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April 8, 2015

Via FedEx

Ms. Kate Flemming
Corporation Clerk
Florida Housing Finance Corporation
227 N. Bronough St.
Suite 5000
Tallahassee, Florida 32301

RE: Petition for Rule Waiver

Dear Ms. Flemming:

Enclosed is a Petition for Rule Waiver, submitted on behalf of Renaissance Preserve IV, LLLP, 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. Best personal regards.

Sincerely,



Patricia K. Green

PKG/zs
Enclosures

cc: Joint Administrative Procedures Committee (with Enclosure)

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FLORIDA HOUSING
FINANCE CORPORATION

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

FHFC CASE NO. 2015-014VW
Application No. 2014-400C

RENAISSANCE PRESERVE IV, LLLP,
a Florida limited liability limited partnership

Petitioner,

vs.

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.004(3)(i) and (j)
FOR A CHANGE IN NUMBER OF UNITS AND IN TOTAL SET-ASIDE PERCENTAGE**

RENAISSANCE PRESERVE IV, LLLP, a Florida limited liability limited partnership (the “Petitioner”) hereby petitions Florida Housing Finance Corporation (the “Corporation”) for (i) a waiver or variance of the Corporation’s prohibition on changes in “Total Number of Units” designated by an applicant, and (ii) a waiver or variance of the Corporation’s prohibition on changes in the “Total Set-Aside Percentage” designated by an applicant and set forth in the Total Set-Aside Breakdown Chart, in its response to RFA 2014-106 – PHA Revitalization of Affordable Housing Developments. See Rule 67-48.004(3)(i) and (j), F.A.C.

In support of its petition, the Petitioner states:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for the Petitioner and its qualified representative for Petitioner’s application (the “Application”) in

response to RFA 2014-106 - PHA Revitalization of Affordable Housing Developments (the “RFA”) are:

Renaissance Preserve IV, LLLP
3629 Madaca Lane
Tampa, FL 33618
Attn.: Paula Rhodes
Telephone: 813-933-0629 ext 212
Facsimile: 813-935-3420
E-Mail: Prhodes@primericagroupone.com

2. For purposes of this Petition, the address, telephone number and facsimile number of the Petitioner’s attorney 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. The Petitioner timely submitted its Application in response to the RFA for the development named “The Homes of Renaissance Preserve III” (the “Development”). *See* Application No. 2014-400C. Petitioner received a preliminary allocation of Low-Income Housing Tax Credits for the Development.

4. The syndication of Low-Income Housing Tax Credits, together with other loan sources, will provide funds for the construction of a multifamily residential apartment community intended to serve low-income individuals and families in Fort Myers, Florida.

5. The requested rule waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in substantial economic hardship to Petitioner; (b) could

deprive Lee County of essential, affordable housing units in a timely manner, and (c) would violate principles of fairness¹. Section 120.542(2), Fla. Stat. (2013).

6. The waiver being sought is permanent in nature.

C. RULES FROM WHICH WAIVER IS SOUGHT

7. Petitioner requests a waiver from Rule 67-48.004(3)(i) and (j), Florida Administrative Code (the “Rule”). Specifically, Petitioner is requesting a decrease in the total number of units from 88 to 72 and an increase in the Total Set-Aside Percentage from 81% to 100%. The existing count of 88 units combined with a set-aside of 81% yields a total number of asset-aside units equal to 72, which is the same result that will be yielded if the relief sought by this Petition is granted.

The Rule provides, in relevant part, as follows:

“(3) ...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...:”

(i) Total number of units; notwithstanding the foregoing, for the SAIL and HC Programs the total number of units may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation;

(j) For the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the last row of the total set-aside break-down chart for the program(s) applied for in the Set-Aside Commitment section of the Application.”

Rule 67-48.004(3)(i) and (j), F.A.C.

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.

D. STATUTES IMPLEMENTED BY THE RULE

8. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that designated the Corporation as the housing credit agency responsible for the allocation and administration of Low-Income Housing Tax Credits. See Section 420.5099, Florida Statutes.

E. PETITIONER REQUESTS A WAIVER FROM THE RULE FOR THE FOLLOWING REASONS

9. Petitioner requests a waiver from Rule 67-48.004(3)(i) and (j), Florida Administrative Code. Petitioner is seeking a waiver from the Rule allowing it to decrease the total number of units from 88 to 72, and to increase the Total Set-Aside Percentage from 81% to 100%.

10. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation 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).

11. The following facts demonstrate the economic hardship and other circumstances which justify Petitioner's request for waiver:

- a. Petitioner timely submitted its Application to the Corporation in response to the RFA, for 88 housing units, with the Total Set-Aside Percentage of 81%, resulting in a total of 72 tax credit units.
- b. The Development is the fourth and final phase of a HOPE VI project, the grant for which carried a Congressionally-mandated expenditure deadline of September 20, 2011. Petitioner commenced construction of an initial 16 out of the total 88 units in the Development in May of 2011, drawing \$1.9 million in HOPE VI funds over the subsequent four months, in order to meet the “use it or lose it” deadline for those funds. Although substantially completed in late 2011, the 16 units were not placed in service until 2012 to allow the Partnership an opportunity to seek a Housing Credit allocation for all 88 units in the Development; unfortunately, tax credits were unable to be obtained for such units in the next ensuing application cycle. The 16 units had to be placed in service at that time to satisfy federal HOPE VI requirements, thereby becoming ineligible for Housing Credits.
- c. Petitioner desires to maintain the overall number of Housing Credit units which it originally committed in the RFA to provide as housing for families of limited means; i.e., 72 units. Whether obtained as a function of multiplying 81% by 88 units, or 100% by 72 units, the product is constant. Removal of the 16 units does not change the allocated amount of Housing Credits, so there is no detriment to the Corporation in terms of the number of Housing Credit units to be approved.

- d. Petitioner's scoring and allocation of Low-Income Housing Tax Credits would not have been affected if Petitioner had originally included 72 units in the Application, with 100% of them designated as set-aside units, as opposed to 88 units with 81% of them designated as tax credit set-aside units. There are no points associated with this aspect of the Application. Nor does this change adversely impact any other applicant in the RFA.
- e. Unless the relief sought by Petitioner is granted, completion of the Development may not be feasible. Petitioner may lose the commitments for funding provided by its lenders and investor and will have insufficient funds required to complete the Development. More importantly, 72 households in Lee County will lose the opportunity to reside in decent, safe and modern surroundings.

12. A waiver of the Rule's restriction against decreasing the total number of units and changing the Total Set-Aside Percentage from Petitioner's Application 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.

13. By granting the waiver and permitting Petitioner to decrease the unit count but correspondingly increase the total Set-Aside Percentage, the Corporation would recognize the economic realities and principles of fundamental fairness in developing affordable rental housing. This recognition would promote participation by owners such as Petitioner in meeting the Act's purpose of providing affordable housing in an economical and efficient manner.

14. 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

Petitioner requests the following:

- a. That the Corporation grant Petitioner a waiver from Rule 67-48.004(14)(i) and (j), Florida Administrative Code, allowing it to increase the Total Set-Aside Percentage from 81% to 100% and to decrease the total number of units in the Development from 88 to 72;
- b. Grant the Petition and all the relief requested therein; and
- c. Grant such further relief as may be deemed appropriate.

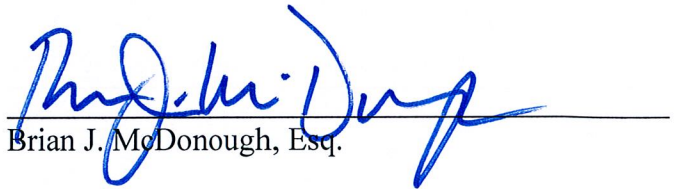
Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
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Miami, Florida 33131
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By: 
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served overnight delivery on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 7th day of April, 2015.


Brian J. McDonough, Esq.