

STATE OF FLORIDA

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FLORIDA HOUSING FINANCE CORPORATION

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CAMPUS TOWERS SENIOR LIVING, INC.,  
F/K/A EDWARD WATERS COLLEGE SENIOR  
CITIZENS HOME, INC.,

FLORIDA HOUSING  
FINANCE CORPORATION

Petitioner,

CASE NO.: 2019-020VW

v.

APPLICATION NO. 2016-350E

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.0072(17)(f) and (g)**

Petitioner, Campus Towers Senior Living, Inc., f/k/a Edward Waters College Senior Citizens Home, Inc., a Florida not for profit corporation (the "Petitioner") submits its Petition to Respondent, Florida Housing Finance Corporation (the "Corporation"), for a waiver of Rule 67-48.0072(17)(f) and (g), F.A.C. (the "Rule") in effect at the time Petitioner submitted its application in response to the Corporation's Request for Applications 2016-108 Elderly Housing Community Loan (the "RFA"), to allow Petitioner's general contractor ("GC") to self-perform the installation of new doors at the Project and to waive the rule which requires that the GC ensure that not more than 20 percent of the construction cost is subcontracted to any one entity, since the cost of the materials for this Project will exceed 20% of the construction costs. In support of this Petition for Rule Waiver of Rule 67-48.0072(17)(f) and (g), F.A.C. (the "Petition"), Petitioner states as follows:

**PETITIONER**

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

Campus Towers Senior Living, Inc.  
1850 Kings Road  
Jacksonville, Florida 32209  
Attention: Adam J. Richardson, President  
Telephone: (904) 354-47301  
Facsimile: (904) 354-4785  
E-mail: [bishoprichardson@icloud.com](mailto:bishoprichardson@icloud.com)

The name, address, telephone, and facsimile numbers of Petitioner's attorneys are:

Brenda Ezell, Esq.  
Ezell Law Firm, P.A  
3560 Cardinal Point Drive, Suite 202  
Jacksonville, Florida 33602  
Telephone: (904) 432-3200  
Facsimile: (904) 432-3201  
E-mail: [brenda@ezellfirm.com](mailto:brenda@ezellfirm.com)

2. Pursuant to the RFA, Petitioner timely submitted its application for EHCL funding. See Application Number 2016-350E. Petitioner was preliminarily awarded Seven Hundred Fifty Thousand and No/00 Dollars (\$750,000.00) in EHCL funding under the RFA (the "EHCL Award"), and received an invitation to enter credit underwriting on December 19, 2016.

3. Petitioner was previously granted a six (6)-month extension to secure a firm loan commitment of the EHCL Award, extending such deadline to March 27, 2018. In connection with the previous extension, Petitioner paid an extension fee of Seven Thousand Five Hundred and No/00 Dollars (\$7,500.00). Subsequently, Petitioner filed a Petition for Waiver of the Rule to extend the deadline to secure a firm loan commitment from March 27, 2018 to September 27, 2018, and not require that an additional extension fee be imposed, which Petition was granted on March 16, 2018. Subsequently, Petitioner filed a Petition for Waiver of the Rule to extend the deadline to secure a firm loan commitment from September 27, 2018 to December 27, 2018 which Petition was granted on September 16, 2018. The firm loan commitment was issued on November 5, 2018 and the EHCL Loan is scheduled to close on March 5, 2019.

4. The EHCL Award is a critical part of the financing for the life-safety, health,

sanitation, and security-related improvements of the one hundred ninety two (192) unit development known as Campus Towers, serving elderly residents aged sixty-two (62) or older (the “Development”). The Development will also be financed with the a refinance of the existing HUD mortgage loan, as well as other supplemental financing, including LIHTC and bond financing, which is actively being pursued by Petitioner under the Corporation’s RFA 2018-113.

5. The Petitioner plans to use the EHCL Award to perform a life-safety upgrade by replacing all corridor unit doors to with a fire-rated assembly door. A significant portion of the budget will be used to purchase the doors and hardware, the cost of which will exceed approximately \$250,000.00, which is in excess of the rule amount of 20% of the contract amount. Additionally, in order to avoid overnight relocation of tenants for this narrow scope of work, and to save costs to the Petitioner, Petitioner’s General Contractor (“GC”) has requested to self-perform the installation of the contracted work for the reasons more specifically outlined below.

**RULE FROM WHICH THE WAIVER IS SOUGHT**

6. The relevant portions of the Rule for which this waiver is sought, provide as follows:

“(17) The General Contractor must meet the following conditions:

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(f) Ensure that not more than 20 percent of the construction cost is subcontracted to any one entity, with the exception of a subcontractor contracted to deliver the building shell of a building of at least five (5) stories which may not have more than 31 percent of the construction cost in a subcontract, unless otherwise approved by the Board for a specific Development. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant’s request, inclusive of construction costs and the General Contractor’s fees;

and, (g) Ensure that no construction cost is subcontracted to any entity that has common ownership or is affiliated with the General Contractor unless otherwise approved by the Board for a specific Development. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant’s

request, inclusive of construction costs and ownership interests in the Development.”

### **STATUTE IMPLEMENTED**

7. The Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statute that created the EHCL program. See §§ 420.507 and 420.508, Florida Statutes (2017).

8. Pursuant to Chapter 120.542(1), Florida Statutes, “[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.” Therefore, under Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its requirements when strict application of these 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 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.” *Section 120.542(2), Florida Statutes.*

9. In this instance, Petitioner meets the standards for a waiver.

### **JUSTIFICATION FOR PETITIONER'S REQUESTED WAIVER**

10. Background. The project scope of work is to replace the doors and frames in each unit to address a life safety issue requiring all the corridor doors to be upgraded to a fire-rated assembly (the “Project”). In order to minimize disturbance to the tenants, the current plan is to replace 3-4 unit doors per day, with the tenants leaving their apartment during the day and

returning that evening by 5:00 p.m. This approach it will not require the relocation of tenants overnight and each unit will be substantially complete in a single day. The planned total duration of this Project is four (4) months.

11. Justification for Waiver of Rule 67-48.0072(17)(f). The cost of the doors will exceed 20% of Project costs. Because this project is for a limited scope of work, the cost of materials for the Project (i.e., doors, frames, and locks) will exceed 20% of the total construction cost. Current estimates for the cost of the doors exceed \$250,000.00. The purchase of the doors and hardware will be for material only and therefore, there will be no formal subcontract issued. Petitioner contends that the reference in the Rule to subcontracting is not applicable, however, Petitioner requests that this Rule be waived for the Project.

12. Justification for Waiver of Rule 67-48.0072(17)(g). The existing contract for the Project contemplated self-performance for the majority of the work based on the limited scope. This is clearly indicated in the Exhibit B provided with the Construction Contract Amendment executed for the Project. Further, when the Petitioner sought proposals from various general contractors to perform rehabilitative work at Campus Towers, the GC was selected primarily because of its “design-build” style of contracting, which minimized costs as compared to other general contractors that made proposals. The GC’s contracted pricing also included maximum price guarantees which were extremely favorable to the Petitioner. Additionally, at the time the Petitioner interviewed and selected its GC, the EHCL contract had not been awarded and the EHCL rules Petitioner is requesting be waived were not contemplated. For this Project, by utilizing the GC’s construction crews, the Petitioner can minimize impact on the tenants and manage the dollars spent on the overall Project. Additionally, by allowing the GC to self-perform the work, the Petitioner would be paying Standard Labor Rates only. The GC would

provide a small crew that will perform the entire scope of work each day and control the timing to enable the tenants to return to their units each afternoon.

13. Further, if small portions of the door installation are subcontracted to other entities, the Petitioner will still be required to pay the cost to perform the work plus the subcontractors' overhead and profit and the GC will be unable to ensure completion of work each day which may preclude the tenants from returning to their unit the same day. Based on the age of the residents at the Project, Petitioner selected the GC based on its commitment to working in a manner that is least disruptive to the daily activities of the residents. Further, assuming a conservative subcontractor overhead and profit of 20%, would mean a direct added cost to the project of \$95,920 as calculated below:

$$\$479,600 \text{ (line item for the New Unit Doors)} \times 20\% = \$95,920$$

$$\text{Added cost: } \$95,920 - \$0 = \$95,920$$

14. The waiver requested herein will not adversely affect Petitioner, the Development, any other party that applied to receive EHCL funding in the RFA or the Corporation. A denial of the Petition, however, would (a) result in substantial economic hardship to Petitioner, as it has incurred over One Hundred Thousand and No/00 Dollars (\$100,000.00) in costs to date toward ensuring that the Development proceeds to completion; (b) deprive Duval County of life-safety, health, sanitation, and security-related improvements to the Development serving persons aged 62 or older; and (c) violate principles of fairness. §120.542(2), F.S.

15. The requested waiver will ensure the availability of EHCL funding which will otherwise be lost as a consequence of the development delays described herein.

### **CONCLUSION**

16. The facts set forth in Sections 10 through 15 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the

failure to complete the life-safety, health, sanitation, and security-related improvements to the Development and the loss of a substantial sum of money should the transaction not go forward.

17. As demonstrated above, the requested waiver serves the purposes of Section 420.5087, Florida Statutes, and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to low income persons and households. Further, by granting the requested waiver, the Corporation would recognize principles of fundamental fairness in the development of affordable rental housing.

18. The waiver being sought is permanent in nature. 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.

WHEREFORE, Petitioner respectfully requests that the Corporation:

- A. Grant this Petition and all the relief requested therein;
- B. Grant a waiver of the Rule to allow the Petitioner's General Contractor to self-perform the installation of fire-rated safety doors at the Development;
- C. Grant a waiver of the Rule to allow more than 20 percent of the construction cost to be subcontracted to the entity providing the door hardware; and
- D. Award such further relief as may be deemed appropriate.

Respectfully submitted,



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**Brenda B. Ezell, Esq.**

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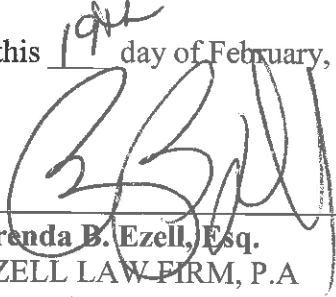
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**CERTIFICATE OF SERVICE**

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 19<sup>th</sup> day of February, 2019.



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