

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2016-013VW

MCG SENIOR APARTMENTS, LTD.
Petitioner

vs.

FHFC APPLICATION: 2014-423S
REQUEST FOR APPLICATIONS: 2014-111

FLORIDA HOUSING FINANCE
CORPORATION,
Respondent

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FLORIDA HOUSING FINANCE CORPORATION

**PETITION FOR WAIVER OF RULE 67-48.0072(13)(b)
FOR MAINTENANCE OF EXCESS RESERVE FUNDS**

Petitioner MCG Senior Apartments, Ltd., a Florida limited partnership (“MCG”) submits its Petition to Respondent Florida Housing Finance Corporation (the “Corporation”) for a waiver of the Corporation’s prohibition on the escrow of replacement reserves in an amount exceeding 50% of the total amount of reserves required for a two year period. *See* Rule 67-48.072(13)(b), Florida Administrative Code. In support of its Petition, MCG states:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for MCG and its qualified representative for MCG’s application (the “Application”) in response to RFA 2014-111 SAIL Financing of Affordable Multifamily Housing Developments to be Used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits (the “RFA”) are:

MCG Senior Apartments, Ltd.
Attention: Steven C. Hyding
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 for MCG's attorney are:

Brian J. McDonough, Esq.
Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
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 in response to the RFA for renovation of the existing development named "Mount Carmel Gardens" (the "Development"). *See* Application No. 2014-423S. Financing for the acquisition and renovation of the Development will include a loan from First Housing Development Corporation of Florida ("First Housing") which will be insured by the U.S. Department of Housing and Urban Development ("HUD") under Section 221(d) (4) of the National Housing Act (the "HUD Loan"). A required component of the HUD Loan will be a minimum initial deposit of \$207,000 to the replacement reserve account to be funded by MCG (the "Reserve Amount"). The Reserve Amount exceeds the allowable initial escrow of replacement reserves under Rule 67-48.072 (13)(b), Florida Administrative Code (the "Rule"), which for the Development, is \$62,100. Accordingly, MCG hereby petitions the Corporation for a waiver of its prohibition on the initial escrow of replacement reserves in an amount exceeding 50% of the total amount of reserves required for a two year period.

4. The requested rule waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in a substantial economic hardship to MCG and (b) could deprive the residents of Duval County, Florida of 207 units of affordable housing and (c) would violate principles of fairness¹. Section 120.542(2), Fla. Stat. (2015).

5. The waiver being sought is permanent in nature.

C. RULES FROM WHICH WAIVER IS SOUGHT

6. MCG requests a waiver from Rule 67-48.0072(13)(b) of the Florida Administrative Code (the "Rule"). Specifically, MCG is requesting approval of the initial escrow of replacement reserves in an amount which exceeds 50% of the total amount of reserves required for a two year period. The Rule provides, in relevant part, as follows:

(13) For Competitive HC, SAIL, and HOME, in addition to operating expenses, the Credit Underwriter must include an estimate for replacement reserves and operating expense reserves deemed appropriate by the Credit Underwriter when calculating the final net operating income available to service the debt. A minimum amount of \$300 per unit per annum must be used for all Developments.

.....

(b)... An Applicant may choose to fund a portion of the replacement reserves at closing. The amount cannot exceed 50 percent of the required replacement reserves for two (2) years and must be placed in escrow at closing.

D. STATUTES IMPLEMENTED BY THE RULE

7. 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.

¹“ 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.

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

8. MCG requests a waiver from Rule 67-48.0072(13)(b), Florida Administrative Code. MCG is seeking a waiver from the Rule prohibiting the initial escrow of replacement reserves in an amount exceeding 50% of the total amount of reserves required for a two year period. 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).

9. As a condition to the origination of the HUD Loan by First Housing, First Housing, as directed by HUD, is requiring the transfer into the replacement reserve of existing project reserves already on deposit with the current owner, in the amount of \$207,000. Scott Moreman, the Senior Vice President of First Housing, has advised Petitioner that HUD is requiring a \$1,000 per unit initial deposit into the replacement reserve, which is thereafter increased by an annual deposit equal to \$300 per unit. The deposit was a condition to HUD'S approval of the 221(d)(4) loan.

10. If the waiver requested herein is not granted, MCG will suffer a substantial economic hardship by failing to meet the technical requirements of the Rule, which will result in rescission of (a) the Corporation's allocation of SAIL funds and (b) the preliminary allocation of housing credits awarded to the Development. MCG's investor member will withdraw from the transaction if the housing credits cannot be delivered as contemplated and, as a consequence,

there will be no source of the equity which is a critical component of the funds necessary to renovate the Development. Renovation of the Development will fail altogether.

11. MCG's scoring and allocation of housing credits would not have been affected by the existence of the excess initial Reserve Amount. There are no points associated with this aspect of the Application. Nor does this change adversely impact any other applicant in the RFA.

12. A waiver of the Rule's prohibition on the escrow of initial replacement reserves in an amount exceeding 50% of the total amount of reserves required for a two year period restriction 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. Should the Corporation require additional information, a representative of MCG is available to answer questions and to provide all information necessary for consideration of this Petition.

F. **ACTION REQUESTED.** MCG requests the following:

- a. That the Corporation grant MCG a waiver from Rule 67-48.0072(13)(b), Florida Administrative Code, allowing it to initially escrow replacement reserves in an amount exceeding 50% of the total amount of reserves required for a two year period;

- b. That the Corporation grant the Petition and all the relief requested therein; and
- c. That the Corporation grant such further relief as may be deemed appropriate.

Respectfully submitted,

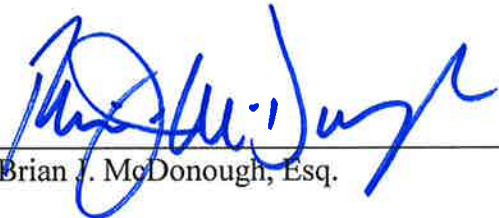
STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
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Miami, Florida 33131
Tel: (305) 789-3350
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E-mail: bmcdonough@swmwas.com

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, 2016.



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

April 7, 2016

Via FedEx

Ms. Kate A. Flemming
Legal Analyst/Corporation Clerk
Florida Housing Finance Corporation
227 N. Bronough Street
Suite 5000
Tallahassee, Florida 32301

RE: Petition for Rule Waiver

Dear Ms. Flemming:

Enclosed is a Petition for Waiver and Variance, submitted on behalf of MCG Senior Apartments, Ltd., for consideration by the Board at the upcoming May 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
Enclosure

cc: Joint Administrative Procedures Committee (with Enclosure)