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FLORIDA HOUSING  
FINANCE CORPORATION

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

METRO SOUTH SENIOR APARTMENTS  
LIMITED PARTNERSHIP,  
Petitioner,

vs.

Case No: 2013-021VW  
Applic. No. 2011-128C

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

**PETITION FOR WAIVER OR VARIANCE**  
**FROM THE 2012 QUALIFIED ALLOCATION PLAN**  
**REGARDING THE RETURN OF A HOUSING CREDIT ALLOCATION**

Petitioner, METRO SOUTH SENIOR APARTMENTS LIMITED PARTNERSHIP (“Metro South”), pursuant to Section 120.542, Florida Statutes, and Rule Chapter 28-104, Florida Administrative Code (“F.A.C.”), hereby petitions Respondent, the FLORIDA HOUSING FINANCE CORPORATION (“FHFC”), for a waiver or variance from the provisions of the 2012 Qualified Allocation Plan (“QAP”) as they pertain to the process by which an applicant may return its Housing Credit allocation and obtain a reservation and allocation of Housing Credits for a later year. Due to delays beyond its control arising from litigation with the City of South Miami, Metro South is seeking to return its Carryover Allocation of 2012 Housing Credits now, rather than waiting until the

last quarter of 2014 as provided for under the QAP, and to immediately receive a reservation and Carryover Allocation of 2013 Housing Credits from FHFC, with a corresponding extension of all deadlines relative to those credits. In support of its Petition, Metro South states as follows:

1. The name and address of the Petitioner are:

Metro South Senior Apartments Limited Partnership  
2206 Jo An Drive  
Sarasota, FL 34231

2. The name, address, email address, and telephone and facsimile numbers of Metro South's attorney, which will be used for service purposes during the course of this proceeding, are:

Warren Husband  
Metz, Husband & Daughton, P.A.  
P.O. Box 10909  
Tallahassee, Florida 32302-2909  
Telephone No. (850) 205-9000  
Facsimile No. (850) 205-9001  
Email Address: whh@metzlaw.com

3. Metro South successfully applied for Housing Credits in FHFC's 2011 Universal Application Cycle to help finance the development of a 91-unit high-rise apartment complex in the City of South Miami (FHFC Applic. No. 2011-128C). Despite the fact that no prior affordable housing projects financed with Housing Credits have ever been located in the City of South Miami, Metro South submitted the highest scoring application in the 2011 Cycle, and FHFC awarded

Metro South a Carryover Allocation of 2012 Housing Credits. Notably, the Metro South project is located within easy walking distance of a nearby Metrorail station, helping to fulfill FHFC's goal of funding at least three Transit-Oriented Developments in the 2011 Cycle.

**THE RULE FROM WHICH A WAIVER OR VARIANCE IS SOUGHT**

4. Pursuant to section 420.5099, Florida Statutes, FHFC is designated as the state's "house credit agency" for purposes of the Internal Revenue Code and is therefore responsible for the distribution of the state's annual allocation of Housing Credits. As such, FHFC is tasked with preparing a Qualified Allocation Plan ("QAP") regulating the distribution of Housing Credits, which it adopted for the 2011 Cycle pursuant to Rule 67-48.002(94):

"QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2012 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the state of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits.

5. Section 9 of the 2012 QAP sets forth a process by which Housing Credits may be returned in the last calendar quarter of the year in which a Development is otherwise required to be placed in service:

[W]here a Development has not been placed in service by the date required or it is apparent that a Development will not be placed in service by the date required, such failure is due to circumstances beyond the Applicant's control, and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in

which it was otherwise required to be placed in service, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may allocate such Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service, provided the following conditions have been met: (i) the sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant's control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs.

6. As explained more fully below, the development process and related closings on the Metro South project have been delayed due to circumstances beyond Metro South's control arising from litigation with the City of South Miami. As a result of these delays, it has become clear that Metro South will be unable to comply with the current deadlines attached to its 2012 Housing Credits, including completion of the Development before the 2014 "placed-in-service" date applicable to these credits.

7. Metro South therefore seeks to return its Carryover Allocation of 2012 Housing Credits now, rather than waiting until the last quarter of 2014 as provided for under the QAP, and to immediately receive a reservation and Carryover Allocation of 2013 Housing Credits from FHFC, with a corresponding extension of

all deadlines relative to those credits.

8. Metro South's request for a waiver/variance is supported by the following facts:

a. FHFC issued a Preliminary Allocation Certificate, dated August 20, 2012, initially awarding Metro South up to \$2,526,990 in 2012 Housing Credits.

b. FHFC and Metro South subsequently entered into a Carryover Allocation Agreement, by which FHFC formally made an allocation of these credits to Metro South, on September 20, 2012.

c. Pursuant to the terms of the Carryover Allocation Agreement, the Development must be "placed-in-service" by August 31, 2014.

d. The development of the Metro South project and the various closings related to this transaction have been delayed, because the City of South Beach (the "City") withheld necessary development approvals related to parking ratios and building heights and took other actions prejudicial to the project, despite numerous accommodations in project design and additional features offered by Metro South.

e. These actions led Metro South to file suit against the City, alleging violations of both the federal Fair Housing Act and the Americans with Disabilities Act. The complaint alleges that the City's actions violate both statutes because: (a) the City's actions effectively deny needed housing opportunities to persons with disabilities and to racial minorities within the city; and (b) the City's actions

perpetuate segregated housing patterns in and around the city, effectively limiting the housing opportunities of disabled persons and racial minorities and denying them the opportunity to live in affordable housing in close proximity to public transportation and needed services.

f. After many months of discovery and protracted litigation, Metro South and the City are presently engaged in serious settlement discussions. These discussions have now progressed to the point where the City is ready to move forward expeditiously with its review and consideration of a redesign of the project, as proposed by Metro South. The City anticipates that this review will be concluded in the next few weeks, which should put the City in a position to enter into a settlement with Metro South on or about September 20, 2013.

**FHFC'S CONSIDERATION OF REQUESTS  
FOR WAIVER OR VARIANCE**

9. Pursuant to section 120.542(1), Florida Statutes, and Rule Chapter 28-104, F.A.C., FHFC has the authority to grant waivers or variances from its rule requirements when strict application of such rules in particular circumstances would lead to unreasonable, unfair, and unintended results. Section 120.542(2), Florida Statutes, states in relevant part that “[v]ariations 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.” For these purposes, a “substantial hardship” is “a demonstrated economic, technological, legal, or other type of hardship” to the petitioner.

10. The purposes of the underlying statute will otherwise be achieved if FHFC grants the requested waiver/variance. The overriding goal of the statutes at issue here, the Florida Housing Finance Corporation Act (ss. 420.501-.55) and section 420.5099 in particular, are to provide a stable and secure source of public funding to encourage the investment of private capital necessary to facilitate the development of decent, safe, and sanitary housing for low-income families. *See* Fla. Stat. §420.502. The rule provisions from which Metro South seeks a waiver/variance implement these statutes.

11. Granting the requested waiver/variance will allow Metro South to proceed with the development of its affordable housing project and serve the low-income residents of the City of South Miami, thus fulfilling the statutory purposes of FHFC and the Housing Credit program. Absent this waiver/variance, Metro South will be unable to comply with the various deadlines attached to its 2012 Housing Credits. The credits will therefore be lost, and this worthwhile project will not be built.

12. By contrast, denial of the waiver/variance would seriously undermine the purposes of the underlying statutes in that it would reward and encourage those

seeking to prevent the development of affordable housing in their communities and discourage the private investment and development activities critical to constructing and operating affordable housing in Florida.

13. Denial of the requested waiver/variance, resulting in the continued application of the rule provisions at issue here, would inflict a substantial hardship on Metro South. To date, Metro South has invested over \$1.5 million in this project. Absent the waiver/variance, Metro South will be unable to comply with the various deadlines attached to its 2012 Housing Credits, suffering the loss of the credits and the substantial sums Metro South has already invested in this Development.

14. Further, without the waiver/variance, Metro South's ability to pursue and resolve its pending litigation against the City of South Miami would be materially and adversely affected. If the waiver/variance is granted, FHFC would open the path toward settlement of Metro South's lawsuit against the City and to the completion of the Development. As such, the City fully supports the requested waiver/variance. FHFC's denial of the requested relief would expose the City and its residents to further costly litigation and to potential liability for millions of dollars in damages.

15. In addition, delaying any exchange of Housing Credits until 2014, as provided for in the QAP, would result in a significant loss in equity for the

Development in light of recent changes to federal law that will eliminate the fixed 9% “applicable percentage” available for 2012 and 2013 Housing Credits, making tax credits issued in 2014 and later years subject to a significantly lower floating percentage. The loss of this equity would cripple the Development.

16. Finally, a denial of the requested relief would work a substantial hardship by rewarding the efforts of those in the City of South Miami who have actively tried to prevent construction of these much-needed affordable housing units for the benefit of local residents.

17. The waiver/variance sought by Metro South is permanent in nature.

18. If FHFC has any questions or requires any additional information regarding this waiver/variance, Metro South stands ready to respond quickly to any such inquiry.

WHEREFORE, Metro South requests that FHFC, on or before September 20, 2013, grant a waiver or variance from the provisions of the 2012 Qualified Allocation Plan (“QAP”), allowing Metro South to immediately return its Carryover Allocation of 2012 Housing Credits and receive a reservation and Carryover Allocation of 2013 Housing Credits, with a corresponding extension of all deadlines relative to those credits. If desired by FHFC, this waiver or variance could be made contingent upon Metro South and the City entering into a

settlement resolving the pending litigation on or before September 20, 2013, or demonstrating to the satisfaction of FHFC on or before September 20, 2013, that the execution of such a settlement is reasonably imminent.

Respectfully submitted on this 14th day of August, 2013.

*Warren Husband*  
WARREN H. HUSBAND  
FL BAR No. 0979899  
Metz, Husband & Daughton, P.A.  
P.O. Box 10909  
Tallahassee, Florida 32302-2909  
850/205-9000  
850/205-9001 (Fax)  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served via U.S. Mail to the Joint Administrative Procedures Committee, The Holland Building, Room 120, Tallahassee, FL, 32399-1300, on this 14th day of August, 2013.

*Warren Husband*  
Attorney