

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: MCG SENIOR
APARTMENTS, LTD.

FHFC Case No.: 2016-013VW

**ORDER GRANTING WAIVER OF RULES 67-48.0072(13)(b) and
67-21.026(11)(b), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on May 6, 2016, pursuant to an "Amended Petition for Waiver of Rule 67-48.0072(13)(b) and Rule 67-21.026(11)(b) for Maintenance of Excess Reserve Funds ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the original Petition on April 8, 2016, and the Amended Petition on April 15, 2016, from MCG Senior Apartments, Ltd. ("Petitioner"). Notice of the Petition was published in Volume 42, Number 71, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION



/DATE: 5-12-16

2. Petitioner was selected to receive SAIL financing and non-competitive housing credits (HC) to assist in the renovation of an existing Development known as Mount Carmel Gardens serving low-income elderly tenants in Jacksonville, Florida. Petitioner now seeks a waiver that will allow it to fund a replacement reserve account in an amount greater than that allowed by rule.

3. Rule 67-48.0072, Fla. Admin. Code, requires an Applicant for non-competitive SAIL financing to include an estimate for replacement reserves.

(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.

4. Rule 67-21.026, Fla. Admin. Code, contains a similar requirement for replacement reserves for applicants for non-competitive HC, and also includes a similar limitation.

(11)(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.

5. Petitioner seeks a waiver that will allow it to fund a replacement reserve account in an amount greater than that allowed by rule. Petitioner is seeking this

waiver because financing for the Development will include funding from the U.S. Department of Housing and Urban Development (HUD), and HUD is requiring as a component of this funding an initial deposit of \$207,000 to the replacement reserve account. Under Florida Housing's rules, the reserve amount would not be allowed to exceed \$62,100. Unless the waiver is granted, Petitioner will be out of compliance either with HUD requirements or Florida Housing rules, and funding for the Development will be jeopardized.

6. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, Fla. Admin. Code, 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. Section 120.542(2) provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness

The 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.

7. The Board finds that granting the waiver would neither affect the scoring of Petitioner's application nor allow Petitioner to gain an unfair advantage

over other applicants. The Board further finds that granting the waiver would have no detrimental impact on Florida Housing or any of its programs.

8. Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver is not granted. Petitioner has also demonstrated that the purpose of the underlying statute, which is to “encourage development of low-income housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

9. The Board finds that strict application of the above rules under these circumstances would cause substantial hardship to Petitioner. The Board further finds that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

IT IS THEREFORE ORDERED:

Petitioner's request for waiver of Rules 67-48.0072(13)(b) and 67-21.026(11)(b), Fla. Admin. Code, is hereby **GRANTED** so that Petitioner will be able to fund its replacement reserve account in accordance with HUD requirements.

DONE and ORDERED this 6th day of May, 2016.

Florida Housing Finance Corporation

By: 
Chairperson

Copies furnished to:

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Joint Administrative Procedures Committee
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND

ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.