

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**VC CATHEDRAL, LLC,  
a Florida limited liability company,**

Petitioner,  
vs.

**CASE NO.** 2020-032VW

**FLORIDA HOUSING FINANCE  
CORPORATION,**

Respondent.

**PETITION FOR WAIVER OF RULES 67-48.009(5)(d),  
67-48.018(1)(c), AND 67-48.023(1)(c)**

VC Cathedral, LLC, a Florida limited liability company (the “Petitioner”) hereby petitions Florida Housing Finance Corporation (the “Corporation”) for a waiver or variance of the Corporation’s prohibition against an applicant applying for SAIL program funding, HOME program funding, and/or competitive Housing Credits if any part of the proposed development is subject to a Land Use Restriction Agreement (“LURA”) unless a specified exception applies. *See* Rules 67-48.009(5)(d), 67-48.018(1)(c), and 67-48.023(1)(c), F.A.C. (2019). Here, neither of the exceptions specified in the Rules applies. Petitioner seeks to rehabilitate a vacant building to create new affordable housing for the benefit of families in Duval County. Because the building is subject to a LURA (which coincidentally does not take effect until renovations are complete and a certificate of occupancy is obtained), the Petitioner cannot apply to the Corporation for funding in response to a competitive solicitation that would place greater affordability restrictions on the property than currently exist under the LURA. The building is a three-story historic structure that has 79 rooms with shared baths and kitchens. Due to its historic designation, the building cannot be demolished or significantly altered. The building will require a substantial interior rehabilitation, which will include “creating” individual units.

Even if it was economically feasible for Petitioner to redevelop the property without FHFC competitive funding, the existing LURA would remain and 15% of the units would be set aside for households at or below 80% AMI. Currently, the building cannot be substantially renovated without FHFC competitive funding. By not allowing Petitioner to apply for competitive funding, the building will continue to sit vacant and be a blight to the area. Accordingly, Petitioner has no other option than to request this waiver. Petitioner is not asking to be released from the LURA, but rather to be allowed to compete for additional FHFC funding (understanding that with such additional funding would come a more restrictive LURA). In support of this petition, Petitioner states as follows:

**A. THE PETITIONER**

1. The name, address, telephone and facsimile numbers, and email address for the Petitioner and its qualified representative for Petitioner's application:

VC Cathedral, LLC.  
3030 Hartley Road  
Suite 310  
Jacksonville, FL 32257  
Attn: James R. Hoover  
Facsimile: (904)260-9031  
Telephone: (904)288-7784  
E-Mail: [rhoover@vestcor.com](mailto:rhoover@vestcor.com)

2. For purposes of this Petition, the address, telephone number and facsimile number of the Petitioner's attorneys are:

Brian J. McDonough, Esquire  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
150 West Flagler Street  
Miami, Florida 33130  
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## **B. BACKGROUND**

### 3. General Development information:

- Development Name: currently Florence N. Davis Center (will be called “Lofts at Cathedral” in future applications)
- Developers: will be TVC Development, Inc. in future applications
- County of Development: Duval
- Number of Units: To be determined at time of application,<sup>1</sup> but approximately 30-40
- Type: currently Garden
- Set Asides: the existing LURA currently requires 15% of the units to be set aside at or below 80% AMI (for 10 years upon issuance of a certificate of occupancy), but Petitioner will set aside 15 units (*i.e.*, 37-50%) at or below at least 80% AMI, plus be subject to the restrictions set forth in any competitive solicitation to which Petitioner applies.
- Demographics: currently family
- Funding Amounts: SAIL \$288,200 (repaid)

4. During the 1994-1995 SAIL VII Cycle, Community Connections of Jacksonville, Inc. (formerly known as Young Women’s Christian Association of Jacksonville, Florida, Inc.) (the “Original Borrower”) applied for and was awarded a State Apartment Incentive Loan

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<sup>1</sup> Because the building is vacant, Petitioner will be creating new units. However, Petitioner does not currently know how many units will be created because it has not yet begun the architectural design process. The building is presently designed as “dorm style” units with common bath and kitchen. The entire layout of the building will need to be redesigned. Petitioner is reluctant to incur the significant expense associated with this process without first knowing whether it is eligible to apply for future RFAs (e.g., whether the draft petition will be granted). Accordingly, Petitioner cannot be more specific at this time.

(“SAIL”) loan (95S-045) in the amount of \$288,200 to finance the rehabilitation of the Florence N. Davis Center, a 79-room<sup>2</sup> housing development located in Duval County, Florida (the “Development”). The Development was operated as a homeless housing facility. The SAIL loan closed on December 28, 1995 and was extended from an original maturity date of June 28, 2012 to a maturity date of June 28, 2047.

5. At the FHFC Board’s September 11, 2011 meeting, the Board approved a request to renegotiate the terms of the SAIL loan to increase the affordability period for an additional 15 years beyond the original 50 year period for a total affordability period of 65 years. The categorical set-aside was also modified such that 100% of the Development’s units would serve the Homeless in lieu of family. In connection with the SAIL loan, the Original Borrower and any subsequent landowners are also bound by a LURA (the “Original LURA”) that likewise spans a 65 year period. The Original LURA was dated December 28, 1995 and amended on November 10, 2003 and June 28, 2012. All amendments, supplements, assignments and modifications are referred to collectively as the “Original LURA” for purposes of this Petition.

6. On or about May 5, 2017, FHFC received notice that the Original Borrower had closed the doors to the project and that the first lien holder (the City of Jacksonville) was initiating foreclosure proceedings. Billy Goat Hill, Inc. (“First Owner”) subsequently acquired the Development and became bound by the Original LURA.

7. The FHFC Board approved the transfer of ownership of the Development and assumption by the First Owner of the Original LURA at its May 5, 2017 meeting. The Board

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<sup>2</sup> While prior Corporation documentation referred to the Center as having 79 “units,” they are more accurately described as 79 dormitory-style rooms with shared bathroom and kitchen areas. These individual rooms could not be converted into 79 new units. First, if FHFC funding is obtained, the Center would be renovated to serve families, a demographic that is not conducive to single-room units. Second, the building is a historic structure that cannot be demolished or reconfigured to house more than 30-40 garden-style apartments.

also revised the affordability set-aside requirements conditioned upon the full payoff of the SAIL loan. Specifically, to make the Development financially viable, the Board approved modifications to allow the First Owner to redevelop the property as a mixed-use development and to provide a set-aside of 15% of the units at 80% AMI (rent and income) for ten years after receipt of a certificate of occupancy since the set-asides would have otherwise terminated upon foreclosure. FHFC also received several letters of community support for the sale of the Development as part of the planned revitalization of the Cathedral District and the modification of the Original LURA.

8. The SAIL loan was subsequently paid in full and satisfied. However, the Original LURA remained in full force and effect. Accordingly, the First Owner recorded an Amended and Restated LURA on April 2, 2018 (Doc #2018075712, OR BK 18335, pg 57) in the Official Records of Duval County to amend and restate the Original LURA to incorporate the modifications approved by the Board at its May 5, 2017 meeting (“Amended LURA”).

9. VC Cathedral, LLC (“Second Owner”) purchased the Development from the First Owner pursuant to a sale that closed on February 27, 2020. Second Owner paid a total purchase price of \$20,000.00 and assumed the loans encumbering the Development (City of Jacksonville SHIP \$134,279.91 balance and HOME \$235,200.00 balance, approximately). Corporation approved of the transfer pursuant to Article VII, § 7.1.2, of the Amended LURA on February 27, 2020.

10. First Owner, Second Owner, and FHFC executed an Assignment and Assumption of the Amended LURA on February 27, 2020.

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

11. Petitioner requests a waiver from Rules 67-48.009(5)(d) (pertaining to SAIL applicants); 67-48.018(1)(c) (pertaining to HOME applicants); and 67-48.023(1)(c) (pertaining to applicants for Housing Credits), F.A.C. (the “Rules”), which provide:

Unless otherwise permitted in a competitive solicitation process, an Applicant is not eligible to apply for [SAIL program funding, HOME Program funding, or Competitive Housing Credits] if any of the following pertain [to the proposed Development]: . . . .

The proposed Development site or any part thereof is subject to any Land Use Restriction Agreement or Extended Use Agreement, or both, in conjunction with any Corporation affordable housing financing intended to foster the development or maintenance of affordable housing, unless at least one (1) of the following [exceptions] applies:

1. A LURA recorded in conjunction with the Predevelopment Loan Program or the Elderly Housing Community Loan Program, or
2. A LURA or EUA, or both, for an existing building or buildings, originally constructed at least 25 years prior to the deadline to apply for the applicable [SAIL funding, HOME funding or Competitive Housing Credits], where, in the current Application, the Applicant has selected and qualified for the Homeless demographic commitment with a Development category of Rehabilitation [Moderate Rehabilitation/Substantial Rehabilitation], Acquisition and Rehabilitation [Moderate Rehabilitation/Substantial Rehabilitation], Preservation, or Acquisition and Preservation.

**D. STATUTES IMPLEMENTED BY THE RULES**

12. The Rules implement, among other sections of the Florida Housing Finance Corporation Act, Section 420.5099 (Allocation of the low-income housing tax credit), Section 420.5089 (HOME Investment Partnership Program) and Section 420.5087 (State Apartment Incentive Loan Program).

**E. JUSTIFICATION FOR THE WAIVER**

13. Under Section 120.542(1), Fla. Stat., 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* § 120.542(2), Fla. Stat.

14. Petitioner would like to apply for SAIL program funding, HOME program funding, and/or competitive Housing Credits. If granted, the funds would be used to substantially rehabilitate the Development, which is currently vacant. In the absence of substantial renovation, the Development will continue to sit vacant and may permanently be lost as a source of affordable housing, depriving Duval County of those affordable housing units. Indeed, the Amended LURA (providing for a set aside of 15% of the units at or below 80% AMI) would not take effect unless or until a certificate of occupancy is obtained, which cannot occur without Corporation funding via a competitive solicitation.<sup>3</sup> Moreover, the City of Jacksonville – through its HOME and SHIP loans on the Development – could foreclose the Amended LURA.

15. The Rules prohibit Petitioner from applying for Corporation funding because the Development is subject to the Amended LURA.

16. The requested waiver is essential in order to provide new affordable housing, which families in Duval County desperately need. Petitioner would use the SAIL, HOME and/or Housing Credits to make the substantial renovations necessary to provide approximately 30-40 quality units for families, of which at least 15 units (*i.e.*, 37-50% of the total units) would be set aside at or below 80% AMI, as well as the more restrictive set-asides provided as part of a

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<sup>3</sup> The historic building can only be reconfigured to house a maximum of 30-40 garden-style apartments. The City of Jacksonville requires that 15 of these units (*i.e.*, 37-50% of the total units) be set aside at or below 80% AMI (and the LURA would require 12 units to be set aside at 80% AMI if the 15% set aside is computed based on the original 79-room development). Accordingly, Petitioner is unable to proceed with the renovations absent Corporation funding.

subsequent competitive solicitation.<sup>4</sup> Without such funding, Petitioner cannot substantially rehabilitate the currently vacant building and the new affordable units will be lost.

17. The requested waivers will not adversely affect the Development or the Corporation, but would allow Petitioner to seek additional funding and ensure that the Development is available at a rate accessible by families of lesser means in Duval County. By granting the waivers, the Corporation would recognize the economic realities and principles of fundamental fairness in the development of affordable housing. This recognition would promote participation by experienced developer entities in meeting the purpose of the Florida Housing Finance Corporation Act in an economical and efficient manner.

18. Moreover, included within the Corporation's Portfolio Preservation Action Plan is the development of parameters for prioritizing developments for recapitalization within each program strategy. The Development should be prioritized in light of the following property risk factors identified in the Board-approved Plan:

- **Affordability Expiration: Risk of Loss of Units Serving High Priority Demographic Population:** There exists a high risk that units serving a high priority demographic population (*i.e.*, families) will be lost due to affordability

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<sup>4</sup> This Petition is being filed with regard to a small portion of a city block that is subject to a LURA. If the petition is granted, Petitioner will include this small parcel with an adjacent parcel and redevelop the entire block to provide affordable housing as part of the same future RFA submission. The adjacent parcel is not subject to the LURA and therefore is not subject to this Petition. The block will be developed as one project under one RFA submission with a small portion of the development (the portion subject to this Petition) providing rehabilitated units and the larger portion providing newly constructed affordable housing units. Until Petitioner knows which RFA the development will be traveling under, Petitioner does not know which set asides would apply. Put another way, for the reasons stated in Footnote 1, *supra*, Petitioner cannot yet predict which demographics it will serve, the number of units it will build, the number of set asides, etc. However, Petitioner can commit that it will comply with all set-aside requirements imposed under the future RFA. Each RFA has specific requirements for the number and allocation of set aside units (including ELI units). The entire project, including the property subject to this Petition, would be subject to those set-aside requirements.



expiration. The Development, which previously provided housing to the homeless demographic, was forced to close in 2017 due to financial hardship and narrowly escaped foreclosure. The First Owner planned to redevelop the property as a mixed use development setting aside 15% of the units at 80% AMI. However, it has remained vacant and Petitioner cannot renovate or reopen the Development to provide affordable housing without additional FHFC funding. The building is a historic structure and therefore cannot be demolished, so the only way to economically preserve the Amended LURA is through using additional FHFC competitive resources for the purpose of providing affordable housing.<sup>5</sup> If such funding is obtained, additional restrictions as set forth in the competitive solicitation will apply such that even more affordable housing is available to this demographic.<sup>6</sup>

- **Aging Stock: Risk of Impacts / Loss Due to Deteriorating Physical Condition:** The Development is aging and will remain vacant unless or until its deteriorating physical condition is addressed. The building was built in 1950 and is in desperate need of substantial rehabilitation, which likely includes significant code and safety issues. As the building continues to age, it is becoming more difficult and more expensive to rehabilitate.
- **Market Condition:** The Development has been vacant for over two years as the First Owner attempted to redevelop the site as a mixed use development with

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<sup>5</sup> See Footnote 3, above.

<sup>6</sup> For the reasons stated in Footnote 1, *supra*, Petitioner is uncertain as to the exact number of affordable housing units the Development will provide. However, if this Petition is granted, and Petitioner successfully applies for an RFA, the Development will be subject to – and will comply with – the set aside requirements of the RFA and LURA.

15% of the units set aside for households at or below 80% AMI. First Owner was unable to move forward with their redevelopment plan. As such, Petitioner, as an experienced affordable developer, was able to acquire the Development for \$20,000 and the assumption of the City of Jacksonville HOME and SHIP loans. The purchase price is well below market value due to the unique challenges of substantially rehabilitating a deteriorating historical structure. Petitioner purchased not only the Development, but the entire block, such that the properties could efficiently be developed in conjunction with each other thereby creating even more affordable housing for families in Duval County. The Amended LURA that is the subject of this Petition covers only approximately the western 1/3 of the block. Thus, granting the waiver – and allowing Petitioner to apply for FHFC funding pertaining to the larger project (i.e., the entire block) – would drastically increase the affordable housing units available. Indeed, Petitioner hopes to provide an additional 90 units by building out the entire block (i.e., 120-130 total units) with funding provided as part of a FHFC competitive solicitation (which would be subject to additional set-aside requirements creating even more affordable units in Duval County).<sup>7</sup>

- **Location**: The Development should be deemed a “higher priority” because it is located inside the central business district of downtown Jacksonville and close to amenities, such as schools, transit, jobs, and other services. Specifically, it is less than two miles from Kirby-Smith Middle School, Andrew A. Robinson Elementary School, Florida State College at Jacksonville, and Florida Coast Career Tech; and less than three miles from a medical center (UF Health

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<sup>7</sup> See Footnote 4, *supra*.

Jacksonville), Matthew W. Gilbert Middle School, John Love Elementary School, Bishop Kenny High School, Community Barber School, and the Brown Eastside Branch Library. It is also located two blocks from a Jacksonville Transportation Authority transfer stop (*i.e.*, Rosa Parks Station), which has multiple routes that run approximately every fifteen minutes. Similarly, it is walking distance to groceries, several restaurants, and countless businesses/potential employers. Thus, the Development should be prioritized because a high demand exists from families for affordable units in downtown Jacksonville.

The Development should also be prioritized because, unlike other rehabilitation projects seeking simply to preserve existing units, the Development would be adding new affordable units to the market that might otherwise be lost. Finally, the SAIL loan (95S-045) has been paid in full and satisfied.

19. A denial of this Petition would: (a) prevent Petitioner from submitting applications for SAIL program funding, HOME program funding, and/or competitive Housing Credits; (b) deprive families in Duval County of critically needed safe, clean, and affordable dwelling units and thereby place a substantial hardship upon them; and (c) violate principles of fairness. It would also result in an unintended consequence that is diametrically opposed to the intent of the SAIL and HOME programs, especially in light of the express intent to meet the housing needs of families. *See* § 420.5087(3)(b).

20. A waiver of the Rules would serve the purposes of Sections 420.5099, 420.5089 and 420.5087 Fla. Stat., 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.

21. 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.

**F. PERMANENCY**

22. The waiver being sought is permanent in nature.

**G. ACTION REQUESTED**

Petitioner requests the following:

- a. That the Corporation grant Petitioner – and any entity related to Petitioner through common Principals that seeks funding in relation to the property that is subject to the Amended LURA – a waiver from Rules 67-48.009(5)(d), 67-48.018(1)(c), and 67-48.023(1)(c), F.A.C. (2019) and allow Petitioner to apply for SAIL program funding, HOME program funding, and/or competitive Housing Credits even though the Development is subject to the Amended LURA;
- b. Grant the Petition and all the relief requested therein; and
- c. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

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By:           s/Brian J. McDonough

**CERTIFICATE OF SERVICE**

The Petition is being served via e-mail for filing with the Corporation Clerk for the Florida Housing Finance Corporation, *CorporationClerk@FloridaHousing.org*, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 11<sup>th</sup> day of May, 2020.

*s/Brian J. McDonough*