

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

CATHEDRAL TERRACE 2, LTD.

Petitioner

v.

FLORIDA HOUSING  
FINANCE CORPORATION

Respondent

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FHFC Case No. 2016-027VW

RFA 2014-111

APPLICATION NO. 2014-426S

**PETITION FOR WAIVER**

CATHEDRAL TERRACE 2, LTD ("Petitioner"), by and through its undersigned attorney, pursuant to Section 120.542, Florida Statutes, and Chapters 28-104, 67-48 and 67-60 Florida Administrative Code ("F.A.C.") hereby petitions the Florida Housing Finance Corporation ("Florida Housing") for a waiver of Rule 67-48.004, F.A.C. (2014) and provisions and requirements of RFA 2014-111 SAIL Financing of Affordable Multifamily Housing Developments to be Used in Conjunction with Tax Exempt Bond Financing and Non-Competitive Housing Credits ("RFA") In support Petitioner states:

**A. THE PETITIONER**

1. The address, telephone and facsimile number of Petitioner is:

5300 W. Cypress St., Suite 200  
Tampa, FL 33607  
Tel: (727) 578-1174  
Fax: (727) 579-0145

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2. The address, telephone and facsimile number of Petitioner's attorney is:

Michael P. Donaldson  
Carlton Fields Jordan Burt  
215 S. Monroe Street, Suite 500  
Tallahassee, FL 32301-1866  
Tel: (850) 513-3613  
Fax: (850) 222-0398

**B. THE DEVELOPMENT**

3. Petitioner successfully applied for financing by submitting an Application in response to the RFA. The financing was to be used to supplement the rehabilitation of a 240 unit apartment complex in Duval County, Florida named Cathedral Terrace. Petitioner was assigned Application Number 2014-426S (the "Application"). As provided in the RFA at page 18, Petitioner was required to comply with the following:

The Applicant will be required to enter into a Memorandum of Understanding (MOU) with at least one (1) designated supportive services lead agency approval by the Corporation, for the purpose of coordinating services and housing for Persons with Disabling Conditions. The Corporation will establish and maintain a list of approved participating agencies in each county that the Development shall work with to execute the MOU. The FHFC-Designated Supportive Services Lead Agencies List is available on the Corporation's Website <http://www.floridahousing.org/Developers/MultiFamilyPrograms/Competitive/2014-111/OtherInformation/> (also by clicking here). The purpose of the MOU is to establish the roles and responsibilities of the Development and lead agency/agencies in meeting the intent of this commitment. These include roles and responsibilities regarding the Applicant notifying the lead agency that a unit is available, the lead agency referring households to apply for the set-aside unit, and the lead agency addressing the needs or the residents in the set-aside unit. The roles and responsibilities of the lead agency may be in conjunction with the supportive services agency's network of community-based service providers.

**C. THE RULES FROM WHICH A WAIVER IS SOUGHT**

4. Petitioner requests a waiver from the portion of RFA that requires the MOU with a designated supportive services lead agency. This requirement of the RFA has been incorporated into the loan documents executed by Petitioner. As required by Rule 67-48.010(12) F.A.C. Petitioner must comply with all loan conditions and requirements.

**D. STATUTES IMPLEMENTED BY THE RULE**

5. The RFA implements, Chapter 420, F.S. The Florida Housing Finance Corporation Act,<sup>1</sup> which is the statute that created the funding programs implemented by Florida Housing. (See 420.5087 and 420.509 F.S.). As the designated funding agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of funds. Accordingly, the RFA implements, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for funding available through the RFA.

6. Florida Housing has the authority pursuant to Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C. to grant waivers to its requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances.

7. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule or in this case RFA provision would (1) create a substantial hardship or violate principals of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes.

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.526, Florida Statutes.

**E. FACTS DEMONSTRATING ENTITLEMENT TO WAIVER**

8. For the reasons set forth below, compliance with the provisions of the aforementioned RFA requirement would give rise to substantial hardship to Petitioner and would violate principles of fairness.

9. Petitioner's Development is a HUD 236/8 project that closed on its award in 2016. At the time of award and closing there was the requirement in the RFA for the creation of an MOU to be executed with a designated supportive services lead agency in order to direct Persons with Disabling Conditions to the property.

10. Petitioner is requesting that these requirement of the MOU be waived given the circumstances specific to this property as follows:

- a) The Cathedral Terrace property is restricted to elderly or handicapped families or individuals under its HUD Regulatory Agreement, and nearly all of the residents would qualify under Florida Housing's definition of Persons with Disabling Conditions. Florida Housing has waived the MOU requirements previously under similar circumstances. (2015-041VW)
- b) Given that this property has HUD Section 8 rental assistance it maintains an extensive waiting list. Given the population served (low income elderly or handicapped individuals), almost everyone on the waiting list would qualify as Persons with Disabling Conditions and the majority of the residents are at or below the Extremely Low Income limit.
- c) The intent of the RFA requirement was to ensure that the property serves Extremely Low Income Persons with Disabling Conditions. However, by using designated supportive services lead agencies under the MOU Petitioner has

incurred longer vacancies, given the lengthy time it takes supportive services lead agency to qualify applicants. Petitioner would be better able to accomplish the RFA requirements intent in a shorter amount of time by using its own in-house Wait List.

11. Petitioner believes that it makes sense to waive the MOU requirement, and that waiving this requirement is consistent with Florida Housing's past waivers addressing similar facts. (See Case No. 2015-041VW)

**F. WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE**

12. Florida Housing's approval of the requested waiver would serve the purpose of the underlying Act. The purpose of both the Act and the RFA is to facilitate and stimulate the development and/or preservation of multifamily rental housing that is affordable to families of limited means. If the requested waiver is granted, this site will generate better occupancy due to faster lease-up of vacant units. The property will still meet the intentions of the Handicapped or Persons with Disabling Conditions category because the development will continue to serve frail low income seniors and mobility impaired households, the majority of which are at or below the ELI income limit.

Petitioner reserves the right to provide additional information should it be necessary.

**G. TYPE OF WAIVER REQUESTED**

13. The waiver being sought is permanent in nature.

**H. ACTION REQUESTED**

14. For the reasons stated above, Petitioner requests a waiver the RFA requirement for the creation and execution of a MOU with a designated supportive services lead agency.

Respectfully submitted this 11<sup>th</sup> day of July 2016.

*/s/ Michael P. Donaldson* \_\_\_\_\_

**MICHAEL P. DONALDSON**

Carlton Fields Jordan Burt

Florida Bar No. 802761

215 S. Monroe Street, Suite 500

Tallahassee, FL 32301

Telephone: 850-513-3613

Facsimile: 850-222-0398

Email: [mdonaldson@carltonfields.com](mailto:mdonaldson@carltonfields.com)

Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the Petition for Waiver is being served by Hand-Delivery for filing with Kate Flemming, Agency Clerk and Hugh Brown, General Counsel for the Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, with copies served via Hand-Delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399 this 11<sup>th</sup> day of July, 2016.

*/s/ Michael P. Donaldson* \_\_\_\_\_

Michael P. Donaldson