

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

PACES FOUNDATION, INC.,
CHASTAIN DEVELOPMENT CORP.,
MARK M. DUMAS, O.C. ADAMS,
LEIGH C. WESTRAAD, and
DOUGLAS F. DUMAS,

Petitioners,

FHFC Case No. 2010-032VW

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR PERMANENT WAIVER OF ADMINISTRATIVE RULES

Petitioners, Paces Foundation, Inc. ("Paces"), Chastain Development Corp. ("Chastain"), Mark M. duMas ("M. duMas"), Douglas F. duMas ("D. duMas"), O.C. Adams ("Adams") and Leigh C. Westraad ("Westraad"), (collectively "Petitioners"), hereby petition The Florida Housing Finance Corporation ("Florida Housing") for a waiver from Rules 67-48.004(5), 67-48.004(13) and 67-48.004(13)(d), Florida Administrative Code ("F.A.C.") (2009) (collectively "2009 Rules"), and proposed Rules 67-48.004(5), 67-48.004(13) and 67-48.004(13)(d) for the 2011 Universal Cycle ("Proposed Rules"). Additionally, a waiver from the corresponding Multifamily Mortgage Revenue Bond Program ("MMRB") is also requested. Those corresponding rules are 67-21.003(5), 67-

21.003(13) and 67-21.003(13)(d), F.A.C. In support of this request, Petitioners provide the following:

1. Pursuant to Section 120.542, Florida Statutes ("F.S.") and Rules 28-104.001 through 28-104.006, F.A.C., Petitioner's request a waiver of the Rules adopted and to be adopted by Florida Housing that authorize Florida Housing to preclude applicants from participating in the Universal Application Cycle process based solely on alleged outstanding financial obligations.

2. Petitioners recognize that the Proposed Rules have not yet been finally adopted for the 2011 Universal Cycle or any future cycle. However as currently drafted, the Proposed Rules for the 2011 Universal Cycle do not change significantly, or at all, from the previous year's rules as to the provisions at issue here. It is presumed future rules will be similar as well.

3. The requested waivers are essential for the continued ability of Petitioners to participate in the funding programs implemented by Florida Housing through the Universal Application Cycle that assist in the development of affordable housing.

The Petitioners

4. The name and address for each Petitioner is:

Chastain Development Corp.
2730 Cumberland Blvd., SE
Smyrna, GA 30080

Paces Foundation, Inc.
2730 Cumberland Blvd., SE
Smyrna, GA 30080

Mark M. duMas
2730 Cumberland Blvd., SE
Smyrna, GA 30080

Douglas F. duMas
415 15th Avenue East
Seattle, WA 98112

O.C. Adams
1425 Sylvan Circle, NE
Atlanta, GA 30080

Leigh C. Westraad
1002 Old Bridge Drive
Myrtle Beach, South Carolina 29572-5982

5. Chastain is a Georgia not-for-profit corporation authorized to do business in Florida. Chastain is in the business of developing affordable rental housing units. Chastain was formerly known as Habitat America, Inc. and was a limited and then general partner in the applicant entity for a project funded by Florida Housing in 1995 as more specifically described below.

6. Paces is a Georgia not-for-profit corporation authorized to do business in Florida. Paces is in the business of developing affordable rental housing units in Florida and other states. Paces was the designated developer on one Application for funding during the 2008 Universal Application Cycle (Application No. 2008-124C) which was subsequently awarded funding in response to RFP 2009-4 (2009-264X). Paces was also the designated developer for two applications in the 2009 Universal Application Cycle (Application No. 2009-173C, Application No. 2009-174C).

7. Adams and Westraad are designated directors of Chastain. Specifically they serve as volunteer directors and have been listed in that capacity since 1995.

8. M. duMas is currently the President of Paces and has served in that capacity for almost 20 years. M. duMas previously served as President of Chastain but resigned from that post effective September 16, 2009.

9. D. duMas is currently the President of Chastain and has been performing in that capacity for some time.

10. As indicated previously, Paces submitted several applications to Florida Housing for funding in the 2008 and 2009 Universal Application Cycles. Paces anticipates submitting and/or being affiliated with applications to participate in programs implemented by Florida Housing in the future. Chastain and its officers and directors M. duMas, Adams and Westraad previously participated in at least one project funded by Florida Housing. Adams and Westraad desire to have the opportunity to participate in Florida Housing funded projects in the future. Additionally D. duMas, as the current President of Chastain, desires the opportunity to participate in Florida Housing funded projects in the future.

11. Based on the strict application of the rules in question, all Petitioners will be prohibited from participating in the Universal Application process. Specifically, any application they submit themselves or are otherwise included or affiliated with will be rejected by Florida Housing in accordance with the rules at issue. The requested waivers would allow Petitioners to submit applications for consideration during future Universal

Cycles and for those applications to be considered on the merits without being rejected for any alleged arrearages.

12. The waivers being sought are permanent in nature.

The Rules from which Relief is Requested and the Statute Implementing the Rules

13. Petitioners request a waiver from the Rules which allow Florida Housing to reject an application if a Developer, Principal, Affiliate, or Financial Beneficiary of an Applicant or Developer has any arrearage issues related to outstanding financial obligations. In other words, if funds are owed by an applicant to Florida Housing for a deal previously funded, that applicant will not be allowed to participate in any funding cycles until that outstanding obligation is resolved. Those entities that Florida Housing considers to owe funds are listed on a Past Due Report which is periodically prepared by Florida Housing.

14. Specifically, the Rules at issue are as follows:

Rule 67-48.004(5) provides: The Corporation shall transmit to each Applicant the NOPSEs submitted by other Applicants with regard to its Application. The notice shall also include the Corporation's decision regarding the NOPSE, along with any other items identified by the Corporation to be addressed by the Applicant, **which may include financial obligations for which an Applicant or Developer or Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer is in arrears to the Corporation or any agent or assignee of the corporation as of the due date for NOPSE filing as set forth in subsection (4) above.**

(Emphasis added.)

Rule 67-48.004(13) provides: The Corporation **shall reject an Application if, following the submission of the additional documentation** revised pages and other information as the Applicant deems appropriate as described in subsection (6) above:

Rule 67-48.004(13)(d) provides: **The Applicant fails to satisfy any arrearages described in subsection (5) above.** For purposes of the SAIL and HOME Programs, this rule subsection does not include permissible deferral of SAIL or HOME interest.

(Emphasis added.)

The corresponding and identically worded MMRB rules are Rules 67-21.003(5), 67-21.003(13) and 67-21.003(13)(d), F.A.C. Petitioners request a waiver from these Rules.

Justification for Petitioner's Requested Waiver

15. Florida Housing has the authority pursuant to Section 120.542(1) and Rule 28-104, F.A.C., to grant waivers to its rule requirements when the strict application of those rule requirements would lead to unreasonable, unfair and unintended consequence in a particular instance.

16. Waivers shall be granted when the person or entity subject to the rule demonstrates that the application of the rule would (1) 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), Florida Statute. "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. As generally explained previously, the Rules at issue prohibit the participation of an applicant in a funding cycle where there are allegedly outstanding financial obligations owed to Florida Housing. An applicant is not allowed to participate until those financial obligations have been addressed and resolved to the satisfaction of Florida Housing. The rules allow Florida Housing to reject an application if the Applicant fails to satisfy any identified arrearage issue. The rule not only applies to the Applicant entity but also the Developer, Principal, Affiliate, or Financial Beneficiary of an Applicant or Developer. Petitioners have been caught in the broad net created by these rules and any application they submit, or are affiliated with, will by Rule be subject to rejection without regard to the merits of the project.

18. Perhaps the best way to explain how Petitioners have been and will continue to be impacted by these rules is to consider this year's applications submitted by Petitioner Paces. During this year's funding cycle, two applications were submitted listing Paces as the Developer. These applications have both been rejected by Florida Housing pursuant to the cited rule provisions. These applications otherwise were perfect in all respects in that they met the applicable Universal Application and Rule requirements. At least one of these applications would have been funded, the other was high on the waiting list.

19. The two applications submitted, specifically designated Paces as the Developer. The reason for rejection was not that Paces had outstanding obligations to Florida Housing, but instead that Chastain and its Principal M. duMas were included on the latest Past Due Report as being part of or affiliated with a development team which had past due obligations.

20. Specifically, Chastain was part of the development team for a project named Edisto Lakes, in Lee County, Florida. Edisto Lakes is owned by Edisto Group, Ltd. a Florida Limited Partnership ("Edisto"). Edisto was the Applicant for funding from Florida Housing in 1995 and was comprised of two general partners including Group Edisto Inc. and its associated partner the Heritage Companies. Indeed, the Heritage Companies were the designated management company as well as the contractor for the Edisto project. Group Edisto was the designated Managing General Partner for the Applicant. Chastain was the designated not for profit general partner entity for the Applicant which was necessary for purposes of obtaining funding and specifically tax credit funding.

21. The Edisto Lakes project is an affordable housing apartment complex built using SAIL (Application #1994S-042) and tax credits (Application #1994L-163 and 1995L-006). As the Past Due Report indicates Florida Housing is owed approximately \$2,000,0000 in late filing fees, taxes and insurance payments on the Edisto project. duMas, Chastain as well as all the other Officers and Directors of Chastain, were also caught in the net created by the rules at issue. In essence, Florida Housing views these additional parties as responsible for the outstanding debt.

22. In reality, M. duMas however had no personal financial interest in Edisto Lakes and Chastain only was to receive a minimal financial benefit for the Edisto Lakes development in the form of an approximately \$10,000 scheduled payment from the managing general partner. Indeed Chastain itself, like Florida Housing, is still owed money from the Group Edisto and Heritage. Similar, D. duMas has no personal financial interest in Edisto Lakes.

23. Moreover, neither Chastain as a limited general partner nor any of its past or present officers have control over how the Group Edisto General Partner pays the bills. Indeed, as specifically reflected in the Limited Partnership Agreement between Edisto and Chastain, the Managing General Partner, acting alone shall have the full and complete authority to carry on the business of the Partnership on behalf of the General Partners.

24. For many years now, M. duMas, Chastain and all remaining officers and directors of Chastain, including D. duMas, have been excluded from all financial or managerial involvement in the Edisto Lakes project. Indeed, the latest Past Due Report in the comments section reflects steps taken by the "borrower" to address the arrearage issue. Neither M. duMas, D. duMas, Chastain nor any other officer or director of Chastain was contacted or consulted about any of these actions.

25. In reality, as reflected by the Past Due Report, the developer in the instant case was the Heritage Companies. Upon knowledge and belief, the Heritage Companies have arrearage problems with numerous Florida Housing funded affordable housing projects in addition to the Edisto Lakes project.

26. At the center of Chastain, M. duMas, D. duMas, Adams and Westraad's dilemma is the Heritage Group which was the experienced developer and financial safety net of the Edisto Lakes development. The Heritage Group has in essence backed away from the Edisto Lakes deal and failed to make good on its obligations to Florida Housing as well as Chastain.

27. As such, neither duMas, Chastain or any of its other officers are responsible for, nor can they act to resolve any alleged arrearages. Yet the rules at issue here as implemented prevent Chastain, M. duMas, D. duMas, Adams or Westraad and any company they are affiliated with from participating in any Universal Cycle funding process.

28. The strict and literal interpretation of the rule prohibits Petitioners ability to even proceed in the application process despite Petitioners inability to make good on the outstanding obligation of approximately \$2,000,000. Indeed M. duMas has made all good faith efforts possible to make good on the outstanding obligation by attempting to contact the Heritage Companies. These attempts have proved unsuccessful.

Conclusion

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

30. Waivers and variances shall be granted when the person subject to the rule demonstrates that application of the rule would (1) 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. Section 120.542(2), Florida Statutes.

31. The requested waiver will not adversely impact the Development, and will ensure that the Petitioners are allowed to participate in the provision of affordable housing. Not granting the requested waiver will lead to a substantial hardship which in essence will serve to prohibit Petitioners from participating in any annual Florida Housing application process. This is an unintended consequence of the strict application of the Rules and Instructions at issue here.

32. The controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief for changed circumstances that arise through no fault of an applicant.

33. The waiver requested here serves the purposes of the Florida Housing Finance Corporation Act (the "Act"), as a whole, because one of the primary goals established by the Act is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households.

WHEREFORE, Petitioners respectfully requests that the Florida Housing Finance Corporation:

A. Grant the Petition and all the relief requested therein;

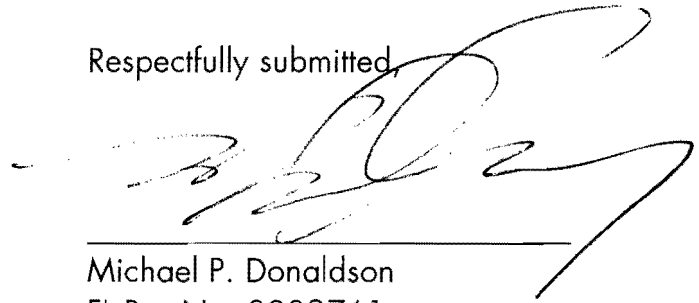
B. Waive Rules 67-48.004(5) and 67-48.004(13)(d), F.A.C. (2009) and proposed 67-48.004(5) and 67-48.04(13)(d), as well as the corresponding MMRB rule under which Petitioners are not eligible to apply for funds because of the arrearage issue.

C. Remove Petitioners from any future Past Due Reports; and

D. Grant such further relief as may be deemed appropriate.

Respectfully submitted this 17th day of August, 2010.

Respectfully submitted,

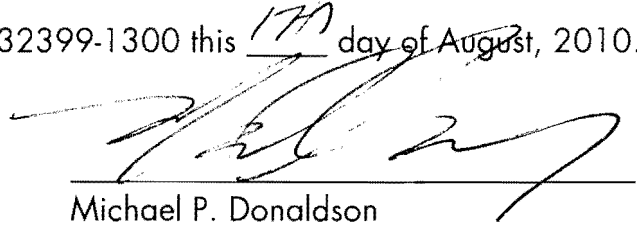


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original Petition is being served by hand delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300 this 17th day of August, 2010.



Michael P. Donaldson