STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

EHDOC Council Towers Limited Partnership,
a Florida limited partnership,

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC CASE NO. 2026-069VW
Application No. 2018-516C

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**PETITION FOR WAIVER OF RULE 67-21.026(10), F.A.C. (7-8-18) AND RULE 67-21.026(13)(e), F.A.C. (7-6-22)**

Petitioner EHDOC Council Towers Limited Partnership, a Florida limited partnership ("Petitioner") submits this Petition to Respondent Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-21.026(10), Florida Administrative Code ("F.A.C.") (eff. 7-8-18) prohibiting costs outside of the guaranteed maximum price construction contract ("GMP"), and the retroactively applicable Rule 67-21.026(13)(e), F.A.C. (eff. 7/6/2022) prohibiting the General Contractor ("GC") from self-performing work in excess of the lesser of $350,000 or 5% of the construction costs. As the result of local governmental COVID-restrictions and newly required COVID protocol requirements, the original GC, T. Morrissey Construction Company ("original GC") would not proceed with the planned tenant in-place rehab and had to be replaced. NEI General Contracting, Inc. ("new GC") became the new GC. Due to several factors, the new GC's fee and other actual construction costs to complete the project were limited at the onset of the project and could not be included as part of the pay application because the U.S. Department of Housing and Urban Development ("HUD") would not allow any changes to the approved form HUD-2328 Contractor's and/or Mortgagor's Cost Breakdown Schedules and Value

("HUD-2328") in relation to amounts already paid to the original GC. At that time, the Petitioner and the new GC agreed to enter into a separate side agreement[1] to account for the limitations on the new GC's fee (please refer to previously granted waiver of Rule 67-21.027(6), F.A.C. (2018)), for any additional costs related to COVID restrictions and protocol requirements, as well as for any necessary Development needs related to additional newly scrutinized Miami Beach requirements in order to get the Certificate of Occupancy. The costs incurred under the side agreement were the result of COVID impacts and other circumstances beyond the Petitioner's control. While the COVID-related costs are allowable under the Corporation's guidelines, they were not eligible for reimbursement under HUD requirements. As such, Petitioner respectfully requests a waiver of the Rule prohibiting costs outside of the GMP. Because COVID-related issues required the new GC to self-perform $778,531 of the side agreement, Petitioner also seeks a waiver of the Rule prohibiting self-performance in excess of a de minimis amount.

In support of the foregoing requests, Petitioner states as follows:

**A. THE PETITIONER**

1. The name, address, telephone and facsimile numbers, and email address for Petitioner and its qualified representative for Petitioner's application are:

Melanie Ribeiro
President and CEO
Elderly Housing Development and Operations Corporation
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Plantation, FL 33324
Phone: 954-835-9200
Fax: 954-835-0888
mribeiro@ehdoc.org

2. The name, address, telephone and facsimile numbers for Petitioner's attorneys are:

[1] The side agreement costs were paid from equity and not loan proceeds.

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**B. THE DEVELOPMENT**

3. The following information pertains to the development ("Development") underlying Petitioner's application:

- Development Name: Council Towers North & South
- Development Address: 533 & 1040 Collins Ave., Miami Beach, FL 33139
- County: Miami-Dade
- Developers: EHDOC Development Services, LLC and SCG Development Partners, LLC
- Number of Units: 250 acquisition/rehab
- Type: High Rise
- Set Asides: 100% of units at 60% AMI or lower
- Demographics: Elderly; Non-ALF
- Funding: $4,500,000 (Completion Bonds) ($3,646,146 in 4% Housing Credit)

**C. PERMANENCY**

4. The waiver being sought is permanent in nature.

**D. RULES FROM WHICH WAIVER IS SOUGHT**

5. Petitioner requests a waiver from Rule 67-21.026(10), F.A.C. (7-8-18), which states in pertinent part:

> (10) The Corporation's assigned Credit Underwriter shall require a guaranteed maximum price construction contract, acceptable to the Corporation, which may

include change orders for changes in cost or changes in the scope of work, or both, if all parties agree, and shall order, at the Applicant's sole expense, and review a pre-construction analysis for all new construction units or a physical needs assessment for rehabilitation units and review the Development's costs.

Additionally, because current Rule 67-21.026(13)(e), F.A.C (7/6/2022) was made retroactively effective to the Development,[2] Petitioner also seeks a waiver from the following provision:

(13) The General Contractor must meet the following conditions: . . . .

(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 costs, not to include the General Contractor fee or pass-through fees paid by the General Contractor;

## E. STATUTES IMPLEMENTED BY THE RULES

6. The Rules implement, among other sections of the Florida Housing Finance Corporation Act (the "Act"), Section 420.5099, Florida Statutes (Allocation of the low-income housing tax credit) ("Statute"). Per Section 420.5099(1)-(2), Fla. Stat., the Corporation 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 WAIVER

7. As a result of COVID-related local ordinances and restrictions enacted by the City of Miami Beach, it was determined that the Original GC, who was based in California, would not be able to perform its duties as planned under the contract and was replaced with a more qualified general contractor who had offices in Florida. In order to remove the Original GC, and as part of

[2] The Corporation's Board approved retroactive application of this portion of the Rule effective 7/6/2022. Thus, while the Development submitted its application in May 2019 and is therefore otherwise subject to the July 8, 2018 version of the Rule, the 7/6/2022 version applies in this instance based on the Board's action.

severance negotiations, Petitioner had to pay various fees, expenses, etc., to the Original GC, which was necessary to allow the renovation to move-forward.

8. Additionally, the Original GC's cost estimates were based on completing the rehabilitation with the seniors in place to prevent displacement. As the COVID restrictions were being implemented, thereby preventing in-place rehabilitation work, HUD pushed to close. The new GC had to value-engineer the rehabilitation work and the methodology for transitioning the residents between units to complete the work. This required the new GC to develop and implement COVID protocols to reduce exposure of the at-risk senior residents to the various subcontractor and general contractor employees that would be in and out of the Development for the duration of the project. The new GC incurred COVID-related costs that were not contemplated by the scope of the GMP contract. As previously mentioned, the costs incurred under the side agreement were the result of COVID impacts and other circumstances beyond Petitioner's control. While the COVID-related costs are allowable under the Corporation's guidelines, they were not eligible for reimbursement under HUD requirements.

9. Petitioner entered into the original construction contract with the Original GC on April 7, 2020 in the original amount of approximately $22,218,128. For the reasons set forth above, Petitioner entered into a second construction contract with a new GC on June 2, 2021. The new GC assumed the existing contract [A1.1], but also entered into a side agreement with the Petitioner dated August 4, 2021, in the original amount of $1,241,852, which was subsequently modified as needed. This agreement was separate from the construction contract for the reasons set forth and referenced above. Total costs incurred under the side agreement were $2,343,774.37 and are reported as follows: Line B.2(aa) Hard costs – $1,217,565 (broken out as follows - Site Improvements - $63,074, Metals - $52,839, Rough Carpentry - $240,844, Finish Carpentry - $277,139, Doors - $3,762, Resilient Flooring - $36,073, Cabinets & Countertops - $269,446,

Elevators - $187,927, HVAC - $55,844, Specialties - $30,617); Maximum GC Fee (14%) – $170,195;[3] New GC Fees disallowed by HUD – $843,523.37;[4] Special permit fees – $90,000; Line B.2(r) General liability insurance – $22,491.

10. The unique circumstances necessitating the side agreement are more fully set forth below.

a. In March of 2020, the COVID-19 Pandemic began. The Pandemic had immediate negative impacts 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 this Development, were affected significantly more than unoccupied projects, as the work had to be performed with limited or no contact with the residents. In addition, COVID-19 protocols were required to be developed and implemented to prevent the spread of the disease between the new GC's employees, its subcontractors, and the senior residents. As the COVID-19 Pandemic was an unprecedented event, COVID-related local ordinances and restrictions were enacted by the City of Miami Beach. The COVID-19 Pandemic

[3] On December 12, 2025, via Case No. 2025-055VW, the Corporation's Board entered an Order stating: "Any General Contractor Fee paid to the Original GC in excess of the 14 percent General Contractor Fee Limitation shall be paid from the Petitioner's Developer Fee and reflected as a subset of the Developer Fee in the Final Cost Certification." Paragraph 4 of that Order recognizes: "due to the nature of the General Contractor Fees, billed by the Original GC as part of the severance, the GC could not absorb most of these costs. The duplicative billing of General Contractor Fees resulted in Petitioner submitting a Petition for Waiver of Rules 67-21.003(1)(B) and 67-21.026(12)(B), F.A.C. (2018), and the Non-Competitive Application Instructions (Rev. 05-2018) on January 20, 2023, to allow the maximum combined General Contractor Fees to exceed 14 percent of the actual construction costs." The referenced severance is discussed above at paragraph 7.

[4] As discussed above, and again at paragraph 11, HUD would not allow costs that were incurred due to COVID, or the inability to change the HUD-2328. The final cost certification includes contract-related costs only. Petitioner cannot exceed the contract value on the AIA on the GCCC per the Corporation's guidelines.

created additional unforeseen costs, some of which would not necessarily have been allowable on the Final Cost Certification.

i. Part of the COVID protocols enacted by the new GC was to purchase materials ahead of time to prevent delays in the schedule related to increased lead times from suppliers. Storage facilities had to be retained for these materials purchased ahead of time to prevent procurement issues caused by the COVID-19 Pandemic. Since HUD would not allow any changes to the approved HUD-2328, these costs were included in the side agreement.

ii. Unlike any normal project, COVID and the resulting COVID protocols created the need for the new GC to incur additional unforeseen costs to ensure the safety of its employees, its subcontractors, and the senior residents. As part of its general contractor duties to manage and control the construction of the Development and in an effort to maintain a level of separation, to limit the spread of COVID and to have appropriate sanitation, the new GC was forced to dedicate a worker to setup and clean sanitation stations, perform temperature screening, install additional signage, perform cleaning, and build temporary separation walls. As an additional effort to maintain the level of separation required to limit the spread of COVID, the Petitioner requested that an employee of the new GC be assigned to be in the elevator at all times to ensure the well-being of the senior residents. Since these related expenses were unforeseen and not HUD-allowable costs, they were included in the side agreement and qualify as part of the self-performed work listed in the Elevator trade.

b. On June 24, 2021, Champlain Towers South, a 12-story beachfront condominium in the Miami Beach suburb of Surfside, FL partially collapsed, causing the deaths of 98 people. This residential building is located approximately 7 miles north of the Development (approximately 15-20 minutes by vehicular traffic). Following the this partial collapse, the Miami Beach Building Department faced intense scrutiny regarding lax oversight, delayed structural recertifications, and deep-rooted communication gaps between inspectors and condo boards/developers. This pressure spurred sweeping overhauls to local enforcement and state-level inspection mandates. Part of the overhaul was that Miami Beach would now enforce stricter standards requiring structural engineers with specific "threshold building" experience to oversee and sign off on recertification reports, preventing inexperienced contractors from rubber-stamping major structural assessments. The Miami Beach Building Department also ramped up proactive inspections and implemented tighter deadlines, requiring property management/contractors to submit formal action plans and repair timelines immediately upon identifying structural faults.

    i. The additional newly scrutinized Miami Beach Building Department enacted several requirements in order for the Development to get the Certificate of Occupancy. This caused the new GC to incur unforeseen costs in relation to being able to meet these requirements as well as for any necessary Development needs requested by the Petitioner.

    ii. Some of the unforeseen costs were in relation to the following:

        1. The City of Miami Beach's Building Department would not sign off on the windscreens at the South Tower. The City of Miami Beach

required the new GC to get a structural inspector to inspect, draw, and sign off on plans stating that they met all of the requirements of the City of Miami Beach.

2. The original contract drawings did not specify engineered shop drawings for the exterior stairwell doors. The City of Miami Beach required the new GC to get an engineer stamped drawing set to meet all of the requirements of the City of Miami Beach.

3. The City of Miami Beach required all trash removal companies to get a special license. As such and with the COVID ordinances in place, the new GC incurred costs above and beyond the normal cost typically included within their general conditions in order to have an additional company with this special license to come and empty the dumpsters at the frequency required to meet the newly enacted COVID protocols of the City of Miami Beach and the new GC.

11. The only related extra costs that would have otherwise been considered a change order were the storage facilities retained for materials purchased ahead of time to get ahead of the procurement issues caused by COVID. If the original GC had remained in place, the GC fee would have been incorporated in the pay application process, but since the new GC was brought in and HUD would not allow any changes to the approved HUD-2328, the extra costs (*e.g.*, costs related to the new GC's fee, the storage facilities, other above mentioned costs incurred related to COVID restrictions and protocol requirements, and the necessary Development needs related to additional newly scrutinized Miami Beach requirements in order to get the Certificate of Occupancy) could not be part of the pay application. As mentioned above, to allow the new GC to recoup these costs,

the side agreement was entered into and any of these costs incurred under the side agreement were paid for from equity, not loan proceeds.

12. Rehabilitation of the Development was completed in July 2025. In order for Petitioner to include these costs in the Final Cost Certification Application Package, Petitioner needs a waiver of the Rule.

13. Because the foregoing costs were not included in the GMP contract, Petitioner respectfully requests a waiver of Rule 67-21.026(10), F.A.C. (eff. 7-8-18).[5]

14. In preparing the Final Cost Certification Application Package, it was also determined that Petitioner needs a waiver of Rule 67-21.026(13)(e), F.A.C. (eff. 7/6/2022) because the GC self-performed work exceeding a de minimis amount.

15. In all, the new GC self-performed approximately $778,531 of the total hard construction cost in the side agreement (*i.e.*, $**1**,215,680), meaning that the GC self-performed approximately 64% of the hard construction costs in the side agreement (33% of the $2,343,774.37 total costs incurred under the side agreement as set forth in paragraph 9, above). Though the GC did not self-perform any work under the original GMP contract, for perspective, the GC self-performed approximately 3.4% of the $22,752,528 construction contract or 3.1% of the $25,056,088 total combined construction contract and side agreement). Self-performed work of $778,531 is included in the above previously listed trade values and further elaborated by trade as follows: Rough Carpentry- $193,601, Finish Carpentry - $220,985, Cabinets and Countertops - $189,716, Elevators - $149,845, Special Construction - $24,384.

16. The COVID-related local ordinances and restrictions enacted by the City of Miami Beach relating to construction and renovation protocols, specifically for in-place renovations like

[5] To maintain compliance with the second part of the Rule, Petitioner had a physical needs assessment for rehabilitation units and review of the Development's costs completed with a site visit on September 20, 2018 and a report date on October 3, 2018.

the Development, required the work to be self-performed by the new GC. The COVID protocols in place limited the number of individuals allowed on the floor at one time. This limitation created schedule issues for the subcontractors on site, which meant at times throughout the project the subcontractors could not keep up with the unit turnover timelines without a significant increase in mobilization costs, especially as certain floors/units were shut down because a senior resident (or residents) contracted COVID. This meant that often the only individuals available to complete the work and make sure the unit turnover timeline was not additionally affected was an employee of the new GC with materials and/or equipment procured by the new GC.[6] Under these conditions, the new GC foresaw significant delays and since it had employees capable of completing the work in the above categories, the new GC was forced to step up in an effort to reduce the impact on the Development's budget and schedule which prevented any additional delay costs from being incurred on the construction contract and created the cost-savings necessary to make the Development viable.

17. Because the new GC self-performed work exceeding a de minimis amount, Petitioner respectfully requests a waiver of Rule 67-21.026(13)(e), F.A.C. (eff. 7/6/2022).

18. Under Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers must be granted when: (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship or violate principles of fairness,

[6] Where the GC controls its own labor pool, there is no downtime or scheduling gaps as the new GC's labor can immediately flow from one project unit to the next within the same development project. In contrast, where the work is subcontracted, the new GC must wait for the subcontractor to have room in its schedule to come to the Development.

and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* Section 120.542(2), Florida Statutes.

19. In this instance, Petitioner meets the standards for the requested waiver. The requested waiver will not adversely impact the Development or the Corporation and will ensure that 250 affordable housing units will be preserved and available for the target population in Miami-Dade County, Florida. 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.

20. Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

## G. RELIEF REQUESTED

21. WHEREFORE, Petitioner respectfully requests that the Corporation:

a. Grant Petitioner the requested permanent waiver from Rule 67-21.026(10), F.A.C. (7-8-18) such that Petitioner may have costs outside of the GMP contract and Rule 67-21.026(13)(e), F.A.C. (7/6/2022) such that the General Contractor is permitted to self-perform work exceeding a de minimis amount;

b. Grant the Petition and all the relief requested therein; and

c. Award such further relief as may be deemed appropriate.

Respectfully submitted,

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By: *s/ Brian J. McDonough*
BRIAN J. MCDONOUGH, ESQ.

**CERTIFICATE OF SERVICE**

The Petition is being served via e-mail for filing with the Corporation Clerk for the Florida Housing Finance Corporation, CorporationClerk@FloridaHousing.org, with copies served electronic mail on the Joint Administrative Procedures Committee, via JAPC@leg.state.fl.us, this 16th day of October, 2026.

*s/ Brian J. McDonough*_____
BRIAN J. MCDONOUGH, ESQ.