

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Metro South Senior Apartments Limited Partnership

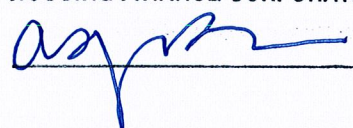
FHFC Case No.: 2013-021VW

**ORDER GRANTING VARIANCE FROM SECTION 9
OF THE 2012 QUALIFIED ALLOCATION PLAN**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 20, 2013, pursuant to a “Petition for Waiver or Variance from the 2012 Qualified Allocation Plan Regarding the Return of a Housing Credit Allocation” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on August 14, 2013, from Metro South Senior Apartments Limited Partnership (“Petitioner”). On August 16, 2013, Notice of the Petition was published in Volume 39, Number 160, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the “Board”) of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATE: 09/23/13

2. During the 2011 Universal Cycle, Petitioner was awarded an allocation of tax credits to finance the construction of an elderly development known as Metro South Senior Apartments (the “Development”) located in the City of South Miami, Florida.

3. Rule 67-48.002(94) Fla. Admin. Code (2012) defines and incorporates by reference the 2012 Qualified Allocation Plan (the “2012 QAP”). Section 9 of the 2012 QAP provides in pertinent part:

[W]here 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.

4. Petitioner requests a variance from the above provisions of the 2012 QAP to permit the immediate return of its Carryover Allocation of 2012 Housing Credits and to receive a reservation and Carryover Allocation of 2013 Housing Credits, with a corresponding extension of all deadlines relative to those credits.

5. Section 120.542(2), Florida Statutes provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

6. The requested change would neither affect the scoring of Petitioner's application nor allow Petitioner to gain an unfair advantage over other applicants.

7. Strict application of the above provision of the 2012 QAP under these circumstances would constitute a substantial hardship and violate the principles of fairness, in that the completion of the Development has been delayed by circumstances beyond Petitioner's control. Development processes and related real estate closings have been delayed by protracted litigation with the City of South Miami, causing Petitioner to be at risk of not meeting its 2014 "placed-in-service" deadline.

8. Petitioner anticipates that the parties to this litigation should enter into a settlement agreement permitting the Development to proceed on or about September 20, 2013.

IT IS THEREFORE ORDERED:

Petitioner's request for a variance from Section 9 of the 2012 Qualified Allocation Plan is hereby conditionally **GRANTED**. Petitioner shall be permitted to immediately return its Carryover Allocation of 2012 Housing Credits and to receive a reservation and Carryover Allocation of 2013 Housing Credits, with a corresponding extension of all deadlines applicable to those Housing Credits. The granting of this variance is conditioned upon the settlement of all claims pending between Petitioner and its related entities and the City of South Miami regarding the Metro South Development no later than November 1, 2013.

DONE and ORDERED this 20th day of September, 2013.

Florida Housing Finance Corporation



By: _____

Chairperson

Copies furnished to:

Wellington H. Meffert II, Esq.
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Ken Reecy
Director of Multifamily Programs
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Warren Husband, Esq.
Counsel for Petitioner
Metz, Husband & Daughton, P.A.
P.O. Box 10909
Tallahassee, Florida 32302-2909

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
120 Holland Building
Tallahassee, Florida 32399-1300

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.