

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

JANIE POE ASSOCIATES 3, LLC

Petitioners,

FHFC CASE NO. 2014- 002 VW
RFP Application No. 2013-103C

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER

Janie Poe Associates 3, LLC ("Janie Poe"), pursuant to Sec. 120.542, Florida Statutes hereby petitions The Florida Housing Finance Corporation ("Florida Housing") for a waiver from the timing provisions of the 2012 Qualified Allocation Plan at Paragraph 9 ("QAP") as incorporated and adopted by Rule 67-48.002, Florida Administrative Code. In support of this Petition Janie Poe provides as follows:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for the Janie Poe and its qualified representative for purposes of this Petition is:

Jorge Aguirre
Vice President
Michaels Development Company
3 E. Stow Road
Marlton, NJ 08053
Telephone: (856) 596-0500

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FLORIDA HOUSING
FINANCE CORPORATION

2. For purpose of this Petition, the address, telephone number and facsimile number of Counsel for Janie Poe is:

Michael P. Donaldson
Carlton Fields Jordan Burt, P.A.
Post Office Drawer 190
Tallahassee, FL 32302-0190
Telephone: (850) 513-3613
Facsimile: (850) 222-0398
Email: mdonaldson@cfjblaw.com

B. THE DEVELOPMENT

3. On May 9, 2013, Janie Poe timely submitted its Application in response to the RFA to assist in the construction of a 72 unit garden apartment development named Janie's Garden Phase 3 in Sarasota, Sarasota County, Florida. (The "Development"). The Janie's Garden Development will be constructed on land owned by the Sarasota Housing Authority. Janie Poe ultimately received an allocation of 2013 Low-Income Housing Tax Credits ("Tax Credits") for the Development and is currently in the Credit Underwriting process established by the RFA and applicable Credit Underwriting Rule.

4. The syndication of Low-Income Housing Tax Credits, together with other loan sources, will provide funds for the construction of Janie's Garden Phase 3. On December 27, 2013, Janie Poe entered into a Carryover Agreement for allocation of 2013 Tax Credits and as a result the Place-In-Service date for the project is December 31, 2015.

5. Because of circumstances beyond Janie Poe's control, as more fully explained in Attachment A, a request to exchange the allocation of 2013 Tax Credits for 2015 or 2016 Tax Credits as allowed by the QAP is necessary.

6. The waiver requested herein will not adversely affect the proposed Janie's Garden Development but is instead an effort to expedite the exchange approval process and

solidify the future of the Janie's Garden Phase 3 project. A denial of this Petition (a) will unfortunately result in substantial economic hardship to Janie Poe; (b) will deprive Sarasota County of essential, affordable housing units, and (c) would violate principles of fairness.

7. The waiver being sought is permanent in nature.

C. QAP PROVISION FROM WHICH RELIEF IS REQUESTED

8. Janie Poe requests a waiver from the timing requirements of the 2012 QAP at Paragraph 9 which provides in relevant part as follows:

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, 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.

9. The process found in the QAP requires an applicant to return the allocated Tax Credits in the last quarter of the calendar year in which the development was required to be placed in service **before** a Tax Credit exchange request can be approved by the Executive Director. Janie Poe request a waiver of this limitation to allow a credit exchange approval by either the Board of Directors or the Executive Director at this point in the process rather than in the last quarter of 2015.

D. STATUTES IMPLEMENTED BY THE QAP

10. The QAP is implementing Chapter 420, F.S. which is the statute that designates Florida Housing as the housing credit agency responsible for the allocation and administrative

of Low-Income Housing Tax Credits for the State of Florida. See Section 420.5099, Florida Statutes.

E. PETITIONER REQUESTS A WAIVER FOR THE FOLLOWING REASONS

11. Petitioner requests a waiver from the QAP to allow for the approval of the credit exchange prior to the last quarter of the Place-In-Service year for Janie's Garden or 2015.

12. As more fully disclosed in Attachment A Janie Poe has encountered many unforeseen issues including the recent loss of its selected General Contractor. These circumstances have led to a request to exchange credits as the only solution to ensure construction of this much needed project.

13. The partners of the project have expressed concern about the uncertainty of the credit exchange if delayed until late 2015 and whether they could move forward to close on the project. Without the waiver request and approval of the exchange these partners will likely no longer participate in this project resulting in the project not being constructed.

14. Florida Housing has the authority to grant waivers when strict application of the requirements would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when (1) the person who is subject to the requirements demonstrates that the application of the requirement would create a substantial hardship or violate principals of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person.

15. In the instant case a waiver of the QAP limitation 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 facilitate the availability of decent, safe and sanitary housing in the State of Florida to households of limited means.

16. By granting the waiver and permitting Janie Poe to exchange credits prior to the last quarter of 2015, Florida Housing would also recognize the economic realities and principles of fundamental fairness in developing affordable rental housing.

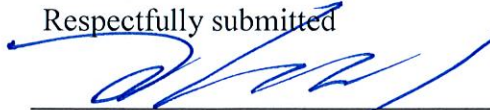
17. Should the Corporation require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

F. ACTION REQUESTED

18. Petitioner requests the following:

- a) That Florida Housing grant Petitioner a waiver from the QAP and allow the requested credit exchange to be approved prior to the last quarter of 2015.
- b) Grant the Petition and all of the relief requested therein; and
- c) Grant such further relief as may be deemed appropriate.

Respectfully submitted



Michael P. Donaldson
Florida Bar No. 0802761
CARLTON, FIELDS JORDEN BURT, P.A.
Post Office Drawer 190
215 S. Monroe St., Suite 500
Tallahassee, Florida 32302
Telephone: 850/224-1585
Facsimile: 850/222-0398

Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Petition for Waiver is being served by electronic transmission for filing with Ashley Black, Agency Clerk and Wellington Meffet, General Counsel for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served via U.S. Mail on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300 this 10th day of February 2015.



Michael P. Donaldson



THE Michaels ORGANIZATION

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 Interstate Realty Management Co., AMO®
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- TAMAQUA (PA)
- TAMPA (FL)
- TRENTON (NJ)
- TULSA (OK)
- TUPELO (MS)

February 4, 2015

Candice Allbaugh
 Housing Credit Administrator
 Florida Housing Finance Corporation
 227 North Bronough Street
 Suite 5000
 Tallahassee, FL 32301

Re: Janie's Garden Phase III; FHFC #2013-103C

Dear Ms. Allbaugh:

The purpose of this letter is to initiate the process of exchanging an allocation of 2013 Low Income Housing Tax Credits ("Tax Credits") for an allocation of 2015 or 2016 year Tax Credits.

As you may recall Janie Poe Associates 3, LLC ("Janie Poe") was awarded \$820,000 in Low Income Housing Tax Credits ("Tax Credits") through RFP 2013-007 and subject to the 2012 Qualified Allocation Plan ("QAP"), both issued by Florida Housing Finance Corporation. The name of the Development is Janie's Garden Phase III located in Sarasota, Florida. On December 27, 2013, Janie Poe entered into a Carryover Agreement (Carryover) for the allocation of 2013 credits. This Carryover has a Placed-in-Service deadline of December 31, 2015. Just recently, on December 23, 2014, the General Contractor (GC) for Janie's Garden Phase III declined to move forward with the project and we are working to find a new general contractor to undertake the construction of the development. As

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result of this GC issue, we will inevitably be unable to meet the December 31, 2015, Placed-in-Service Deadline and seek relief.

As you know the QAP allows relief in the form of an exchange or "swap" of Tax Credit allocation under certain conditions. Specifically paragraph 9 of the 2012 QAP provides the process as follows:

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, 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.

This process allows an applicant to return the allocated Tax Credits in the last quarter of the calendar year in which the development was required to be placed in service and request the issuance of Tax Credits from the following year's

authority if it is apparent that the Development will not meet the Placed-in-Service Deadline. Such requests may be approved by Florida Housing's Executive Director subject to conditions as set out in Paragraph 9 of the QAP. In the instant case Janie Poe seeks action now on its request for this exchange rather than waiting until the last quarter of the calendar year. With all of the pending approvals to enable us to move forward we see no alternative.

In a continual effort to move this project forward Janie Poe has taken all reasonable steps since accepting its invitation into credit underwriting. In order to contain costs, we interviewed different architects and settled on a new architect who designed a more cost effective configuration for the Development. In a further effort to contain costs Janie Poe spent the first half of 2014 interviewing different Florida based contractors, looking for contractors experienced in wood-frame multifamily construction of the type proposed for Janie's Garden Phase III.

During the 2nd and 3rd quarter of 2014, the overall construction environment in Florida became more and more competitive. Once bids were received in October, we quickly selected one of the two contractors that ultimately bid the job and began negotiations with them. Concurrent to the contractor selection process, we diligently worked with the local government to secure permits and maintain the significant financial commitments made by the local government to this redevelopment effort. At the same time, we initiated the lengthy, convoluted HUD approval process.

The negotiations with the contractor were complicated by the fact that the bids received were approximately 20% higher than the estimates the contractors had provided just two months prior to finalizing their bids. This created a discrepancy that would cause the project to be far above the TDC threshold in the application. Because of these increased costs Janie Poe undertook a stringent value-engineering process to reduce costs, and the contractor was asked to revise bids accordingly. Separately, in spite of our best efforts to secure HUD approval for an early construction start, HUD still had not provided such approval as of mid-December 2014 which would have allowed the project to move forward into construction. This delay was caused mainly by a construction budget that could not be finalized for submission due to the inability to confirm a construction price. The construction pricing was also in flux until FHFC confirmed the approval of the increase in the TDC which was tabled until the January Board meeting.

On December 23, 2014, we were informed by the GC that, given the uncertainty of receiving a Notice of Commencement before the end of the year, the GC was no longer comfortable that they could meet the unit delivery schedules and construction guarantees. This was in part due to their inability to confirm with certainty they would be able to direct additional resources to the Development job should we encounter weather or other unforeseen delays. This decision by the contractor was made over a 48-hour period, was clearly not a decision we were expecting, and was certainly beyond our control.

In response to this unexpected event Janie Poe immediately sought out alternative contractors and by January 15, 2015, we were in communication with

7 contractors trying to determine what options were available to us. We sent plans to and requested bids from no less than 5 contractors. By January 20, 2015, all but 3 contractors had declined to bid the job because their existing subcontracting sources and resources did not allow them to turn around bids to us in a timely manner. As of January 30, 2015, Janie Poe is soliciting bids from these three contractors plus one additional contractor we have communicated with since January 15. All four contractors have committed to providing a bid then the fourth still reviewing the job to gauge their ability to provide a bid.

The contractors that have committed to bidding the job have all requested extensions for responding citing difficulty in receiving bids from subcontractors in a timely fashion due to the volume of work they find themselves engaged in. Separately, HUD would not provide approval to begin construction prior to the selection of a GC, removing our ability to begin construction immediately upon selection of a new contractor.

Our current situation is such that we do not anticipate having a contractor selected until the end of February or beginning of March 2015. Once we have chosen a GC we will continue with the approval from HUD for an early construction start. Such approval is reasonably expected to be received within 30-45 days of being requested. Given those timelines, there is not sufficient time for a contractor to complete construction in time to meet our current December 31, 2015, Placed-In-Service Deadline.

We are left in the position of requesting that Florida Housing provide the relief and exchange our current 2013 credit allocation for the next available credit authority (2015 or 2016) available, in an amount equal to the 2013 Carryover allocation of \$820,000. Florida Housing's approval of this request will facilitate the development of these much-needed affordable housing units in the City of Sarasota. It will also secure the significant financial commitments made by the City of Sarasota, the County of Sarasota, and the Housing Authority of the City of Sarasota, all of which have pledged capital, in kind considerations, Section 8 subsidy and an Annual Contribution Contract for public housing subsidy. This Development remains very desirable in terms of meeting the area's affordable housing needs and we look forward to your favorable response to this request. We ask that this request be considered at the next meeting of the FHFC Board of Directors, which tentatively will be a telephonic meeting on February 20, 2015.

Sincerely,

A handwritten signature in black ink, appearing to be 'Jorge Aguirre', written over a horizontal line.

Jorge Aguirre

cc: Steve Auger, Executive Director
Ken Reecy, Multifamily Programs Director

CARLTON FIELDS
JORDEN BURT

ATTORNEYS AT LAW

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Atlanta
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Miami
New York
Orlando
Tallahassee
Tampa
Washington, DC
West Palm Beach

February 10, 2015

Ashley Black
Corporation Clerk
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

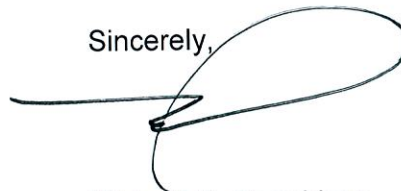
VIA HAND DELIVERY

Re: Janie Poe Associates 3, LLC v. Florida Housing Finance Corporation

Dear Ashley:

Enclosed please find an original Petition for Waiver in the above-styled matter.

Sincerely,



Michael P. Donaldson

MPD/rb