STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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College Trace Apartments, L.P.
a Florida Limited Partnership,

Petitioner,

FHFC CASE NO. 2025-041VW
Application No. 2022-520C

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

PETITION FOR WAIVER OF RULE 67-21.026(13)(h), F.A.C. (07/06/22)

Petitioner College Trace Apartments, L.P., a Florida limited partnership ("Petitioner") submits this Petition to Respondent Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's general prohibition under Rule 67-21.026(13)(h), Florida Administrative Code ("F.A.C.") (07/06/22) against subcontracting to an entity having common ownership. The subcontractor temporarily having common ownership with the general contractor ("GC") was the most qualified for the scope of work and, prior to entering into the subcontract, a purchase and sale agreement was signed that ultimately terminated the common ownership of the GC and the subcontractor. In support, Petitioner states:

A. <u>THE PETITIONER.</u>

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

Paul Shevchuk
Mandarin Trace Apartments, L.P.
1150 Kane Concourse, FL 2
Bay Harbor Islands, FL 33154
Phone: 646-770-7248
Email: PShevchuk@sbvre.com

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

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, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
106 E. College Ave.
Suite 700
Tallahassee, Florida 32301
Telephone: 850-329-4852
Fax: 850-329-4864
Email: BSmitha@stearnsweaver.com

B. THE DEVELOPMENT.

3. The following information pertains to the Development:

- Development Name: College Trace Apartments
- Development Address: 813 Bloodworth Lane, Pensacola, Florida 32504
- County: Escambia
- Developer: OMP College Trace Apartments, LLC
- Number of Units: 112 (Acquisition and Rehabilitation)
- Demographic: Family
- Type: Townhouses and Garden Style Apartments
- Set Asides: 100% at or below 60% AMI
- Funding: $1,180,151 Non-Competitive HC funding request (annual amount)

C. WAIVER IS PERMANENT.

4. The waiver being sought is permanent in nature.

D. RULE FROM WHICH WAIVER IS SOUGHT.

5. Petitioner seeks a waiver of Rule 67-21.0026(13)(h) to allow a construction cost to be subcontracted to an entity having common ownership:

> (13) The General Contractor must meet the following conditions:
> …
> (h) Ensure that no construction cost is subcontracted to any entity that has common ownership or is an Affiliate of with the General Contractor or the Developer. For purposes of this paragraph, "Affiliate" has the meaning given it in subsection 67-21.002(5), F.A.C., except that the term "Applicant" therein shall mean "General Contractor."

See Rule 67-21.0026(13)(h), F.A.C. (effective 07/06/2022).

E. STATUTES IMPLEMENTED BY THE RULE.

6. The Rule implements, among other sections of the Florida Housing Finance Corporation Act, the statute that designated the Corporation as the housing credit agency responsible for the allocation and administration of Low-Income Housing Tax Credits. *See* Section 420.5099, Florida Statutes.

F. JUSTIFICATION FOR THE REQUESTED WAIVER.

7. The General Contractor's Cost Certification for the Development disclosed that the subcontractor for the Special Equipment trade (*i.e.*, Reliant Safety LLC, or "Reliant Safety" for short) temporarily shared common ownership with the General Contractor.

8. Upon information and belief, the purpose of the Rule is to prevent self-dealing and to promote the use of the most qualified subcontractor. Here, Reliant Safety was the most qualified subcontractor for the scope of work. Prior to, and separate from the Development, the management company and Reliant Safety maintained a symbiotic relationship. Their collaboration extended beyond addressing security concerns at the site to ensuring seamless and efficient property management, coordinating closely with onsite personnel to address quality of life issues as well.

9. Reliant Safety offered a unique "virtual guard" based system through its security cameras, which it could monitor remotely and efficiently, and maintain over the long-term. This system is meticulously designed, installed, maintained, and monitored by a dependable safety team. The team has a well-established track record of specific equipment installation that is seamlessly integrated into coordinated security and management practices. The symbiosis between the system and the management team results in a superior product and management experience for the residents. The security team surveys the site, designs the layout and camera views based on their experience, and then continuously remote monitors the site.

10. The most cost effective, proven, and suitable option that prioritized the quality of life of the complex and safety of the residents was therefore for Reliant Safety to initially set up and test the cameras, and then monitor the cameras themselves going forward. This arrangement allowed Reliant Safety to assume responsibility for ongoing operations and maintenance of the cameras as well as ensuring project safety with the knowledge that they had been installed and set up to meet their needs. More importantly, a purchase and sale agreement, the completion of which terminated the common ownership of the GC and Reliant Safety, was signed nearly three months before Reliant Safety entered into the subcontract with the GC.[1] Thus, at the time the GC subcontracted with Reliant Safety, it knew that the common ownership would soon be terminating. In fact, 60% of the payments to Reliant Safety – comprising more than 40% (*i.e.,* $44,692.50) of the amount paid to Reliant Safety – were made *after* the common ownership was officially terminated.[2]

[1] The Purchase and Sale Agreement was signed on October 26, 2022 and the subcontract was subsequently signed on January 17, 2023.

[2] The closing on the Purchase and Sale Agreement occurred on May 5, 2023. At that time, two payments had been made to Reliant Safety. Three more payments were made to Reliant Safety after the closing.

11. For the foregoing reasons, while the Rule was technically violated, the violation that occurred here is distinguishable from circumstances where GCs subcontract to an affiliated subcontractor without any intent to terminate the affiliation and for the sole purpose of profiteering.

12. 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, 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.

13. The requested waiver will not adversely affect Petitioner, the Development, any other applicant, or the Corporation. A denial of this Petition, however, would result in substantial economic hardship to Petitioner – failure to meet the technical requirements of the Rules could result in rescission of the allocation of housing credits awarded to the Development.

14. A waiver of the Rules would serve the purposes of Section 420.5099, F.S., and the Act as a whole, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to households of limited means.

G. <u>ACTION REQUESTED</u>.

15. Petitioner respectfully requests the following:

(a) with respect to Reliant Safety LLC, that the Corporation grant Petitioner a waiver from Rule 67-21.026(13)(h), which prohibits subcontracting to an entity having common ownership;

(b) that the Corporation grant the Petition and all the relief requested therein; and

(c) that the Corporation grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, 22nd Floor
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@stearnsweaver.com
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 copies served by U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 3rd day of September, 2025.

By: */s/ Brian J. McDonough*
Brian J. McDonough, Esq.