

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

JANIE POE ASSOCIATES 3, LLC

Petitioners,

FHFC CASE NO. 2014- 087 VW  
RFP Application No. 2013-103C

vs.

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**PETITION FOR WAIVER**

Janie Poe Associates 3, LLC ("Janie Poe"), hereby petitions The Florida Housing Finance Corporation ("Florida Housing") for a waiver of the Total Development Cost Limitation found in the Credit Underwriting Procedures Section of RFP 2013-007: For PHA Revitalization High Priority Affordable Housing Developments. ("RFP") 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: (407) 772-0200

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](mailto: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 Low-Income Housing 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.

5. The waiver requested herein will not adversely affect the proposed Janie's Garden Development. However, a denial of this Petition (a) will result in substantial economic hardship to Janie Poe; (b) could deprive Sarasota County of essential, affordable housing units, and (c) would violate principles of fairness.

6. The waiver being sought is permanent in nature.

**C. RFP PROVISIONS FROM WHICH WAIVER IS SOUGHT**

7. Janie Poe requests a waiver from the Total Development Cost Limitation referenced in RFP 2013-007. Specifically, Janie Poe is requesting an increase in the Total

Development Cost per unit from the listed \$163,000 to \$168,000 which is a minimal increase of \$5,000.

8. The RFP, in relevant part a Exhibit C, Part I (20)(e) provides:

e. If the Credit Underwriter is to recommend a Competitive Housing Credit Allocation, the recommendation will be the lesser of (i) the qualified basis calculation result, (ii) the gap calculation result, or (iii) the Applicant's Housing Credit Request Amount. During the credit underwriting process and as a part of the Final Cost Certification Application review outline in Part II below, the **Development will be subjected to the Total Development Cost per unit limitation test. Any credit underwriting report involving Competitive Housing Credits that reflects a Total Development Cost per unit amount that exceeds the Total Development Cost limitation, as outline below, shall receive a negative recommendation by the Credit Underwriter.**

1) For proposed Developments requesting Competitive HC, the Corporation shall limit the total Development Cost (TDC) per unit for all Developments based on the average cost to deliver new construction units and rehabilitation units, based on the construction type of the units as indicated by the Applicant at question 4.f(2) of Exhibit A of the RFP. The maximum TDC per unit exclusive land costs, applying any applicable TDC multiplier and will be tested during the credit underwriting and final allocation process, as follows:

- a) Any Applicant that has an amount that exceeds these limitations in any credit underwriting report will not have the credit underwriting report approved.
- b) Any Applicant that presents a Final Cost Certification Application (FCCA) that has amounts that exceed these limitations will have its Housing Credit Allocation reduced.

2) These TDC limitation amounts are effective from credit underwriting review through Final Cost Certification.

Total Development Cost Per Unit Base Limitation (Calendar Year 2013)

Measure	New Construction Units	Rehabilitation Units
Maximum TDC Per Unit exclusive of Land Costs	\$163,000	\$137,000

**D. STATUTES IMPLEMENTED BY THE RFP**

9. The RFP 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 FROM THE RFP FOR THE FOLLOWING REASONS**

10. Petitioner requests a waiver from RFP to allow for a minimal increase in the Total Development Cost Limitation from \$163,000 to \$168,000. As has become evident in the Credit Underwriting process additional costs primarily caused by non-union labor issues have increased the construction costs per unit for the Janie's Garden Development. The labor issues result from prevailing wage cost issues associated with construction on public housing authority lands (Sarasota Housing Authority) and the requirements of the Davis Bacon Act.

11. In general it is not uncommon for unforeseen events to occur after submission of an Application. Indeed in subsequent Requests for Proposals, Florida Housing recognized possible increases in construction costs which could increase the Total Development Cost and created flexibility including the creation of an escalation factor to be used in the Credit Underwriting Process.

12. Florida Housing has the authority to grant waivers to its requirements 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 rule demonstrates that the application of the rule 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.

13. A waiver of the RFP's Total Development Cost 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.

14. By granting the waiver and permitting Janie Poe to minimally exceed the Total Development Cost Limitation amount, Florida Housing would recognize the economic realities and principles of fundamental fairness in developing affordable rental housing. This recognition would promote participation by developers such as Janie Poe in meeting the Act's purpose of providing affordable housing where it is desperately needed.

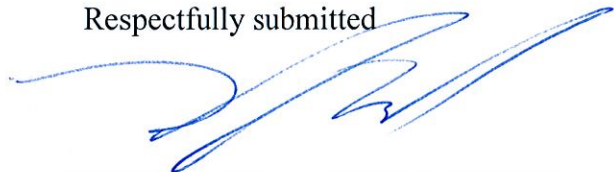
15. Should the Corporation require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

**F. ACTION REQUESTED**

16. Petitioner requests the following:

- a) That Florida Housing grant Petitioner a waiver from the RFP Total Development Cost Limitation and allow it to minimally exceed the Total Development Cost Limitation.
- b) Grant the Petition and all of the relief requested therein;  
and
- c) Grant such further relief as may be deemed appropriate.

Respectfully submitted



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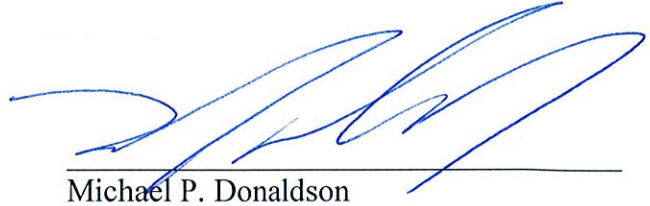
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Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original Petition is being served by electronic transmission for filing with the Corporation 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 20th day of November, 2014.



Michael P. Donaldson