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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

FHFC CASE NO. 2025-040VW
Application No. 2022-518C

PETITION FOR WAIVER OF RULE 67-21.026(13)(h), F.A.C. (07/06/22) AND FOR BOARD APPROVAL PURSUANT TO RULE 67-21.026(13)(g), F.A.C. (07/06/22)

Petitioner Mandarin 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. Petitioner also seeks Board Approval pursuant to Rule 67-21.026(13)(f), F.A.C. (07/06/22), which gives the Corporation discretion to allow more than 20% of the construction costs of a development to be subcontracted to a single subcontractor. Petitioner intended for that subcontractor to only install the HVAC system, but had to expand the scope to include additional work when two other subcontractors failed to timely perform and the development fell behind schedule. Despite efforts to comply with the Rule, the cap was exceeded by 1.1%. In support, Petitioner states:

A. THE PETITIONER.

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

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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.
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Bridget Smitha, Esq.
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Tallahassee, Florida 32301
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Email: BSmitha@stearnsweaver.com

B. THE DEVELOPMENT.

3. The following information pertains to the Development:

- Development Name: Mandarin Trace Apartments
- Development Address: 3960 Old Sunbeam Road, Jacksonville, FL 32257
- County: Duval
- Developer: OMP Mandarin Trace Apartments, LLC
- Number of Units: 120 (Acquisition and Rehabilitation)
- Demographic: Family
- Type: Garden Apartments
- Set Asides: 100% at or below 60% AMI
- Funding: $1,225,090.00 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.

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.

[1] The Purchase and Sale Agreement was signed on October 26, 2022 and the subcontract was subsequently signed on January 18, 2023.

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>RULE PURSUANT TO WHICH BOARD APPROVAL IS SOUGHT.</u>

15. Petitioner seeks Board approval to exceed the 20% subcontractor cap pursuant to Rule 67-21.026(13)(g), which provides, in relevant part, as follows:

> (13) The General Contractor must meet the following conditions:
>
> …
>
> For Developments with a Development category of Rehabilitation or Substantial Rehabilitation, **unless otherwise approved by the Corporation** for a specific Development, 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, with the exception of a subcontractor (or any group of entities that have common ownership or are Affiliates of any other subcontractor) contracted to perform work on both the HVAC and electrical components of a building of at least seven (7) stories which may not have more than 31 percent of the construction cost in a subcontract, unless otherwise approved by the Corporation for a specific Development. With regard to said approval, the Corporation shall require an analysis from the Credit Underwriter

> and consider the facts and circumstances of each Applicant's request, inclusive of construction costs and the General Contractor's fees. For purposes of this paragraph, "Affiliate" has the meaning given in subsection 67-21.002(5), F.A.C., except that the term "Applicant" therein shall mean "subcontractor…"

See Rule 67-21.0026(13)(g), F.A.C. (07/06/2022)(emphasis added).

H. <u>JUSTIFICATION FOR BOARD APPROVAL.</u>

16. During the review of the General Contractor's Cost Certification, it was discovered that one subcontractor (*i.e.*, All Weather Contractors, Inc. or "All Weather" for short) exceeded the 20% limitation of Rule 67-21.026(13)(g), F.A.C. (07/06/22) by approximately 1.1%. Per the GC Cost Certification, the total construction costs amounted to approximately $4,865,146. All Weather's subcontract amounted to approximately $1,026,935 or 21.1%.

17. Petitioner has never previously worked with All Weather and is not affiliated therewith in any way. Initially, All Weather was contracted to perform only the HVAC work. Unfortunately, two other subcontractors failed to perform their contracted scopes: concrete work (*i.e.,* sidewalks) and in-unit work (*i.e.*, interior carpentry and finishes). Progress on the Development was delayed (Petitioner was four months into a 12-month job with no significant progress on the in-unit work or concrete work) and Petitioner needed a trustworthy subcontractor to complete that work. Accordingly, because All Weather was already mobilized onsite and had a proven track record of performing efficiently and on time, Petitioner knew it could trust All Weather with an expanded scope.

18. This trust was particularly important for the in-unit work that was originally contracted to Kinetic Renovations LLC ("Kinetic"). Since the rehabilitation was performed with the tenants in place, Petitioner determined that using the same subcontractor for the interior work of each unit: significantly minimized the disturbance to the residents, facilitated tight coordination of the work, reduced the number of unit entries, reduced the timeframe workers were inside each unit, and ensured the scopes were executed seamlessly. For these reasons, and because Kinetic

had performed satisfactorily at another affordable housing development (College Trace), Petitioner entrusted Kinetic with the in-unit work here. When Kinetic was unable to complete the in-unit work, Petitioner needed to quickly replace Kinetic with a subcontractor that it trusted to limit disruptions and safety concerns for the tenants. All Weather was the only viable option as Petitioner was not able to locate any other local entities that were qualified to perform occupied rehab work.[2]

19. Petitioner never contemplated or intended for the same contractor to perform all of the work provided by All Weather and would not have exceeded the Rule but for the foregoing exigent circumstances.

20. In an attempt to prevent All Weather from exceeding the cap imposed by the Rule, Petitioner used a separate plumber for unit interiors, and a separate subcontractor for window installation and siding repairs. Despite this effort, the cap was exceeded by 1.1%.

21. Petitioner therefore respectfully requests approval from the Corporation for All Weather to exceed the Rule's 20% cap. Using All Weather promoted Petitioner's goal of maximizing the value added to the Development. Providing the same subcontractor with a wider range of scope permitted economies of scale such that more was achieved from each dollar spent. Any savings were invested back into the Development. Additionally, because the GC consolidated the responsibility for in-unit work primarily with a single subcontractor, it will be easier for Petitioner to pursue any warranty issues in the future.

22. If this request is approved, it will not adversely affect the Development, any other applicant, or the Corporation. A denial, however, would result in substantial economic hardship

[2] The lack of qualified subcontractors is not limited to Duval County. Indeed, there are few contractors in Florida, much less nationwide, qualified to perform work with tenants in place. Had Petitioner used a contractor from outside of Duval County, then it would have cost exponentially more to pay for travel, lodging, etc.

to Petitioner because, as a result of the denial, the funding awarded to the Development could be rescinded.

23. Because rehab work is complete, and the subcontractor has already been paid, Petitioner has no means to come into compliance. Petitioner therefore respectfully requests approval for All Weather Contractors, Inc. to perform approximately 21.1% of the total construction costs.

24. 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.

I. ACTION REQUESTED.

25. 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) with respect to All Weather Contractors, Inc., that the Corporation allow it to exceed the 20% cap by approximately 1.1%;

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

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

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
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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.