

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

LANDINGS PORT RICHEY SENIOR
HOUSING LIMITED PARTNERSHIP,

Petitioner,

FHFC CASE NO. 2017-008VW
RFA NO. 2015-245CS

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.002 (95)

Petitioner LANDINGS PORT RICHEY SENIOR HOUSING LIMITED PARTNERSHIP, (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing") for a waiver of the timing provisions of the 2015 Qualified Allocation Plan ("2015 QAP") as incorporated and adopted by Rule 67-48.002(95), Florida Administrative Code ("F.A.C.") (2014) (the "Rule") pertaining to a tax credit exchange. In support, Petitioner states as follows:

A. THE PETITIONER

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

Landings Port Richey Senior Housing Limited Partnership
Attn: Matt Rule
c/o National Church Residences
2335 North Bank Drive
Columbus, OH 43220
Telephone: 614-273-3539
Fax: 614-451-0351
E-mail: Mrule@nationalchurchresidences.org

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
305-789-3350 (Phone)
305-789-3395 (Fax)
Email: Bmcdonough@stearnsweaver.com

3. On June 23, 2015, Petitioner timely submitted its Application in response to the RFA 2014-104 for Housing Credit and SAIL Financing for the Preservation of Existing Multifamily Affordable Housing Developments (the "RFA") to assist in the renovation and preservation of a 196 unit development located in Pasco County, Florida (the "Development"). Petitioner requested housing tax credits in the amount of \$1,510,000. The Development received an allocation of 2015 Low-Income Housing Tax Credits ("Tax Credits") and was invited to credit underwriting on September 8, 2015. On December 23, 2015, Petitioner entered into a Carryover Agreement for allocation of 2015 Tax Credits. The "placed in service" date for the Development is December 31, 2017.

B. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver of Rule 67-48.002(95), F.A.C. and Subsection II.K. of the 2015 QAP, which provides as follows:

"K. Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required or it is apparent that a Development will not be placed in service by the date required, and such failure is due to circumstances beyond the Applicant's control, **and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service,** the Corporation may reserve allocation

in an amount not to exceed the amount of Housing Credits returned, and may allocate such Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service, provided the following conditions have been met: (i) the sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant's control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs.”

(emphasis added).

6. The process found in the 2015 QAP requires an applicant to return its allocation of housing tax credits in the last calendar quarter of the year in which it was otherwise required to be placed in service before a tax credit exchange request can be approved by the Executive Director of Florida Housing. Petitioner is requesting a waiver of this limitation on the timing of the tax credit exchange, to allow a credit exchange to be approved by the Executive Director, or the Board of Directors of Florida Housing, at this time rather than in the last calendar quarter of 2017.

D. STATUTES IMPLEMENTED BY THE RULE AND THE 2015 QAP

7. The 2015 QAP and the Rule implement, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statutes relating to the allocation of Low-Income Housing Tax Credits contained in Section 420.5099 of the Florida Statutes. *See* § 420.5099, *Fla. Stat.* (2016) (the “Statute”).

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND SUBSECTION II.K OF THE 2015 QAP

8. As mentioned above, Petitioner requests a waiver of the timing requirements found in the 2015 QAP to permit Florida Housing to approve the tax credit exchange prior to the last quarter of 2017.

9. Over the last year the Development has suffered unforeseen events that make it clear that the Development will not be placed in service by the required date—December 31, 2017. The Development was proceeding towards a December closing when, unexpectedly, the affordable housing market suffered a significant pull back resulting from the recent Presidential election and the resulting possibility of significant marginal tax rate adjustments that are being proposed by the new administration. The result of this possible change was felt not only by the Petitioner and this Development but by many projects scheduled to close at the end of 2016. On November 22, 2016 the Petitioner's tax credit investor advised the Petitioner that it would not be able to close on the terms that had previously been feasible due to the possibility of such future tax rate changes. Because of these changes (as well as a rising interest rate market) the Petitioner's transaction had to be re-underwritten and, in part, restructured in order to move forward. On December 5, 2016 the Petitioner advised Florida Housing that it was unable to meet the December closing deadline as it needed to restructure its transaction and find a replacement tax credit investor.

10. Through diligent efforts, the Petitioner has successfully procured a replacement tax credit investor, National Equity Fund, and has restructured its transaction by also including a Sponsor Loan as part of the funds being used to renovate and preserve the Development. This will enable the Development to successfully move forward to a closing. The additional funding sources have also been reaffirmed.

11. The replacement tax credit investor is concerned about the uncertainty of the credit exchange if delayed until the last quarter of 2017 and is unwilling to close on the Development without assurance that tax credits will be available to the Development even though the Development will not be placed in service prior to December 31, 2017. Given that it is now known that the Development will not meet the placed in service deadline, the tax credit investor is unwilling to invest millions of dollars in a Development that may not receive credits. Without the waiver request and approval of the credit swap, the tax credit investor will not participate in the Development, resulting in the Development not being preserved.

12. As discussed above, the delays have been caused by circumstances outside the control of the Petitioner. The issues which ensued due to the tax credit industry's reaction to the proposed reduction in marginal corporate tax rates were not only unforeseen and unanticipated by the Petitioner, they were unforeseen and unanticipated by the entire tax credit industry. Accordingly, these events, coupled with the typical building period of 14 to 18 months, make it impossible to meet the December 31, 2017 deadline.

13. 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 rule demonstrates that the application of the rule would: (1) create a substantial hardship or, violate principles of fairness,¹ 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.* (2016).

¹ 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. § 120.542(2), *Fla. Stat.* (2016)

14. In this instance, Petitioner meets the standards for a waiver of the Rule and timing limitations in the 2015 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 196 affordable elderly housing units will be preserved and made available for the target population in Pasco County, Florida. The strict application of the 2015 QAP and the timing limitation on the credit swap will create substantial hardship for Petitioner because it will not be able to renovate the Development if the tax credit investor does not participate. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State.

15. As mentioned above, the requested waiver serves the purpose of the Statute because one of the primary goals of the Statute is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida for low-income households. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in 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.* (2016).

F. ACTION REQUESTED

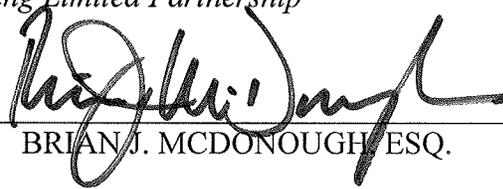
16. For the reasons set forth herein, Petitioner respectfully requests Florida Housing (i) grant the requested waiver of the timing requirements found in the 2015 QAP and allow the requested credit exchange to be approved before the last calendar quarter of 2017; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, Suite 150
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@swwmwas.com

*Counsel for Landings Port Richey Senior
Housing Limited Partnership*

By: _____

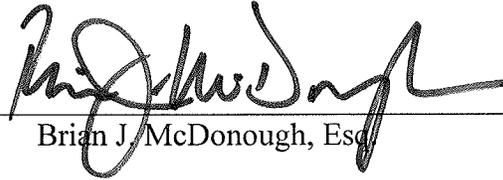
A handwritten signature in black ink, appearing to read "Brian J. McDonough", written over a horizontal line.

BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The Petition For Waiver is being served by overnight delivery, with a copy served by electronic transmission for filing with the Florida Housing Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 19th day of January, 2017.

By: _____



Brian J. McDonough, Esq.