

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

IN RE: CYPRESS TRACE APARTMENTS 1998-_____
CROSS KEYS APARTMENTS PHASE II 1998-_____
BRIDGEWATER PLACE APARTMENTS 1999-509C
VILLA ESPERANZA APARTMENTS 1999-511C
CAPTIVA CLUB APARTMENTS 2002-529C
SAN MARCO APARTMENTS 2002-532C
BERNWOOD TRACE APARTMENTS 1999-520C
CROSSINGS AT UNIVERSITY 1999-517C

FHFC Case No: 2016-038VW

**PETITION FOR WAIVER OF RULE 67-21.027(1) AND RULE 67-21.031(2)
TO PERMIT PETITIONERS TO SUBMIT QUALIFIED CONTRACT PACKAGES
OR, IN THE ALTERNATIVE,
TO MODIFY UNIT AFFORDABILITY SET-ASIDES
UPON THE EXPIRATION OF THE EXTENDED USE PERIOD**

Each of the following entities (each, a “Petitioner”, and collectively, the “Petitioners”) hereby petitions Florida Housing Finance Corporation (the “Corporation”) for a waiver of Rules 67-21.029(1) and 67-21.031(2), Florida Administrative Code, in order to permit Petitioners:

- A. to submit a Qualified Contract Package (a “QCP”) to the Corporation with respect to any of the Developments hereinafter identified; or
- B. in the alternative, if any Petitioner elects not to submit a QCP to the Corporation for a particular Development, to adjust the rental set-asides which are applicable to said Development at the end of a thirty (30)-year Extended Use Period.

In support of this petition, the Petitioners state:

A. THE PETITIONERS

- 1. The name, address, telephone and facsimile numbers, and email address for each of the Petitioners and their qualified representative are:

Petitioners' names:

Cypress Trace Associates, Ltd.
Cross Keys Associates, Ltd.
Bridgewater Place Associates, Ltd.
Villa Esperanza Associates, Ltd.
Captiva Club Associates, Ltd.
San Marco Associates, Ltd.
Bernwood Trace Associates, Ltd.
Crossings at University Associates, Ltd.

All Petitioners have the following address:

Cornerstone Group
2100 Hollywood Blvd.
Hollywood, FL 33020
Attention: Jorge Lopez
Telephone: (954) 362-5700
Facsimile: (954) 362-5987
E-mail: Jorge.lopez@cornerstonegrp.com

2. For purposes of this Petition, the address, telephone number and facsimile number of the Petitioners' attorney is:

Brian J. McDonough, Esquire
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street
Miami, Florida 33130
Telephone: 305-789-3350
Facsimile: 305-789-3395
E-mail: bmcdonough@stearnsweaver.com

B. BACKGROUND

3. Each of the respective Petitioners submitted an Application in the relevant year pertaining to their respective properties, pursuant to Rule 67-21.003, Florida Administrative Code, for non-competitive housing tax credits (the "Credits") to finance the acquisition and construction of the following developments (each, a "Development" and collectively, the "Developments"):

<u>Petitioner</u>	<u>Development</u>
Cypress Trace Associates, Ltd.	Cypress Trace Apartments
Cross Keys Associates, Ltd.	Cross Keys Apartments
Bridgewater Place Associates, Ltd.	Bridgewater Place Apartments
Villa Esperanza Associates, Ltd.	Villa Esperanza Apartments
Captiva Club Associates, Ltd.	Captiva Club Apartments
San Marco Associates, Ltd.	San Marco Apartments
Bernwood Trace Associates, Ltd.	Bernwood Trace Apartments
Crossings at University Associates, Ltd.	Crossings at University Apartments

Each Application was for Credits that are allocated to an affordable housing project on a non-competitive basis when it is being developed with the proceeds of multifamily mortgage revenue bonds; such Credits do not need to be competitively sought in a process that would exclude competing developers through a point-based ranking system.

4. As noted below, no competitive advantage was achieved by the Petitioners for doing so, but in each Application, Petitioners erroneously made a commitment to set aside units in the Developments for an affordability period in excess of thirty (30) years, in lieu of a period equal to thirty (30) years following the issuance of the final tax credit allocation for each Development (the “Extended Use Period”). Additionally, each Petitioner entered into an Extended Low Income Housing Agreement (the “Extended Use Agreement”) pursuant to which it erroneously made an election to have an Extended Use Period equal to the period of time set forth in the table below, in lieu of a period equal to thirty (30) years, which would have been a sufficient commitment by each Petitioner, to have been allocated the Credits.

<u>Development</u>	<u>Current Extended Use Period</u>
Cypress Trace Apartments	31 years
Cross Keys Apartments	45 years
Bridgewater Place Apartments	40 years
Villa Esperanza Apartments	50 years
Captiva Club Apartments	50 years
San Marco Apartments	50 years

Bernwood Trace Apartments
Crossings at University Apartments

50 years
50 years

5. There was no need for Petitioners to have agreed to a term in excess of thirty (30) years, for any Extended Use Period; the election was made in a good-faith but mistaken belief that doing so would enhance the ability of each Development to obtain an allocation of Credits. The errors in each Application, and the Extended Use Period set forth in each Extended Use Agreement, effectively prohibit each Petitioner from entering into the QCP process, through which it might sell its Development after the expiration of the initial 15-year compliance period, or failing that, to transition the Development to market-rate rents. Said errors also mandate an affordability period which extends beyond that which would have been necessary to submit a legally sufficient application for the Credits.

6. Petitioners now seek a waiver of the provisions of Sections 67-21.027, and 67-21.031(2), F.A.C. (collectively, the “Rule”), in order to be able to (a) submit a QCP to the Corporation in connection with each of the Developments, or, (b) as to those Developments which Petitioners desire to retain and not submit to the QCP process, to curtail the Extended Use Period from the current periods to a thirty (30) year period for each Development, which is the norm for non-competitively allocated Credits. Petitioners recognize that a grant of this Petition will require an amendment to each of the recorded Extended Use Agreements.

7. As noted in Section 11 below, Petitioners are willing to retain, rather than eliminate, the affordable nature of all of the Developments, whether they are entered into the QCP process and are not sold (because no Qualified Contract is presented), or whether they are not entered into the QCP process but are held for the duration of the thirty (30)-year amended Extended Use Period.

C. RULES FROM WHICH WAIVER IS SOUGHT

8. Petitioner requests a waiver of Rule 67-21.027(1), Florida Administrative Code, which, in relevant part, provides as follows:

(1) “.....Further, each Housing Credit Development shall comply with any additional Housing Credit Set-Aside chosen by the Applicant in the Application.”

9. Petitioner requests a waiver of Rule 67-21.031(2), Florida Administrative Code, which, in relevant part, provides as follows:

“(2) After the fourteenth year of the Compliance Period, unless otherwise obligated under the Extended Use Agreement, or a Land Use Restriction Agreement under another Corporation program, and provided the right to request a qualified contract for the Development was not waived in exchange for or in connection with the award of Housing Credits, the owner of a Development may submit a qualified contract request to the Corporation.”

D. STATUTES IMPLEMENTED BY THE RULE

10. The Rule is implementing, 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.

E. PETITIONER REQUESTS A WAIVER FROM THE RULE FOR THE FOLLOWING REASONS

11. Petitioners request a waiver of the Rule in order to be able to submit a QCP to the Corporation, which would typically then provide an opportunity to sell the Development or failing that, the ability of the Petitioner to transition to market-rate housing over a period of three (3) years; however, notwithstanding applicable laws which permit a property to transition to market-rate rents if the QCP process fails to result in a sale, the Petitioners have agreed to retain certain affordability set-asides on the Developments, such that (other than with respect to the two

Developments described in the following paragraph) ten percent (10%) of the units in each Development not disposed of in the QCP process would be available to residents earning at or below forty percent (40%) of the applicable Area Median Income, and ninety percent (90%) of the units in each Development will be available to residents earning at or below eighty percent (80%) of the Area Median Income (such adjusted set-asides being hereinafter referred to as the “Adjusted Affordability Limits”).

12. The following two Developments have existing units which are currently designated as either market-rate or set aside for Extremely Low Income (“ELI”) residents. Therefore the Adjusted Affordability Limits described in Section 11 above need to be modified for these Developments. The Petitioners that own the following two Developments are willing to agree to the following modified affordability set-aside limits if said Developments are not disposed of in the QCP process:

- a. Bernwood Trace Apartments
 - i) 65 ELI units, with ELI set-asides retained until ELI restrictions expire in accordance with their terms, whereupon these units would become available to residents earning at or below eighty percent (80%) of Area Median Income;
 - ii) 34 units (i.e., 10% of the units) available to residents earning at or below forty percent (40%) of the applicable Area Median Income; and
 - iii) 241 units available to residents earning at or below eighty percent (80%) of the applicable Area Median Income.
- b. San Marco Apartments:
 - i) 28 ELI units, with ELI set-asides retained until ELI restrictions expire in accordance with their terms, whereupon these units would become available to residents earning at or below eighty percent (80%) of Area Median Income;
 - ii) 26 market-rate units, which will remain at market rents;

- iii) 26 units (i.e., 10% of units) available to residents earning at or below forty percent (40%) of the applicable Area Median Income; and
- iv) 180 units available to residents earning at or below eighty percent (80%) of the applicable Area Median Income.

13. Petitioners also request a waiver of the Rule in order to permit Petitioners to modify the affordability set-asides applicable to Developments which may not be subjected to the QCP Process, but are retained for the duration of the applicable Extended Use Period. Petitioners seek a reduction of the current respective Extended Use Periods to an Extended Use Period of thirty (30) years, which would have been a sufficient period of time elected in the Applications and committed to in the Extended Use Agreements in order to receive an allocation of Credits. Again, in lieu of extinguishing all affordability restrictions upon the expiration of a thirty (30)-year Extended Use Period, the Petitioners are willing to preserve the affordable nature of the Developments, consistent with the Adjusted Affordability Limits set forth in Section 11 above, and the Development-specific limits set forth in Section 12 above.

14. Because each Application was non-competitive, allowing this change does not permit the Petitioners to gain any advantage over other developers in their respective Applications.

15. The requested rule waiver will not adversely affect any of the Developments. However, a denial of this Petition (a) will result in substantial economic hardship to Petitioner and (b) would violate principles of fairness¹. Section 120.542(2), Fla. Stat. (2013).

16. The waiver being sought is permanent in nature.

¹“Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. “Principles of Fairness” are violated when 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. Section 120.542(2), Florida Statutes.

17. 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 shall 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. § 120.542(2), Fla. Stat. (2011).

18. The following facts demonstrate the economic hardship and other circumstances which justify Petitioner's request for waiver:

- a. The Developments will suffer from deferred maintenance because there will be insufficient revenue from the Developments to perform the capital repairs and replacements that are required to maintain them at the current level of quality affordable housing communities.
- b. Additional debt service for the extensive renovations and repairs that should be made would over-burden the Developments, without the increased revenue that would result from rents established at the Adjusted Affordability Limits.
- c. If the Petition is not granted, the Petitioners will not be able to participate in the QCP process, thereby imposing financial and administrative burdens on each Petitioner to continue to own and operate Developments which are not capable of supporting themselves from available rental income, or which, for other reasons, Petitioners no longer desire to own and operate.

19. A waiver of the Rule's requirement that the Developments comply with set-asides that were erroneously and needlessly selected by Petitioners and then memorialized in the respective Extended Use Agreements entered into by the Petitioners, 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 stimulate creative private sector initiatives to increase and maintain the supply of affordable housing.

20. Should the Corporation require additional information, a representative of each Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

F. ACTION REQUESTED

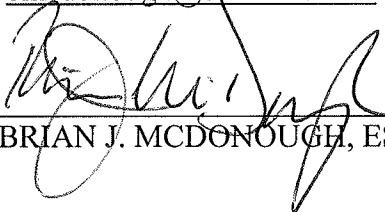
Petitioner requests the following:

- a. That the Corporation grant Petitioner a waiver from Rule 67-21.029(1) and 67-21.031 (2) Florida Administrative Code, allowing it to
 - i) submit a Qualified Contract Package to the Corporation with respect to any of the Developments identified herein; or
 - ii) in the alternative, if any Petitioner elects not to submit a Qualified Contract Package to the Corporation for a particular Development, to adjust the rental set-asides which are applicable to said Development at the end of a thirty (30)-year Extended Use Period, as provided herein.
- b. Grant the Petition and all the relief requested therein; and
- c. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

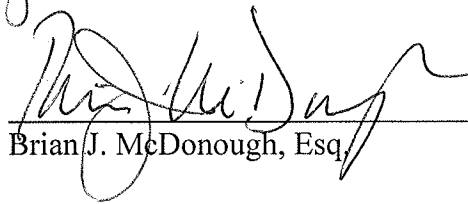
STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Counsel for Petitioners
150 West Flagler Street, Suite 150
Miami, Florida 33131
Tel: (305) 789-3350
Fax: (305) 789-3395
E-mail: bmcdonough@swmwas.com

By: _____


BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served overnight delivery on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 30 day of August, 2016.



Brian J. McDonough, Esq.