

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

MLF TOWERS,

Petitioner

v.

FLORIDA HOUSING
FINANCE CORPORATION

Respondent

FHFC CASE NO. 2015-041VW

APPLICATION NOS. 2011-106C

Carryover Agreement 2012-011C

FLORIDA HOUSING
FINANCE CORPORATION

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PETITION FOR WAIVER

MLF 2, LTD. ("Petitioner"), by and through its undersigned attorney, pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code ("F.A.C.") hereby petitions the Florida Housing Finance Corporation ("Florida Housing") for a waiver of Rule 67-48.004, F.A.C. (2011) and specifically provisions and requirements of the 2011 Universal Application adopted by the Rule.

In support Petitioner states:

A. THE PETITIONER

1. The address, telephone and facsimile number of Petitioner is:

5300 W. Cypress St., Suite 200
Tampa, FL 33607
Tel: (727) 578-1174
Fax: (727) 579-0145

2. The address, telephone and facsimile number of Petitioner's attorney is:

Michael P. Donaldson
Carlton Fields Jordan Burt
215 S. Monroe Street, Suite 500
Tallahassee, FL 32301-1866
Tel: (850) 513-3613
Fax: (850) 222-0398

B. THE DEVELOPMENT

3. Petitioner successfully applied for financing from the Housing Tax Credit Program in the 2011 Universal Application Cycle that Florida Housing administers pursuant to Chapter 67- 48, F.A.C. (2011). Petitioner's Application Number was: 2011-106C (the "Application"). As provided in the 2011 Universal Application Petitioner received points for committing to the following:

- (i) Set aside at least 50 percent of its Extremely Low Income (ELI) units for Special Needs Households; and
- (ii) Develop and execute a Memorandum of Understanding (MOU) with at least one designated Special Needs Household Referral Agency for the county where the proposed Development is located. The deadline for the MOU will be established in the Carryover Allocation Agreement.

C. THE RULES FROM WHICH A WAIVER IS SOUGHT

4. Petitioner requests a waiver from the portion of Rule 67-48.004 that adopts and incorporates by reference the Universal Application Package or UA 1016 (Rev. 2-11). The relevant portions of the Rule are as follows:

67-48.004 Application and Selection Procedures for Developments.

- (1) When submitting an Application, Applicants must utilize the Universal Application in effect at the Application Deadline.
 - (a) The Universal Application Package or UA1016 (Rev. 2-11) is adopted and incorporated herein by reference and consists of the forms and instructions available, without charge, on the Corporation's Website under the 2011 Universal Application link labeled Instructions and Application or from

<http://www.org/Gateway/reference.asp?No=Ref-00703>, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the HOME and HC Program(s).

5. Specifically Petitioner requests a waiver from the MOU requirements of the Universal Application.

D. STATUTES IMPLEMENTED BY THE RULE

6. The Rule and Universal Application which is adopted by reference implements, the Florida Housing Finance Corporation Act,¹ the statute that created the Housing Credits Program. (Section 420.5093, Florida Statutes) The Act designates Florida Housing as the State of Florida's housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). Section 420.5099(1) and (2), Florida Statutes. Accordingly, the Rule implements, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the Housing Credit Program.

7. Florida Housing has the authority pursuant to Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C. to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances.

8. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate

¹ The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.526, Florida Statutes.

principals of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes.

E. FACTS DEMONSTRATING ENTITLEMENT TO WAIVER

9. For the reasons set forth below, compliance with the provisions of the aforementioned Rule and Universal Application provides would give rise to substantial hardship to Petitioner and would violate principles of fairness.

10. 540 Town Center (f/k/a MLF Towers) is a HUD 202/8 that closed on its award of Tax Credits in 2012. At the time of award and closing there was a requirement for the creation of an MOU to be executed with a local referral agency in order to direct “special needs” applicants to the property.

11. Petitioner is requesting that the requirement for the MOU and special needs be removed given the circumstances specific to this property as follows:

- a) The property remains restricted to elderly or mobility impaired individuals under its HUD Use Agreement, and nearly all of the residents there would qualify under Florida Housing’s definition of Special Needs. Because of this reality Florida Housing has waived the special needs and MOU requirements for HUD 202 properties in subsequent Request for Applications (“RFA”) which replaced the Universal Application Cycle.
- b) Given that this property has HUD Section 8 rental assistance for 100% of the units, it maintains an extensive waiting list. Given the population served (low income elderly or mobility impaired individuals), almost everyone on the waiting

list would qualify as a "Special Needs Household," and the majority of the residents are at or below the Extremely Low Income limit.

- c) The intent of the Rule and Universal Application requirements was to ensure that the property serves Extremely Low Income individuals with Special Needs. However, by using the referral agency under the MOU, Petitioner has incurred longer vacancies, given the lengthy time it takes the Referral Agency to qualify applicants. Petitioner would be better able to accomplish the Rule and Universal Applications intent in a shorter amount of time by using its own in-house Wait List.

12. Petitioner believes that it makes sense to waive the MOU and special needs requirement, and that the waiving of this requirement is consistent with Florida Housing's recent evaluation of the situation given that the requirement no longer exists in subsequently issued RFAs.

F. WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

13. Florida Housing's approval of the requested waiver would serve the purpose of the underlying Florida Statute, Section 420.5093, as well as the Tax Credit Program. The purpose of both the Statute and the program is to facilitate and stimulate the development and/or preservation of multifamily rental housing that is affordable to families of limited means. If the requested waiver is granted, this site will generate better occupancy due to faster lease-up of vacant units. The property will still meet the intentions of the Special Needs category because the building will continue to serve frail low income seniors and mobility impaired households, the majority of which are at or below the ELI income limit.

Petitioner reserves the right to provide additional information should it be necessary.

G. TYPE OF WAIVER REQUESTED

14. The waiver being sought is permanent in nature.

H. ACTION REQUESTED

15. For the reasons stated above, Petitioner requests a waiver from Rule 67-48.004 and specifically the Universal Application requirement for the creation and execution of a MOU with a designated Special Needs Household Referral Agency.

Respectfully submitted this 20th day of November 2015.

/s/ Michael P. Donaldson
MICHAEL P. DONALDSON
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Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Petition for Waiver is being served by electronic transmission for filing with Kate Flemming, Agency Clerk and Hugh Brown, General Counsel for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served via Hand-Delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300 this 20th day of November, 2015.

/s/ Michael P. Donaldson
Michael P. Donaldson

**CARLTON FIELDS
JORDEN BURT**

ATTORNEYS AT LAW

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November 20, 2015

Kate Flemming
Corporation Clerk
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

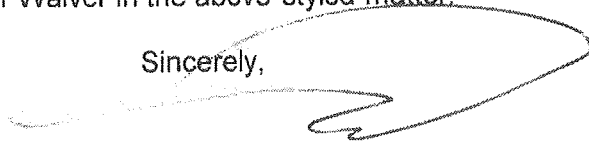
VIA ELECTRONIC TRANSMISSION

Re: MLF Towers v. Florida Housing Finance Corporation

Dear Kate:

Enclosed please find a Petition for Waiver in the above-styled matter.

Sincerely,



Michael P. Donaldson

MPD/rb