

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

In Re: EHDOC Council Towers  
Limited Partnership

FHFC Case No.: 2023-001VW

**ORDER GRANTING WAIVER OF RULE 67-21.003(1)(b), F.A.C. (2018), 67-21.026(12)(b) F.A.C. (2018) AND CERTAIN NON-COMPETITIVE APPLICATION INSTRUCTIONS (Rev. 05-2018)**

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on January 27, 2023. On January 10, 2023, Florida Housing Finance Corporation ("Florida Housing") received a Petition for Waiver of Rules 67-21.003(1)(b) and 67-21.026(12)(b) (eff. 7/8/18) and the Non-Competitive Application Instructions (Rev. 05-2018) (the "Petition") from EHDOC Council Towers Limited Partnership (the "Petitioner") to allow the Petitioner's general contractors to receive an aggregate fee exceeding 14%. Notice of the Petition was published on January 12, 2023, in Volume 49, Number 8, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised on the premises, the Board hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner successfully applied for four percent housing tax credits to assist in acquiring and rehabilitating a 250-unit high-rise development named Council Towers North & South located in Miami-Dade County, Florida (the “Development”).

3. Rule 67-21.026(12)(b) Fla. Admin. Code (2018), in relevant part, provides:

The General Contractor’s fee shall be limited to a maximum of 14 percent of the actual construction costs...

4. Rule 67-21.003(1)(b), F.A.C. (2018) incorporates by reference the Non-Competitive Application Package (Rev. 05-2018) (“NCA”). The NCA includes the following requirement:

General Contractor’s fee is limited to 14% of actual construction cost.

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A1.2. General Contractor Fee see Note (3) (Max.14% of A 1.1., column 3).

5. Petitioner requests a waiver of the above rules to allow Petitioner’s general contractors to receive an aggregate fee over 14%. Construction began on the Development sometime around June 2020. Almost immediately after the commencement of its renovation work, Petitioner avers

that the project began to experience substantial delays due to COVID-related local ordinances and restrictions imposed by the City of Miami Beach. As a result of these restrictions, Petitioner states that it was forced to replace its original general contractor (“Morrissey”) with NEI General Contracting (“NEI”).

6. As part of the severance negotiations with Morrissey, Petitioner agreed to pay various fees and expenses directly incurred by Morrissey and other amounts to ensure Morrissey’s continued cooperation toward the successful completion of the project. Petitioner states that HUD has approved all costs to be paid to Morrissey.

7. NEI’s (the replacement contractor) contractor fee is under the 14% limit; however, as a result of the severance negotiations, the overall aggregate fee between Morrissey and NEI as a percentage of the actual cost of work, is 15.69%.

8. Petitioner has agreed to pay any General Contractor fee above 14% out of its Developer Fee.

9. Section 120.542(2), Florida Statutes, provides in pertinent part:

Variations 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.

10. The Board finds that granting the requested waiver will not impact other participants in funding programs administered by Florida Housing, nor will it detrimentally impact Florida Housing.

11. The Board also finds that Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control and that it would suffer a substantial hardship if the waiver is not granted.

12. The Board further finds that Petitioner has also demonstrated that the purpose of the underlying statute, which is to “encourage development of low-income housing in the state,” would still be achieved if the waiver is granted. §420.5099, Fla. Stat.

**IT IS THEREFORE ORDERED** that Petitioner’s request for a waiver of 67-21.003(1)(b) (2018) and 67-21.026(12)(b)(2018) and certain parts of the Non-Competitive Application Instructions (Rev. 05-2018) is hereby **GRANTED** to allow Petitioner to exceed the maximum General Contractor’s fee of 14% of actual construction costs on the condition that 1) Morrissey complete and execute the General Contractor Cost Certification for the work that Morrissey completed; and 2) any amounts over the 14%

limitation be paid out of the Petitioner's Developer Fee and reflected as a subset of Developer Fee in the Development Final Cost Certification.

**DONE and ORDERED** this 27<sup>th</sup> day of January 2023.



Florida Housing Finance Corporation

By:   
Chairperson

Copies furnished to

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### **NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.**