

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2009-034 VW
Application No. 2006-035C

PALAFIX LANDING, LTD.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.004(14)(b), F.A.C.,
WAIVER OF SECTION II, PART B, SUBSECTION 1 OF
THE 2006 UNIVERSAL APPLICATION INSTRUCTIONS, AND
WAIVER OF THE REQUIREMENTS OF RFP NO. 2009-04,
ALL PERTAINING TO THE IDENTITY OF A DEVELOPER**

Petitioner Palafox Landing, Ltd., a Florida limited partnership (“Petitioner”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of (a) Rule 67-48.004(14)(b), F.A.C., (b) Section II, Part B, Subsection 1 of the Universal Application Instructions, regarding changing the identity of a developer in applications submitted under the 2006 Universal Cycle, and (c) Section 4, Subsection B(1) of RFP No. 2009-04. *See, respectively,* (a) Rule 67-48.004(14)(b), F.A.C. (2006), and (b) Section II, Part B, Subsection 1 of the 2006 Universal Application Instructions, as incorporated into Chapter 67-48, F.A.C., pursuant to Rule 67-48.004(1)(a), F.A.C. (2006) (collectively, the “Rules”), and RFP No. 2009-04.

Pursuant to Section 120.542, Fla. Stat. (2006), and Rules 28-104.001 through 28-104.006, F.A.C. (2006), Petitioner requests a waiver of the Rules, to change the identity of the developer in its 2006 Universal Application, by adding a co-developer thereto.

Florida Housing has the authority pursuant to Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C., 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 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 fairness¹, 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. (2005).

In support of its petition, the Petitioner states:

A. THE PETITIONER

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

Palafox Landing, Ltd.
c/o Carlisle Development Group, LLC
Attention: Matthew Greer
2950 SW 27th Avenue, Suite 200
Miami, Florida 33133
Telephone: 305-476-8118
Facsimile: 305-476-1557

2. The name, address, telephone and facsimile numbers, and e-mail address of Petitioner's attorney, for purposes of this Petition, are:

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 (2006).

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STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
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3. Pursuant to the 2006 Universal Cycle, Petitioner submitted its Universal Application for Housing Credits under the Low Income Housing Tax Credit program. *See* Application No. 2006-035C (the “Application”).

4. Florida Housing issued a Preliminary Allocation of Housing Credits to Petitioner (the “Credits”) reserved in the annual amount of \$998,400.

5. Due to market conditions and in particular, the inability of Petitioner to obtain a binding commitment for the sale of the Credits to an equity investor, the proceeds of which would have been used for the development of Palafox Landing, a new 96-unit apartment development (the “Project”) intended to serve very-low and low-income households in Escambia County, Florida, Petitioner returned the Credits to Florida Housing. Thereafter, Petitioner submitted a proposal (the “Proposal”) to Florida Housing for Tax Credit Exchange Program Funds and Tax Credit Assistance Funds, under RFP #2009-04 (the “RFP”).

6. The Proposal was accepted by Florida Housing and Petitioner was preliminarily awarded an allocation of Tax Credit Exchange Program Funds and an allocation of Tax Credit Assistance Funds for the construction of the Project.

7. Pursuant to the RFP, the Petitioner is required to affirm in its Proposal that the developer entity named in the Application remains in effect.

8. The original co-general partners of the Petitioner were (a) CEII Palafox, Inc. (“CEII”), which remains the 51% co-general partner of the Petitioner, and (b) GMN Palafox, Inc., as a 49% co-general partner, which was wholly owned by Greater Miami Neighborhoods, Inc. (“GMN”). Following the award of the Credits, but prior to the submission of the Proposal, GMN and its affiliates filed a petition under Chapter 11 of the United States Bankruptcy Code and have liquidated, or are in the process of liquidating, certain of their respective assets, including but not limited to the interest of GMN Palafox, Inc., as a co-general partner in the Petitioner.

9. As a result of the financial and operational difficulties suffered by GMN following the preliminary award of Credits for the Project, Petitioner filed a petition to Florida Housing in 2007, under Case No. 2007-051VW, seeking to waive the requirements of Rule 67-48.004(14) and Section II.A.2.a.(1) of the 2006 Universal Application Instructions. In accordance with the Order granting the 2007 petition, GMN was removed as a co-developer for the Project, and GMN-Palafox, Inc., was removed as a co-general partner of the Petitioner. The Order specifically cited GMN’s inability to fulfill its obligations to the Project as the basis for the granting of the petition.

10. Although CEII found it necessary, at the time of the 2007 petition, to remove GMN as co-developer and GMN-Palafox, Inc., as co-general partner, it believes that the process of developing and constructing the Project will be enhanced by the inclusion of a substitute co-developer having substantial construction experience and financial wherewithal, to essentially reinstate the original structure of the Project developer as comprised of two co-developers.

11. CEII approached Carlisle Development Group, LLC (“Carlisle”) with a request that Carlisle assist it in developing the Project and closing the Project’s financing. CEII has,

directly or through affiliated entities, incurred significant expenses associated with the pre-development of the Project including, without limitation, obtaining Pre-Development Loan Program funds from Florida Housing in the amount of \$383,775. CEII believes that having Carlisle involved in the Project, as contemplated by this Petition, will enable (a) the financing on the Project to close, (b) the Project to be successfully developed, (c) CEII and its affiliates to be repaid their substantial pre-development expenses and (iv) most importantly, the provision of much-needed affordable housing for the citizens of Escambia County, Florida.

12. CDG Palafox Landing, LLC (the "Carlisle GP") is anticipated to succeed to the interests of GMN Palafox, Inc., as a 49% co-general partner in the Petitioner. The retention of a 51% general partnership interest by CEII, which is wholly owned by Community Enterprise Investment, Inc., a Florida not-for-profit corporation, will ensure that the original non-profit set-aside requirements have been maintained.

13. The original co-developers listed in Exhibit 9 to the Petitioner's Application were (a) Community Enterprise Investments, Inc., and (b) GMN. At the time the venture between the parties was created, GMN was possessed of the requisite expertise and financial wherewithal to oversee development and construction of the Project to its completion, as well as provide various guaranties. Since GMN is no longer participating in the Project, the Petitioner believes it is in the best interests of the Project to replace GMN as a co-developer, by adding a party possessing significant experience, financial wherewithal and ability in the development, construction and operation of affordable housing communities in Escambia County, Florida.

14. Palafox Landing Development, LLC, which is an affiliate of Carlisle and of the Carlisle GP, has the requisite expertise and ability to ensure the successful development of the Project. During the past 10 years, Carlisle, on its own and through its related entities, has

acquired extensive experience, knowledge, and access to resources from developing, owning, and managing approximately 8,000 affordable rental housing units in developments for very low-income and low-income individuals and families.

15. Petitioner can rely on and benefit from the expertise, experience, services, resources, and support personnel available through Carlisle. Accordingly, the continuity, progress, and quality of the Project will not be disrupted, and the addition of Palafox Landing Development, LLC, as the co-developer will ensure the Project's completion.

16. The requested waiver would not have provided Petitioner with an unfair advantage in the scoring of its Application or the allocation of funds under the RFP. The requested Rule waiver will not adversely affect the Project. However, a denial of this Petition (a) would result in substantial hardship to the Petitioner; (b) could deprive Escambia County of essential, affordable housing units in a timely manner; and (c) would violate principles of fairness. § 120.542(2), Fla. Stat. (2006).

17. The waiver being sought is permanent in nature.

B. Rules from Which Relief is Requested and Statute Implemented by the Rules

18. Petitioner requests a waiver of Rule 67-48.004(14)(b) which identifies non-curable matters in an Application 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: . . .

(b) Identity of each Developer, including all co-Developers;”

19. Petitioner also requests a waiver of Section II, Part B, Subsection 1 of the Universal Application Instructions, which provides as follows:

“1. Developer or principal of Developer (Threshold)

The identity of the Developer(s) listed in this Application may not change until the construction or Rehabilitation/Substantial Rehabilitation of the Development is complete, unless approved by the Board.”

20. Petitioner also seeks a waiver of Section 4, Subsection B(1) of the RFP, wherein the applicant is required to affirm that:

“the following information and commitments made by the Applicant in its Original Application are still in effect:”

1. The Developer entity.”

21. The applicable Rules² for which the waiver is requested are implementing Florida Housing Finance Corporation Act’s statute that created the Housing Credits Program. §420.5099, Fla. Stat. (2006).³ 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. §§ 420.5099(1) and (2), Fla. Stat. (2006). Accordingly, the Rules that are the subject of Petitioner’s waiver request are implementing, 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. (2006).

C. Justification for Petitioner’s Requested Waiver

22. The facts stated in Paragraphs 3 through 16 above demonstrate the circumstances leading to this Petition, requesting that Florida Housing approve a waiver of the Rules to allow

² Pursuant to Rule 67-48.004(1)(a), F.A.C. (2006), the 2006 Universal Application Instructions are incorporated into Rule Chapter 67-48.

³ The Florida Housing Finance Corporation Act (the “Act”) is set forth in Sections 420.501 through 420.516 of the Florida Statutes. *See also* Rule 67-40.020(1), F.A.C. (2006).

the addition of Palafox Landing Development, LLC, essentially replacing GMN as the original co-developer of the Project.

23. The requested waiver to allow the addition of Palafox Landing Development, LLC, following the removal of GMN as a co-developer of the Project will not adversely impact the Project or Florida Housing or be prejudicial to the Project or to the affordable housing market to be served by the Project, and will in fact allow the Petitioner to develop and complete construction of the Project in accordance with all anticipated schedules. Petitioner does not, without the valuable services to be provided by a co-developer such as Palafox Landing Development, LLC, expect to be able to render the level of knowledge, experience and ability needed to efficiently and professionally complete the Project. Denial of the requested waiver will create a substantial hardship for the Petitioner and will compromise Petitioner's ability to provide desperately needed affordable housing in Escambia County, Florida.

D. Conclusion

24. The requested waiver will not adversely impact the Project or Florida Housing, and will ensure that 96 affordable housing units will be available in Escambia County, Florida.

25. 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.

26. The requested waiver serves the purposes of Section 420.5099, Florida Statutes (2006), 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. (2006).

27. 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 in meeting the purpose of the Act through new construction in an economical and efficient manner.

28. Should Florida Housing require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of Rule 67-48.004(14)(b), F.A.C., and Section II, Part B, Subsection 1 of the Universal Application Instructions.

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

- A. Waive the restrictions in (i) Rule 67-48.004(14)(b), (ii) Section II, Part B, Subsection 1 of the Universal Application Instructions and (iii) Section 4, Subsection B(1) of the RFP, as to changing the Developer's identity after the Application Deadline, and permit Petitioner to add Palafox Landing Development, LLC, as its co-developer; and
- B. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.

Counsel for PetitionerDevelopment, Ltd.

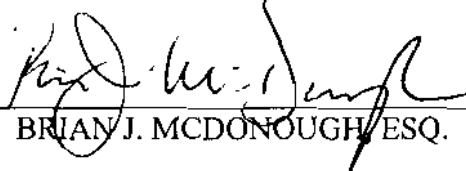
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By: 
BRIAN J. MCDONOUGH, ESQ.

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 28 day of September, 2009

By: 

Brian J. McDonough, Esq.