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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

WRDG T3D, LP, a Florida limited partnership,

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FHFC CASE NO. 2024-038VW
Application No. 2020-515C

PETITION FOR WAIVER OF RULE 67-21.026(13)(h) (06/23/2020)

Pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code, Petitioner WRDG T3D, LP, (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing") for a waiver of the requirement in Rule 67-21.026(13)(h), Florida Administrative Code ("F.A.C.") (06/23/2020) (the "Rule") that a general contractor may not subcontract to an entity that is an Affiliate of the General Contractor. In the course of conducting its own due diligence, Petitioner discovered that a subcontractor is technically affiliated with the General Contractor ("GC") in the sense that a couple of the individuals that manage the GC also manage the Affiliate. However, neither these individuals, nor the GC itself, have any economic interest in the Affiliate. The Affiliate was only utilized because it submitted the lowest unit cost bid for skilled hourly rates. Since Petitioner caught it before the retainage was released to the GC, Petitioner issued a deductive change order and informed the GC that it could not charge fees on that work. Nonetheless, because the work was subcontracted in violation of the Rule, Petitioner respectfully requests a Rule waiver. In support, Petitioner states as follows:

A. THE PETITIONER

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

WRDG T3D, LP
c/o Jerome Ryans
5301 W. Cypress St.
Tampa, FL 33607
Telephone: (813) 253-0551
Fax: (813) 367-0784
Email: JeromeR@thafl.com

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
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Email: Bmcdonough@stearnsweaver.com

Bridget Smitha
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"):

- Development Name: Boulevard Tower 4 and Boulevard Villas
- Address: 1308 and 1546 W. Chestnut St. Tampa, FL. 33607
- Developer: WRDG T3D Developer, LLC
- County of Development: Hillsborough
- Number of Units: 134
- Type: Boulevard Tower 4 comprises 8 stories (102 units) and Boulevard Villas comprises 3 stories (32 units)

- Demographics: Family

- Set Asides: 40 units (29.85%) @ or below 50% AMI; 74 units (55.22%) @ or below 60% AMI; and 20 units (14.93%) @ or below 80% AMI

- Funding Amounts: $2,242,602 4% Housing Credits (annual allocation)

C. THE RULE FROM WHICH WAIVER IS REQUESTED

4. Petitioner requests a waiver of Rule 67-21.026(13)(h), F.A.C. (6/23/2020), which provides:

> The General Contractor must meet the following conditions: . . . Ensure that no construction cost is subcontracted to any entity that has common ownership or is an Affiliate of [sic] 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."

Id.

D. STATUTES IMPLEMENTED BY THE RULE

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the "Act"):

- Section 420.507, Powers of the corporation.

- Section 420.508, Special powers; multifamily and single-family projects.

- Section 420.509, Revenue bonds.

See §§ 420.507, 420.508, and 420.509, Fla. Stat. (the "Statutes").

E. JUSTIFICATION FOR GRANTING WAIVER

6. Petitioner submitted Non-Competitive Application No. 2020-515C and was invited to credit underwriting on March 18, 2021.

7. Prior to releasing the retainage to the GC, Petitioner conducted due diligence on the various subcontractors and discovered B&B Skilled Services Corp. (the "Affiliate"), which provided rough carpentry work, had some of the same agents as the GC, such that it technically

meets the definition of an "Affiliate" under Rule 67-21.002(5), F.A.C., as modified by the Rule.[1] Specifically, some of the individuals that manage the Affiliate also manage the GC. The GC did not report the relationship to Petitioner because neither the individuals, nor the GC, have any economic interest in the Affiliate. Rather, the Affiliate was selected solely because it submitted the lowest unit cost bids for skilled hourly rates. Thus, the motivation for using the Affiliate was purely to secure a financial benefit and cost savings for the Development.

8. In an attempt to undo the effect of the GC subcontracting to an affiliated entity, Petitioner issued a deductive change order in the amount of $27,626.76[2] and informed the GC that it cannot charge fees on this work. The GC agreed that no General Contractor Fee will be taken on the costs subcontracted to its affiliated entity.

9. Because the Rule prohibits the use of affiliated subcontractors, Petitioner is in need of a Rule waiver.

10. 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 rules demonstrates that the application of the rules 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.

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[1] The total amount of the work completed by the Affiliate was $197,334.

[2] To calculate the deductive change order value, Petitioner multiplied the value of work performed on the job by the Affiliate by the 14% that could not be charged.

[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. *See* § 120.542(2), Fla. Stat.

11. In this instance, Petitioner meets the standards for a waiver of the Rules. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 134 affordable housing units will remain available for the target population in Hillsborough County, Florida. The strict application of the Rule will create substantial hardship for Petitioner because failure to satisfy the technical requirements of the Rule would result in rescission of allocation of housing credits awarded to the Development. The waiver will serve the purposes of the Statutes and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary low-cost housing in the State.

12. By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing to persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable rental housing. *See* § 420.5099(2), Fla. Stat.

F. WAIVER IS PERMANENT

13. The waiver being sought is permanent in nature.

G. ACTION REQUESTED

14. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested waiver of the Rule and allow the General Contractor to subcontract to an Affiliate on the condition that no General Contractor Fee will be taken on the costs subcontracted to its affiliated entity; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
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Miami, Florida 33131

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Counsel for Petitioner

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

CERTIFICATE OF SERVICE

The Petition For Rule Waiver is being served by electronic transmission for filing with the Florida Housing Clerk for the Florida Housing Finance Corporation via CorporationClerk@floridahousing.org, with copies served U.S. Mail on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 24th day of July, 2024.

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