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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FINANCE CORPORATION

CEDAR OAKS SENIOR HOUSING
LIMITED PARTNERSHIP, a Florida
limited partnership,

Petitioner,

FHFC CASE NO. 2026-013VW
FHFC Application No. 2020-159C

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER OF RULE 67-48.0072(16)(b), F.A.C. (eff. 7/11/19)

Petitioner Cedar Oaks Senior Housing Limited Partnership (the “Petitioner”) by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation (“Florida Housing”), for a waiver of Rule 67-48.0072(16)(b), Florida Administrative Code (“F.A.C.”) (7/11/19) (the “Rule”), which limit the General Contractor’s (“GC”) fee to 14% of actual construction cost. Florida Housing’s Board previously delegated authority to staff to approve Petitioner’s request to allow one subcontractor to exceed the 20% subcontractor cap¹ and perform 22.3% of the construction cost, which in turn caused the GC’s fee to exceed by approximately 0.238% the 14% cap imposed by the Rule. Because the GC fee has already been paid, Petitioner reduced the overage from the Developer Fee. Petitioner’s Final Cost Certification is now nearly complete, and Petitioner is in need of a waiver to proceed. Petitioner therefore

¹ Rule 67-48.0072(17)(g), F.A.C. (7/11/19) provides: “The General Contractor must meet the following conditions: . . . Ensure that not more than **20 percent** of the construction cost, not to include the General Contractor fee or pass-through fees paid by the General Contractor, **is subcontracted** to any one entity or any group of entities that have common ownership or are Affiliates of any other subcontractor. . . .” (emphasis added).

respectfully seeks a Rule waiver. If granted, Petitioner will reflect the excess GC fee paid out of the Developer Fee as a subset of the Developer Fee on the Development Final Cost Certification (“DFCC”). In support of this request, Petitioner states as follows:

A. THE PETITIONER.

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

Matthew D. Rule
National Church Residences
2335 North Bank Drive
Columbus, OH 43220
Telephone: (614)273-3539
Fax: N/A
Email: MRule@NationalChurchResidences.org

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

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
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Fax: 850-329-4844
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B. WAIVER IS PERMANENT.

3. The waiver being sought is permanent in nature.

C. DEVELOPMENT BACKGROUND.

4. The following information pertains to the development underlying Petitioner’s application (“Development”):

- Development Name: Cedar Oaks
- Developer: National Church Residences

- County of Development: Volusia
- Number of Units: 44
- Type: Garden Apartments (acquisition and preservation)
- Demographics: Elderly Non-ALF
- Set Asides: 20% @ 40% AMI and 80% @ 60% AMI
- Funding Amounts: \$464,405 9% housing credits (annual)

D. THE RULE FROM WHICH WAIVER IS REQUESTED.

5. Petitioner requests a waiver of Rule 67-48.0072(16)(b), F.A.C. (7/11/19) which provides in pertinent part:

(16) For all Developments, the Developer Fee and General Contractor's fee shall be limited to:

(b) The General Contractor's fee shall be limited to a maximum of 14 percent of the actual construction cost.

Id.

E. STATUTES IMPLEMENTED BY THE RULE.

6. Rule 67-48.0072, F.A.C., implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"):

- Section 420.5087, State Apartment Incentive Loan Program.
- Section 420.5089, HOME Investment Partnership Program; HOME Investment Partnership Fund.
- Section 420.5099, Allocation of the low-income housing tax credit.

7. Per Section 420.5099(1), (2), Florida Housing acts as the State's housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

8. Petitioner timely submitted Application No. 2020-159C for the Development on October 24, 2019 in response to RFA 2019-115 Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments.

9. On February 6, 2020, Petitioner received an invitation to enter credit underwriting.

10. On December 20, 2023, Petitioner requested to waive Rule 67-48.0072(17)(g), F.A.C. (7/11/19) (“The General Contractor must meet the following conditions: . . . Ensure that not more than 20 percent of the construction cost, not to include the General Contractor fee or pass-through fees paid by the General Contractor, is subcontracted to any one entity or any group of entities that have common ownership or are Affiliates of any other subcontractor. . . .”) because it was discovered during the cost certification review (*i.e.*, after the work had been completed) that one subcontractor, Master Craft Plumbing Contractors, Inc. (“MCPC”), exceeded the 20% cap by approximately 2.3%.

11. MCPC was selected to perform multiple scopes, including the plumbing and the mechanical/HVAC scopes, since it was the best choice for both trades. Due to the substantial scopes, the final costs came in at 22.3% of total construction costs. On February 15, 2024, First Housing stated that it had reviewed the request, performed certain due diligence, and determined:

The GC received separate bids for plumbing repairs and HVAC work, as detailed above. The bids from **MCPC were the lowest bids and the subcontractor selected to complete both the plumbing and HVAC work.** Moran reviewed all the bids provided and **considers MCPC’s bid to be reasonable.** Between the time the bid was provided, and the Subcontract Agreement was signed, the cost increased to \$472,152. According to the draft GCCC, the total cost of work completed by MCPC was \$520,084, which is a difference of \$47,932 or a 10.15% increase over the total Subcontract Agreement. First Housing received **eleven (11) change orders** between MCPC and Choate. The change orders included water heater escalation costs, the addition of a HVAC system in the community building, inclusion of filter back grilles for HVACs, condensing units, and storage containers. Based on an email, from Moran, dated February 1, 2024, **the change orders appear reasonable.**

During the GCCC review process, it was discovered that **MCPC surpassed the 20% subcontractor cost limitation, as a result of the plumbing and HVAC work. However, selecting MCPC provided a cost savings to the Development.** If the GC had selected the second lowest bid for plumbing (\$417,000) and HVAC work (\$240,700) the total cost of the work would have been \$657,700, which is **\$137,616 or 26.46% greater** than the actual total cost of \$520,084.

12. At its March 26, 2024 meeting, Florida Housing's Board considered as an informational item staff approval of Petitioner's request to allow the subcontractor to exceed the 20% limitation in conjunction with review by the credit underwriters and construction consultants and receipt of positive recommendations from the credit underwriters.

13. In the process of completing the Final Cost Certification, it was determined that the subcontractor's 2.3% overage (*i.e.*, \$53,667 overage)² resulted in a GC fee on the subcontractor's overage of approximately \$7,513 and a Developer Fee on the subcontractor's overage of approximately \$8,587.

14. Because the GC fee had already been paid in full, Petitioner reduced the overage from the Developer Fee.

15. As a result of the foregoing, the GC fee comprised approximately 14.238% of the construction cost. Because the GC fee exceeded the cap by 0.238%, Petitioner is in need of a waiver of the Rule.

16. Petitioner is no longer doing business with that GC and the overage was not discovered until after the books were closed.

17. No one that worked on the deal are still with Petitioner or the GC and archived records are limited.

² Per the GC cost certification, the Total Construction Cost is \$2,332,084. Thus the 20% cap limited the subcontractor to \$466,417, but the subcontractor ultimately received \$520,084, resulting in an overage of approximately \$53,667.

18. After substantial research, Petitioner is unable to identify the information necessary to request a reimbursement from the GC and lacks any leverage to require the GC to take action other than through litigation, which is cost prohibitive given the small amount at issue.

19. Because of the elapse of time and change in personnel, Petitioner is uncertain of who to even contact regarding reimbursement of the fee. More importantly, Petitioner strongly believes litigation would be required to resolve the issue, which would be cost prohibitive given the small amount at issue.

20. If granted, Petitioner will reflect the excess amount as a subset of the Developer Fee on the DFCC.

21. 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 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,³ and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat.

22. Strict application of the Rule will create a substantial hardship. The Development was the first Project Rental Assistance Contracts (“PRAC”) deal in Florida, and the second in the country, to go through the Rental Assistance Demonstration for PRAC conversion and a Low-Income Housing Tax Credit (“LIHTC”) closing. The PRAC program requires the rents be set well

³ “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. § 120.542(2), Fla. Stat.

below market rents. As confirmed in the Market Study performed during credit underwriting, the average rent at the Development is \$480 per month whereas the average market rent in Volusia County is \$801 per month. Thus, LIHTCs provide a crucial mechanism for bringing in new capital to fund repairs. PRACs in general, and the Development specifically, house some of the most vulnerable older adults. The combination of onsite service coordinators and decent, affordable housing ensures these seniors have a healthy and safe living environment. However, if the housing credits are not funded, there will be no financing source available to fund the much needed repairs and preserve this PRAC.

23. For the foregoing reasons, Petitioner meets the standards for the requested waiver.

24. The waiver will not adversely impact the Development, nor Florida Housing.

G. ACTION REQUESTED.

25. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver and allow Petitioner to exceed the General Contractor's fee maximum of 14% of actual construction cost; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

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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 25th day of February, 2026.

By: /s/ Brian J. McDonough