

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

LOGAN HEIGHTS PRESERVATION,
L.P., a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2018-001VW
Application No. N/A

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____ /

PETITION FOR WAIVER OF RULE 67-21.028(1)(g), F.A.C.

Petitioner Logan Heights Preservation, L.P. (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing") on behalf of a member of its General Partner (*i.e.*, LL AH1, LLC, a Florida limited liability company, the "Passive Member"), for a waiver of the requirement to provide an IRS Form 8821 ("Form 8821") for each Financial Beneficiary of the Development under Rule 67-21.028(1) (g), Florida Administrative Code ("F.A.C.") (the "Rule"). In support, Petitioner states as follows:

A. THE PETITIONER.

1. The address, telephone, facsimile numbers and e-mail address for Petitioner and its qualified representative are:

Logan Heights Preservation, L.P., a Florida limited partnership
Attn: Mr. Jonathan Gruskin
201 Santa Monica Boulevard, #550
Santa Monica, CA 90401
Telephone: (424) 222-8253
Email: yoni@lincolnavcap.com

2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel is:

Brian J. McDonough, Esq.
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B. WAIVER IS PERMANENT.

3. The waiver being sought is permanent in nature.

C. PETITIONER'S ORGANIZATIONAL STRUCTURE AND BACKGROUND.

4. Petitioner timely submitted a housing credit application for Logan Heights, 1000 Logan Heights Circle, Sanford, FL, 32773 (the "Development"). The Development has 360 units that the Petitioner intends to rehabilitate and finance through the issuance of multifamily housing revenue bonds and equity generated through the syndication of housing credits allocated to projects that utilize multifamily private activity bond financing to fund greater than 50% of the cost of the project.

5. Petitioner is a Florida limited partnership consisting of: (1) Logan Heights GP LLC (0.01%, the "General Partner"), and (2) Jonathan A. Gruskin (99.99%, the withdrawing limited partner).

6. The 0.01% General Partner has two members: (1) 60 Lincoln Family LLC (55.556%, the "Managing Member"), and (2) LL AH1, LLC (44.444%, the "Passive Member").

7. As members of the General Partner, the Managing Member and Passive Member are required by the Rule to provide a Form 8821 for itself and its members.

8. The Managing Member will actively participate in the Development and will provide a Form 8821 for itself and its members.

9. Neither the Passive Member, nor its members (*i.e.*, Long Light Capital, LLC; Daniel Cahir; and Charles Queenan, collectively the “Passive Member’s Members”), will have an active role in the Development, nor will they have rights regarding the operations and compliance of the property. Long Light’s commitment to investing passively with the Managing Member in affordable housing developments in Florida and elsewhere was predicated upon its role in such developments being entirely passive – with the Managing Member and its principals being responsible for all financial guaranties, compliance, operations, and the like. Requiring the Passive Member to provide Form 8821 for itself and the Passive Member’s Members would be inconsistent with the business agreement of the Managing Member and its principals and the Passive Member and its principals. Further, the purpose for the requirement of principal disclosure is to ensure that Florida Housing is aware of the personal identity of those parties that will have responsibility for the ongoing viability of the Development. That is accomplished in this case through the disclosure of the various Managing Member principals. Thus, the purpose of the underlying statute will still be achieved if the waiver is granted.

D. THE RULE FROM WHICH WAIVER IS REQUESTED.

10. Petitioner requests a waiver of the Rule, which provides:

67-21.028 HC with Tax-Exempt Bond-Financed Developments.

(1) Tax-Exempt Bond-Financed Developments which applied for Non-Competitive Housing Credits when also applying for MMRB from the Corporation shall:

(g) Provide an IRS Form 8821 for each Financial Beneficiary of the Development prior to Final Housing Credit Allocation

11. “Financial Beneficiary” is defined by Rule 67-21.002(47), F.A.C., as: “any Principal of the Developer or Applicant entity who receives or will receive any direct or indirect financial benefit from a Development, except as further described in Rule 67-21.0025, F.A.C.”

12. “Principal” is defined by Rule 67-21.002(85)(a)2.c., F.A.C., with respect to an Applicant that is a limited partnership, to include any member of a limited liability company at the second principal disclosure level.

13. Under these definitions (*i.e.*, “Financial Beneficiary” and “Principal”), the Rule requires the Passive Member and the Passive Member’s Members to submit Form 8821. Petitioner is requesting a waiver of this requirement so that the Passive Member and its members, who will play no active role in the Development, are not required to disclose highly confidential information.

E. STATUTE IMPLEMENTED BY THE RULE.

14. The Rule implements, among other sections of the Florida Housing Finance Corporation Act (the “Act”), Section 420.5099, Allocation of the low-income housing tax credit. Per Section 420.5099(1),(2), Florida Housing acts as the State’s housing credit agency and is authorized to establish procedures for allocating and distributing low-income housing tax credits.

F. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

15. 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 the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the

application of the rule would: (1) create a substantial hardship or, violate principles of fairness,¹ 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. (2017).

16. Absent the requested Rule waiver, Petitioner will suffer a substantial hardship in that the Passive Member and/or the Passive Member’s Members may decide not to invest in the Development. Seminole County may also suffer in that the Passive Member may withhold its consent to proceed with the transaction as currently contemplated as a refinancing with conventional debt would not require the provision of Form 8821. If the credit underwriting process is too invasive, the Passive Member will reject the contemplated transaction and pursue a pure conventional refinancing that would not impose the same long-term affordability requirements, nor provide the same long-term affordability housing benefits. In that case, the amount of high quality refurbished affordable housing units in Seminole County would be reduced – defeating the purpose of the Act (*i.e.*, preserving and maintaining the availability of decent, safe and sanitary housing in the State).

17. Upon information and belief, the purpose of the requirement to provide Form 8821 is to ensure that the actions of active participants are not influenced by motives other than the best interest of the Development. Because neither the Passive Member nor the Passive Member’s Members will exert any control over decisions related to the Development, there is no

¹ “Substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “principles of fairness” are violated when the 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. § 120.542(2), Fla. Stat. (2017).

risk that their financial interests will influence the Development. Moreover, all of the active participants of the Petitioner will submit Form 8821.

18. As discussed in paragraphs 9 and 17, above, the purpose of the Rule and statute will be achieved if the waiver is granted. All active participants in the Development will submit Form 8821, ensuring the disclosure of the financial interests of all persons with the power to make decisions regarding the Development.

19. Literal application of the Rule would impact the Passive Member and the Passive Member's Members in a significantly different way because these entities lack the authority to exert control over decisions impacting the Development.

20. Petitioner thus meets the standards for the requested waiver. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 360 affordable housing units will be preserved and made available for the target population in Seminole County, Florida. As outlined in paragraph 16, the strict application of the Rule will create a substantial hardship for Petitioner (and Seminole County) because Petitioner's ability to rehabilitate the Development at the lowest cost to the end user will be jeopardized if the Passive Member and the Passive Member's Members must submit Form 8821. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State. Denying the waiver may deny Seminole County the preservation of these much-needed affordable housing units.

21. The requested waiver will thus prevent a substantial and unfair hardship from being imposed on Petitioner while still achieving the underlying purpose of the Rule.

G. ACTION REQUESTED.

22. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver of the Rule such that the Passive Member and the Passive Member's Members are not required to submit Form 8821; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

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Counsel for Petitioner

By: /s/ Brian J. McDonough
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

This Petition is being served by hand-delivery, with a copy served by electronic transmission for filing with the Florida Housing Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by hand-delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 3rd day of January, 2018.

By: /s/ Brian J. McDonough
Brian J. McDonough, Esq.