

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2012-050VW
Application No. 2011-106C

MLF 2, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

RECEIVED
12 AUG - 8 AM 11:06
FLORIDA HOUSING
FINANCE CORPORATION

**PETITION FOR WAIVER OF RULE 67-48.004(14)(i)'s RESTRICTIONS ON
CHANGING THE TOTAL NUMBER OF UNITS
FOR ITS MLF TOWERS DEVELOPMENT**

Petitioner MLF 2, Ltd., a Florida limited partnership ("MLF 2"), submits to Respondent Florida Housing Finance Corporation ("Florida Housing" or "Corporation") its Petition for waiver of Rule 67-48.004(14)(i), Florida Administrative Code (the "Rule"). The Rule precludes changes to certain sections of the 2011 Universal Application after the Application Deadline.

1. Pursuant to Section 120.542, Fla. Stat. (2011), and Rules 28-104.001 through 28-104.006, F.A.C. (2011), MLF 2 requests a waiver of the Rule to allow for a reduction in the number of units in the Development (as herein described) from 146 units to 145 units with a corresponding pro rata reduction of Housing Credits preliminarily allocated by Florida Housing to the Development.

A. THE PETITIONER

1. The name, address, and telephone and facsimile numbers for MLF 2 and its qualified representative are:

MLF 2, Ltd.
5300 W. Cypress Street
Suite 200
Tampa, FL 33607
Telephone: (727) 578-1147
Facsimile: (727) 579-0145

2. The name, address, telephone and facsimile number, and e-mail address of MLF 2's attorney is:

Brian J. McDonough, Esquire
STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street
Miami, Florida 33130
Telephone: 305-789-3200
Facsimile: 305-789-3395
E-mail: bmcdonough@swmwas.com

B. THE DEVELOPMENT

3. The proposed Development described in the Application is the preservation and rehabilitation of 146 existing elderly housing units located in Pinellas County, Florida (the "Development").

4. MLF 2 timely submitted its Application for Housing Credits under the Housing Credits Program ("Housing Credit Program"). *See* Application No. 2011-106C.

5. On June 8, 2012, the Petitioner (among others) was notified by the Corporation that final rankings had been issued by the Corporation and that the Petitioner had received a preliminary (subject to credit underwriting) commitment of Housing Credits. Further, on May 2, 2012, the Petitioner was invited into credit underwriting.

6. In the Application, Petitioner agreed that 146 units in the Development would be set aside for households earning no more than sixty percent area median income, of which 10% of the units (15) were agreed by the Petitioner to be set aside for households earning at or below thirty-three percent (33%) of area median income. Of the 146 set aside units, 145 of such units

are expected to receive some form of rental assistance (PBRA) from the U.S. Department of Housing and Urban Development (“HUD”). The Demographic Commitment for the Development is elderly as set forth in the Application. It is common for owners of elderly projects that have previously received funding under HUD’s Section 202 program (such as the existing development), to provide an in-house home health provider which is a critical supportive service for the elderly residents who will be residing in the Development. The Petitioner has determined that the most efficient way to provide such service is to use one of the units previously earmarked as a residence for such purposes. In consideration of such revision to the proposed number of units, Petitioner understands and agrees that the amount of Housing Credits it would otherwise be entitled to receive will be reduced by .68% (1/146) or a numerical reduction from \$1,350,000 to \$1,340,820.

C. THE RULE FROM WHICH RELIEF IS SOUGHT AND THE STATUTE IMPLEMENTING THE RULES

7. MLF 2 realleges and incorporates Paragraphs 1 through 6 as though fully set forth herein.

8. The Rule for which the waiver is sought provides as follows:

Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline . . . Those items are as follows:

(i) Total number of units

Rule 67-48.004(14)(i) (2011)

9. The applicable Rule for which the waiver is requested implements, among other sections of the Florida Housing Finance Corporation Act (the “Act”),¹ the statute that created the

^{1/} Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes. (the “Act”). See also Rule 67-40.020(1), F.A.C.

Housing Credits Program. *See* § 420.5099, Fla Stat. (2011). The Act designates Florida Housing as the State of Florida’s housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits (“Allocation Procedures”). §§ 420.5099(1) and (2), Fla. Stat. (2011).

10. The requested Rule waiver will enable MLF 2 to take an existing apartment development has long been in need of repair and substantial renovation and create a significantly improved apartment project. The conversion of one unit of residential housing to a “wellness center” will be a tremendous asset to the elderly residents who will be living in the Development.

11. The applicable Rule for which the waiver is requested implements, among other sections of the Florida Housing Finance Corporation Act (the “Act”),¹ the statute that created the Housing Credits Program. *See* § 420.5099, Fla. Stat. (2011). The Act designates Florida Housing as the State of Florida’s housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits (“Allocation Procedures”). §§ 420.5099(1) and (2), Fla. Stat. (2011). Accordingly, the Rule subject to MLF 2’s waiver request implements, among other sections of the Act, the statutory authorization for Florida Housing’s establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2011).

D. JUSTIFICATION FOR MLF 2’S REQUESTED WAIVER

12. MLF 2 realleges and incorporates Paragraphs 1 through 11 as though fully set forth herein.

^{1/} Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes. (the “Act”). See also Rule 67-40.020(1), F.A.C.

13. The requested waiver will (a) ensure the financial feasibility of the completion of the Development; and (b) provide an invaluable amenity to the elderly residents of the Development.

14. The requested Rule waiver will not adversely impact the Development. A denial of this Petition could (a) result in substantial hardship to the elderly residents of the Development; (b) deprive Pinellas County of additional and essential affordable housing units in a timely manner; (c) impair Pinellas County's desire to implement its plan to redevelop MLF Towers Apartments and improve the area in which such project is located; and (d) violate principles of fairness. § 120.542(2), Fla. Stat. (2011).

15. More significantly, should its Petition be denied MLF 2 may be unable to deliver additional low-income housing units to a market in desperate need of quality affordable housing. Further, should its Petition be denied the existing tenants currently residing at the apartment complex will not receive the benefits of the proposed improvements to the existing apartment complex.

16. The requested one-unit reduction in the set-aside count will not cause any decrease in the amenities or services provided to residents at the Development; in fact, it will improve the proposed amenities.

17. As demonstrated above, the requested waiver serves the purposes of Section 420.5099 and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households by ensuring:

the maximum use of available tax credits in order to encourage development of low-income housing in the state, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the

availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.

§ 420.5099(2), Fla. Stat. (2011).

E. CONCLUSION

18. MLF 2 realleges and incorporates Paragraphs 1 through 17 as though fully set forth herein.

19. 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. Florida Housing generally approves such waivers when they would not affect the scoring of an application or otherwise allow an applicant to obtain a possible unfair competitive advantage.

20. The requested waiver will not adversely impact the Development or Florida Housing.

21. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developer entities and the private investment and lending community in meeting the purpose of the Act, through new construction, in an economical and efficient manner.

22. The waiver being sought is permanent in nature.

Should Florida Housing require additional information, MLF 2 is available to answer questions and to provide all information necessary for consideration of its Petition for Waivers of Rule 67-48.004(14)(i)'s restrictions on changing the number of units for the Development.

WHEREFORE, Petitioner MLF 2, Ltd. respectfully requests that the Florida Housing Finance Corporation grant the Petition and provide the following relief:

A. Waive the prohibition on changing the total number of units in the Development to permit a decrease from 146 to 145 for occupancy by households earning sixty percent or less of the area median income coupled with a corresponding pro rata reduction in Housing Credits from \$1,350,000 to \$1,340,820; and

B. Award such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Counsel for MLF 2, Limited Partnership
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Tel: (305) 789-3350
Fax: (305) 789-3395

By:

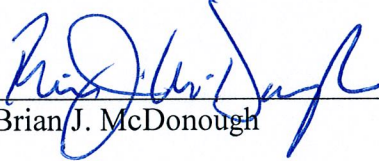

BRIAN J. MCDONOUGH

Florida Bar No. 337927

E-mail: bmcdonough@stearnsweaver.com

CERTIFICATE OF SERVICE

The original Petition is being served by overnight 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 by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 7th day of August, 2012.

By: 
Brian J. McDonough