Applicant's certification and acknowledgement form, prohibiting GC Self-Performance for certain scopes of work on the Project.

12. Petitioner on September 19, 2019, entered into a Standard Form Construction Contract Agreement with NEI General Contracting, Inc. ("NEI"), where the basis of the payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price ("Cathedral Townhouse Contract").

13. Work commenced on the Project on or about January 2020. Approximately 10 weeks after work commenced, the COVID-19 Pandemic began. The Pandemic had an immediate, negative impact on the construction industry. Such impacts included, but were not limited to labor shortages and supply chain disruptions. Also affected was the process of occupied renovations with respect to limited contact with residents.

14. Certain NEI subcontractors on the Project were not able to adapt and were significantly affected by the conditions created by the Pandemic. As a result of labor shortages due to worker health concerns, limited contact with residents and the lack of support from local subcontractor's labor pool, NEI was forced to self-perform certain portions of the contractual work in an effort to maintain the project's schedule and prevent additional project costs due to delays. Specifically, NEI self-performed minor finish carpentry work at the site including, but not limited to uncontracted entry door repairs (adjustments include hinge replacement, bondo of frames, and latch adjustments identified by owner as required during final inspections and before residents were required to relocate to their homes at a value of $66,574. The scope couldn't be defined prior to final inspections and therefore time didn't allow it to be subcontracted.

15. Directly related to the Pandemic, NEI self-performed signage, temperature screens, sanitation stations, and frequent cleaning of work areas in an effort to limit spread as advised by the CDC which was successful by the low number of report cases within this elderly community. Approved change orders were issued to NEI for these tasks totaling $79,644.

16. During demolition at the Project, existing unknown conditions were exposed that prompted the threshold inspector to require certain corrections associated with fire protection, all of which was outside of NEI's Contract. NEI attempted to hire a firestopping contractor and

received a proposal for such work in the amount of $456,000. Attached as Exhibit "B" is a copy of the proposal from NFS in the amount of $456,000. In response to receiving NFS's proposal in an exorbitant amount compared to the actual scope of work, NEI assembled a team that was able to accomplish such work at saving of approximately $219,680. This was accomplished by way of a combination of subcontractors from different trades (e.g. drywall contractors, plumbers, electricians and NEI's own forces). A total of $236,320 was paid for this extra work, which in turn was apportioned among NEI and its subcontractors as follows: $82,960 to Ultra (for fire caulking), $42,400 to David Gray Plumbing (for Floor Penetrations), $39,680 to Ace Electrical (Putty Packs), and $71,280 for NEI labor to support subcontractors with limited labor force to complete the additional misc. firestopping required by threshold inspectors' direction at time of rough inspection. A copy of the approved PCO's and the support proposals/invoices from Ultra, David Gray Plumbing and Ace Electrical are attached hereto as composite Exhibit "C."

17. Similarly, NEI self-performed window installation prep in occupied apartments and blind installation in unoccupied apartments due to COVID delay in window installation at a cost of $81,706. This included $64,222 in preparing occupied units for window installations. The above was the result of unavoidable COVID issues. Based on CDC's recommendations to address COVID concerns, this work was rightfully delayed by the Applicant until a clear plan to safely perform the occupied apartment work was in place. Due to the contracted subcontractor unavailable labor resources, NEI had no choice but to assist in creating and implementing social distancing protocols within occupied apartments to create a safe environment for work to continue. As well as, install the window blinds in the unoccupied units prior to the windows being installed so elderly residents had a safe path back to a home that had all required components. Ultimately, the window subcontractor removed and reinstalled the new blinds after the window installation was complete. But due to time constraints and available labor resources during the height of Covid concerns, the limited scope of work and time constraints to perform, it was not possible to hire a

different subcontractor to reprice and install the blinds as a secondary effort caused by COVID protocols for a value of $17,284.

18. All of the additional and self-performed work by NEI was unanticipated at the time the contract for the Project was executed. Labor shortages and increased costs associated with health protocols brought on by the Pandemic required NEI to quickly adapt in order to maintain the Project schedule. It was only able to do so on time and without prohibitive cost overruns through self-performance as described above.

19. In addition to the waiver being sought for the scopes of work identified and explanation above, NEI self-performed work in disciplines that would *not* "normally [be] performed by subcontractors," including, but not limited to the following:

- Material Procurement and Distribution of items directly purchased by NEI – NEI's Labor effort included but not limited to receive, organize, store and distribute materials (Ex. Residential Cabinets and Countertops, Doors, Window Treatments, and Base /Door Trim) throughout the building following COVID social distancing protocols not factored into base contract.
- Elevator Operator - Further, to protect residents and workers performing the rehabilitation via social distancing protocols, NEI was requested by the client to staff the project elevator for the 68 weeks with a full-time elevator operator who would ensure social distancing from the elderly residents while maintaining the ability for staffing and material distribution as required at a total value of $281,860.
- Punch List and Final Cleaning - Due to labor shortages and the need to quickly return the most vulnerable elderly residents to their units so as to avoid project delays, NEI was required to self-perform Punch List and Cleaning Activities that would not necessarily have been subcontracted to a subcontractor. This work included, but was not limited to final unit cleaning and punch list completion (ex.: adjustment of hardware and shelving based on property management directive as a reasonable accommodation to residents, leveling

and repositioning appliance hardware, ascetical caulking and touchups to existing components.) for a total value of $193,192

While the Petitioner and NEI do not believe this type of work requires a waiver as general contractors routinely perform these functions as industry standard, should FHFC find a waiver is required, the delays associated with hiring subcontractors to perform these tasks would have delayed the Project, causing an economic hardship to NEI, and in turn to the Petitioner, and the elderly residents of the Cathedral Townhomes.

20. 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 the application of the rule would: (l) 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. (2018).

21. 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 177 much needed affordable housing units will be made available for a vulnerable segment of the population in Duval 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 substantially increase the cost of the Project, and delay the delivery of these much-needed units in Duval County if additional subcontracted labor is required to be hired.

22. 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. 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 will 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 s. 420.5099(2), F.S.

### F. Action Requested

WHEREFORE, Petitioner respectfully requests that Florida Housing:

(i) Grant the requested waiver of Rule 67-48.0072(17)(f), F.A.C. and to the extent required, the Applicant's certification and acknowledgement form, for the scopes of work identified herein, as applicable;

(ii) Grant this Petition and all of the relief requested herein, and all costs allowed by Rule 67-48.0072(16)(b), F.A.C. and the Cathedral Townhouse Contract; and

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

Respectfully submitted this 18th day of May, 2022.

Michael Donaldson

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*Counsel for Cathedral Townhouse, Ltd.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Petition for Waiver is being served by electronic transmission for filing with Ana McGlamory, Agency Clerk (CorporationClerk@floridahousing.org) and Hugh Brown, General Counsel (Hugh.Brown@floridahousing.org) for the Florida Housing Finance Corporation, at 227 North Bronough Street, Tallahassee, Florida 32301, with a copy served via electronic transmission on the Joint Administrative Procedures Committee, at (JAPC@leg.state.fl.us), at 680 Pepper Building, 111 W. Madison Street, Tallahassee, FL 32399, this 18th day of May, 2022.

/s/ Michael P. Donaldson
Michael P. Donaldson