

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2015-003VW  
SAIL Application No. 2014-423S

MCG SENIOR APARTMENTS, LLC

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.004 AND PROVISIONS OF RFA 2014-111,  
FOR A CHANGE IN APPLICANT NAME AND STRUCTURE**

Petitioner, MCG Senior Apartments, LLC, a Florida limited liability company (“MCG”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver or variance of the Respondent’s prohibition on changes in an Applicant’s name and ownership structure until after loan closing, which is set forth in the Florida Housing’s Request for Applications No. 2014-111 (the “RFA”).

Florida Administrative Code Section 67-48.004 (the “Rule”) further prohibits changes to an Applicant’s name (a) prior to receipt of an invitation to credit underwriting and (b) thereafter, only upon approval of the Board of Florida Housing. MCG is seeking a waiver or variance with regard to the Rule, as well.

MCG requests a waiver of the applicable provisions of the RFA and the Rule in order to allow for (i) the conversion of the entity structure of MCG from a limited liability company to a limited partnership (with no substantive change in ownership) and (ii) the change in the name of MCG from “MCG Senior Apartments, LLC” to “MCG Senior Apartments, Ltd.”

**A. THE PETITIONER**

1. The name, address, telephone and facsimile numbers, and email address for MCG and its qualified representative for MCG's application submitted in response to the RFA (the "Application") are:

MCG Senior Apartments, LLC  
Attention: Steven C. Hydinger  
2101 Highland Avenue South  
Suite 110  
Birmingham, AL 35205  
Telephone: 205-639-5070  
Facsimile: 205-639-5070  
E-mail: stevenh@brecdevelopment.com

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

Brian J. McDonough, Esquire  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
150 West Flagler Street  
Miami, Florida 33130  
Telephone: 305-789-3350  
Facsimile: 305-789-3395  
E-mail: bmcdonough@stearnsweaver.com

**B. THE DEVELOPMENT**

3. MCG timely submitted its Application, assigned Application No. 2014-423S, in response to the RFA, seeking a State Apartment Incentive Loan ("SAIL") program loan in the amount of \$4,010,087 and an Extremely Low Income ("ELI") loan in the amount of \$1,968,900 to assist in the financing, rehabilitation and preservation of a 207-unit residential development in Duval County, Florida, intended to serve elderly persons (the "Development"). MCG received an invitation into credit underwriting from Florida Housing on December 19, 2014, which was accepted by MCG on December 22, 2014.

4. The SAIL and ELI funds allocated to MCG, together with other loan and equity sources, will provide funds for the construction, renovation and preservation of the Development.

5. The requested waiver will enable MCG, once converted to a limited partnership, to avail itself of the provisions of Section 196.1975, Florida Statutes, which allows for an exemption from real estate taxes in favor of affordable housing communities which are restricted to occupancy by persons age 62 and older and which have a 501(c) (3) corporation as the sole general partner. Section 196.1975, F.S., provides, in relevant part, as follows:

**196.1975 Exemption for property used by nonprofit homes for the aged.**— Nonprofit homes for the aged are exempt to the extent that they meet the following criteria:

(1) The applicant must be a corporation not for profit pursuant to chapter 617 or a Florida limited partnership, the sole general partner of which is a corporation not for profit pursuant to chapter 617, and the corporation not for profit must have been exempt as of January 1 of the year for which exemption from ad valorem property taxes is requested from federal income taxation by having qualified as an exempt charitable organization under the provisions of s. 501(c)(3) of the Internal Revenue Code of 1954 or of the corresponding section of a subsequently enacted federal revenue act.

6. The requested waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in a substantial economic hardship to MCG; (b) could result in a reduction of services to the residents of the Development; (c) could deprive Duval County, Florida of essential affordable housing units in a timely manner and (d) would violate principles of fairness<sup>1</sup>. § 120.542(2), Fla. Stat. (2013).

7. The waiver being sought is permanent in nature.

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<sup>1</sup>“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.

C. **Rule from Which Relief is Requested and Statute Implemented by the Rule**

8. MCG realleges and incorporates Paragraphs 1 through 7 as though fully set forth herein.

9. MCG requests a waiver of the provisions of the RFA and the Rule, which provide, in relevant part, as follows:

RFA:

- a. Part I, Section 2(c) of the RFA provides as follows: **“All applicants must provide a list, as Attachment 2 to Exhibit A, identifying the Principals for the Applicant.”**
- b. “Principals” is defined in Exhibit C to the RFA, with respect to an Applicant that is a limited liability company, as **“any manager or member of the Applicant or Developer limited liability company, and, with respect to any manager or member of the Applicant or Developer limited liability company that is: (i) A corporation, any officer, director or shareholder of the corporation, (ii) A limited partnership, any general partner or limited partner of the limited partnership, or (iii) A limited liability company, any manager or member of the limited liability company.”**
- c. Exhibit D to the RFA provides, in Section 1.a. thereof, that **“The SAIL Applicant shall be the borrowing entity and cannot be changed until after loan closing. Replacement of the Applicant or a material change (33.3 percent or more of the Applicant, a General Partner of the Applicant, or a member of the Applicant) in the ownership structure of the named Applicant prior to loan closing shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes after loan closing require Board approval”.**

Therefore, without the relief requested to be granted pursuant to this Petition, MCG, as the Applicant, cannot be changed prior to closing of the SAIL and ELI loans; the “Principal” identified as the manager of MCG identified on Attachment 2 to the Application cannot be changed from a “manager” to a “general partner” prior to closing; and any material change in the ownership structure of MCG cannot occur.

Rule: The Rule provides as follows (See Section 67-48.004 (3) (a), F.A.C.):

**(3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any**

**other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:**

**(a) Name of Applicant entity; notwithstanding the foregoing, the name of the Applicant entity may be changed only by written request of an Applicant to Corporation staff and approval of the Board as follows:**

- 1. After the Applicant has been invited to enter credit underwriting for the SAIL and HOME Programs, and**
- 2. After the Carryover Allocation Agreement is in effect for the Competitive HC Program.**

Therefore, Board approval is required for the change in the name of MCG which will occur as a consequence of the conversion of MCG from a limited liability company to a limited partnership.

10. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the State Apartment Incentive Loan Program. *See* Section 420.5087, F.S.

**D. Justification for Petitioner's Requested Waiver**

11. MCG realleges and incorporates Paragraphs 1 through 10 as though fully set forth herein.

12. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., Florida Housing has the authority 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 (1) the person who is subject to the rule demonstrates that the application of the rule would 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), Fla. Stat. (2011).

13. In this instance, MCG meets the standards for a waiver.

14. MCG requests a waiver from the relevant restrictions in the RFA and the Rule, in order to allow for:

(a) the conversion of the entity structure of MCG from a limited liability company to a limited partnership (with no substantial change in ownership),

(b) the change in control of MCG from a managing member (which is owned by a non-profit corporation), to control of the converted entity by a general partner (which is the same non-profit corporation), and

(c) the change in the name of MCG from “MCG Senior Apartments, LLC” to “MCG Senior Apartments, Ltd.”

15. MCG is a limited liability company comprised of:

(a) a managing member, whose sole member is a non-profit corporation, and

(b) two non-managing members, which are (i) the same non-profit corporation that currently serves as the managing member of MCG and (ii) Steven Hyding, an individual.

The current entity structure of MCG is described in Attachment 2 to the Application, a copy of which is attached hereto as Exhibit “A” (the “Existing MCG Structure”).

16. MCG seeks to:

(a) convert its entity type from a limited liability company to a limited partnership;

(b) cause the sole member of its current managing member to become both the sole general partner and a limited partner of MCG following such conversion,

(c) cause the other current member, an individual, to become a limited partner following such conversion, and

(d) change its name to “MCG Senior Apartments, Ltd.”

The proposed entity structure of MCG following such conversion is described in Exhibit “B” attached hereto (the “Proposed MCG Structure”).

17. The planned conversion and restructuring of MCG will not adversely impact MCG, Florida Housing or any other applicant seeking funds pursuant to the RFA. The same parties which currently (directly or indirectly) hold member interests in MCG will continue to have ownership in the converted entity, in the same percentages as they had prior to the conversion.

18. The provisions of the RFA and the Rule for which MCG is seeking a waiver were intended to prevent third parties from entering the transaction after the application process. The RFA and the Rule were designed to prevent the “flipping” of an application to a third party that would not have qualified for SAIL or ELI funds, if it were the Applicant in the first instance. Strict application of the relevant provisions of the RFA and the Rule in this instance will not fulfill this purpose, but instead lead to the unintended consequence of preventing internal structural changes within the originally constituted entity, that have no adverse effect on Florida Housing, the Development, or any other Applicant which submitted a response to the RFA. In this instance, the same parties will continue to hold the same ownership interests in MCG, with no new partners added, and no “flip” will have occurred. However, unless the waiver is granted, MCG will be unable to claim the real estate tax exemption which is available to limited partnerships, but not to limited liability companies, under Section 196.1975, F.S. The result will be undue hardship to MCG and a hindrance to the financial viability of the Development.

19. If MCG had been structured as a limited partnership matching the Proposed MCG Structure described in Exhibit “B” attached hereto, at the time the Application was submitted, Florida Housing’s evaluation of the Application and its decision to extend an invitation to underwriting to MCG would not have been adversely impacted.

20. If the relief sought pursuant to this Petition is not granted, MCG will suffer substantial hardship. The consequences resulting from MCG's inability to avail itself of the real property tax exemption afforded to limited partnerships under Section 196.1975 will put a financial burden on the Development that will result in curtailed services and amenities for its residents.

**E. Conclusion**

21. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be granted when (a) the applicant subject to the rule demonstrates that strict application would create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. §120.542(2), Fla. Stat. (2011).

22. The requested waiver will not adversely impact MCG, the Development, any other party that sought or received an allocation of SAIL or ELI funds under the RFA, or Florida Housing.

23. A denial of the requested waiver could result in a substantial hardship for MCG which would lose the opportunity to obtain favorable real estate tax treatment and will cause the loss of substantial services for residents of the Development.

24. 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 developers to further Florida Housing's purposes through construction of projects for senior residents in an economically viable manner. The specific goal of providing 207 units of affordable housing in Duval County, Florida will be achieved through the approval of the waivers requested in this



Petition, with no detriment to any party. Granting of the requested waiver will serve the underlying purpose of Chapter 420, Part V, Florida Statutes by facilitating the development of multifamily housing that is affordable to elderly residents.

25. Should Florida Housing require additional information, MCG is available to answer questions and to provide all information necessary for consideration of this Petition.

WHEREFORE, Petitioner, MCG Senior Apartments, LLC, a Florida limited liability company, respectfully requests that Florida Housing Finance Corporation provide the following relief:

- A. Grant the Petition and all relief requested herein;
- B. Approve the conversion and restructuring of MCG from the format described in Exhibit "A" attached hereto as the Existing MCG Structure, to the format described in Exhibit "B" attached hereto as the Proposed MCG Structure;
- C. Approve the change of the name of MCG Senior Apartments, LLC to MCG Senior Apartments, Ltd., a Florida limited partnership; and
- D. Grant such further relief as may be deemed appropriate.

Respectfully submitted,


STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
Counsel for MCG Senior Apartments, LLC  
150 West Flagler Street, Suite 150  
Miami, Florida 33131  
Tel: (305) 789-3350  
Fax: (305) 789-3395  
E-mail: [bmcdonough@swmwas.com](mailto:bmcdonough@swmwas.com)

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, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 11 day of February, 2015.

By:  \_\_\_\_\_  
Brian J. McDonough, Esc.

**ATTACHMENT 2**

Approved  
FHFC Advance Review  
8/26/14

**PRINCIPALS FOR APPLICANT AND DEVELOPER**

**APPLICANT**

*MCG SENIOR APARTMENTS, LLC, a Florida limited liability company*

Managing Member: MCG Senior Apartment Manager, LLC, a Florida limited liability company

Member: East Lake Community Development, Inc.  
an Alabama not-for-profit corporation

Member: Steven C. Hydinger

*MCG SENIOR APARTMENT MANAGER, LLC, A Florida limited liability company*

Sole Member and Manager: East Lake Community Development, Inc.,  
An Alabama not-for-profit corporation

*EAST LAKE COMMUNITY DEVELOPMENT, INC., An Alabama not-for-profit corporation*

There are no shareholders or members

Officers and Directors are:

John M. Wilson, Board Member and President  
Don C. Smith, Board Member/Vice President/Treasurer  
Kenneth F. Skellie, Board Member/Secretary  
George C. Pelekis, Board Member

**DEVELOPER**

*BREC DEVELOPMENT, LLC, an Alabama limited liability company authorized to do business in Florida*

Manager Director Steven C. Hydinger

Members/Managers: William E. Welden  
Robert C. Field  
Charles V. Welden, III  
William B. Welden

Exhibit "A"

**EXHIBIT "B"**

**PROPOSED MCG STRUCTURE**

**Proposed New ATTACHMENT 2 - PRINCIPALS FOR APPLICANT AND DEVELOPER**

**APPLICANT**

*MCG SENIOR APARTMENTS, LTD., a Florida limited partnership*

General Partner:	East Lake Community Development, Inc. an Alabama not-for-profit corporation
Limited Partner:	East Lake Community Development, Inc. an Alabama not-for-profit corporation
Special Limited Partner:	Steven C. Hydinger

*EAST LAKE COMMUNITY DEVELOPMENT, INC., An Alabama not-for-profit corporation*

There are no shareholders or members

Officers and Directors are:

John M. Wilson, Board Member and President  
Don C. Smith, Board Member/Vice President/Treasurer  
Kenneth F. Skellie, Board Member/Secretary  
George Pelekis, Board Member

**DEVELOPER**

*BREC DEVELOPMENT, LLC, an Alabama limited liability company authorized to do business  
in Florida*

Manager Director:	Steven C. Hydinger
Members/Managers:	Robert C. Field William E. Welden Charles V. Welden, III William B. Welden

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

Patricia K. Green  
150 West Flagler Street, Suite 2200  
Miami, FL 33130  
Direct: (305) 789-3345  
Fax: (305) 789-2621  
Email: pgreen@stearnsweaver.com

February 11, 2015

**Via FedEx**

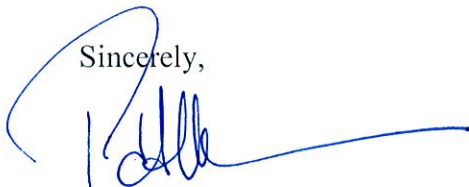
Ashley Black  
Corporation Clerk  
Florida Housing Finance Corporation  
227 N. Bronough St.  
Suite 5000  
Tallahassee, Florida 32301

**RE: Petition for Rule Waiver**

Dear Ms. Black:

Enclosed is a Petition for Rule Waiver, submitted on behalf of MCG Senior Apartments, LLC, for consideration by the Board at its next meeting. I have sent a duplicate copy to the Joint Administrative Procedures Committee. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Patricia K. Green

PKG/zs  
Enclosures

cc: Joint Administrative Procedures Committee (with Enclosures)