

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2015-004VW  
Non-Competitive HC Application No. 2013-514C

AMC HTG I, LTD.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-21.003(1) (a) AND APPLICATION  
INSTRUCTIONS, FOR A CHANGE IN APPLICANT STRUCTURE**

Petitioner, AMC HTG I, Ltd., a Florida limited partnership (“Petitioner”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver or variance of the Respondent’s prohibition on changes in an Applicant’s ownership structure prior to Florida Housing’s approval of the Final Housing Credit Allocation Agreement and the issuance of IRS Form 8609, which is set forth in the Instructions to the Application for Non-Competitive Housing Credits submitted by Petitioner. See Non-Competitive Application Instructions Revised 3-13 (the “Instructions”). The Instructions are included in the Non-Competitive Application Package (Rev-3-13) which is incorporated by reference into Florida Administrative Code Section 67-21.003(1) (a) (the “Rule”).

Petitioner requests a waiver of the Instructions, as incorporated into the Rule, in order to allow for the transfer of twenty one percent (21%) of the membership interests in the Petitioner’s non-managing general partner to another entity.

**A. THE PETITIONER**

1. The name, address, telephone and facsimile numbers, and email address for Petitioner and its qualified representative for Petitioner's Non-Competitive Application in the 2013 Housing Credit Program (the "Application") are:

AMC HTG I, Ltd.  
Attention: Matthew Rieger  
3225 Aviation Avenue, Suite 602  
Miami, FL 33133  
Telephone: 305-443-8288  
Facsimile: 305-443-9339  
E-mail: mattr@htgf.com

2. The name, address, telephone and facsimile numbers, and e-mail address of Petitioner'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. Petitioner timely submitted its Application for 2013 Housing Credits. *See* Application No. 2013-514C for the development named "Courtside Family Apartments". Petitioner received an invitation into credit underwriting from Florida Housing on November 7, 2014, which was accepted by Petitioner on November 7, 2014.

4. The Housing Credits to be awarded to Petitioner, together with other loan sources, will provide funds for the construction of a community comprised of eighty four (84) affordable

residential units intended to serve low-income persons in Miami-Dade County, Florida (the “Development”).

5. The requested waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in a substantial economic hardship to Petitioner; (b) could result in delay in completing, or possibly a complete failure to construct, the Development; (c) could deprive Miami-Dade 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).

6. The waiver being sought is permanent in nature.

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

7. Petitioner realleges and incorporates Paragraphs 1 through 6 as though fully set forth herein.

8. Petitioner requests a waiver of the Instructions, which are incorporated by reference into the Rule, and provide, in relevant part, as follows:

**Applicants must use the Non-Competitive Application Form to apply for...Non-Competitive Housing Credits (4 Percent HC) only, to be used for a Tax-Exempt Bond-Financed Development where the bonds are issued by a County Housing Finance Authority (HFA) pursuant to Section 159.604, F.S.....**

**2. Applicant:**

**a. State the name of the Applicant.**

**(1) If applying for Housing Credits, the Applicant must be a limited partnership (including a limited liability limited partnership) or a limited liability company. The Applicant entity shall be the recipient of the Non-Competitive Housing Credits and may not change until after the Final Housing Credit Allocation Agreement has been approved and the IRS Forms 8609 have been issued. The Applicant entity may be changed after**

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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.

**a Final Housing Credit Allocation Agreement has been approved and the IRS Forms 8609 have been issued; however, the Corporation must be notified in writing of the change. Changes to the Applicant entity prior to approval of the Final Housing Credit Allocation Agreement and issuance of the IRS Forms 8609 will result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes to the limited partner of a limited partnership or member of a limited liability company owning the syndicating interest therein will not result in disqualification.**

9. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that designates Florida Housing as the agency responsible for the allocation and distribution of low-income housing tax credits. *See* Section 420.5099, F.S. (the “Statute”).

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

10. Petitioner realleges and incorporates Paragraphs 1 through 9 as though fully set forth herein.

11. 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).

12. In this instance, Petitioner meets the standards for a waiver.

13. Petitioner requests a waiver from the Instructions, as incorporated into the Rule, in order to allow for the transfer of twenty one percent (21%) of the membership interests in the Petitioner’s non-managing general partner to another entity.

14. Petitioner is comprised of two general partners and a limited partner. The two general partners are (a) AMC HTG I GP, LLC, a Florida limited liability company (the “Managing GP”) and (b) AM Housing I GP, LLC, a Florida limited liability company (the “Administrative GP”). The Administrative GP has a single member, which is AM Affordable Housing, Inc., a Florida non-profit corporation (the “AGP Member”). Petitioner desires to cause the AGP Member to transfer 21% of its member interests in the Administrative GP to Urgent, Inc., a Florida not-for-profit corporation, as more particularly described in Paragraph 15 below.

15. Petitioner is seeking approval of a transfer, by the AGP Member, of twenty one percent (21%) of its membership interest in the Administrative GP to Urgent, Inc., a Florida not-for-profit corporation. This transfer is necessary to create a “tax disaffiliation” required by the Petitioner’s limited partner (the “Investor Limited Partner”). Without the disaffiliation, significant negative tax consequences would ensue which would result in a reduction in the equity payable by the Investor Limited Partner, and a resulting likely inability to proceed with the Development.

16. If the relief sought pursuant to this Petition is not granted, Petitioner will suffer substantial hardship. The tax consequences resulting from Petitioner’s inability to make the changes described herein to its ownership structure will cause the inability of the Investor Limited Partner to invest in the Development or, at a minimum, cause a substantial decrease in the amount of its investment, thereby causing the Development to fail for lack of sufficient construction funding sources.

**E. Conclusion**

17. 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).

18. The requested waiver will not adversely impact Petitioner, the Development, any other party that received an allocation of non-competitive Housing Credits or Florida Housing.

19. A denial of the requested waiver could result in a substantial hardship for Petitioner which would cause the loss of a substantial portion of the equity contributions committed to be made to the Development by the Investor Limited Partner. The feasibility of the Development will be jeopardized.

20. 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. The goal of providing eighty four (84) units of affordable housing in Miami-Dade County, Florida will be achieved through the approval of the transfer of member interests 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 households of limited means.

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

WHEREFORE, Petitioner, AMC HTG I, Ltd., respectfully requests that the Florida Housing Finance Corporation provide the following relief:

A. Grant the Petition and all relief requested herein;

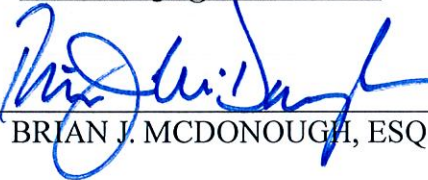
B. Approve the transfer of twenty one percent (21%) of the membership interest in the Administrative GP from the AGP Member to Urgent, Inc., a Florida not-for-profit corporation; and

C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
Counsel for AMC HTG I, Ltd.  
150 West Flagler Street, Suite 150  
Miami, Florida 33131  
Tel: (305) 789-3350  
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By:

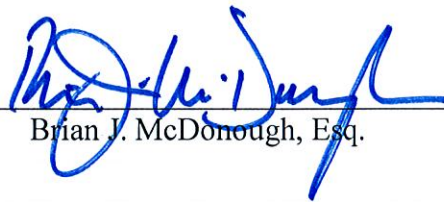


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BRIAN J. MCDONOUGH, ESQ.

**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, Esq.



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 AMC HTG I, Ltd., 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)