

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

DOUGLAS POINTE PRESERVATION,
Ltd., a Florida limited partnership,

Petitioner,

FHFC CASE NO. 2017-087VW
Application No. 2016-533C

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER OF RULE 67-21.002(9), (85), F.A.C.

Petitioner Douglas Pointe Preservation, Ltd. (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing") on behalf of itself and its developer, Douglas Pointe Developer LLC, a Florida limited liability company (the "Developer"), for a waiver of the definition of "Applicant" as defined in subsection (9) of Rule 67-21.002(9), Florida Administrative Code ("F.A.C.") (the "Rule"), and "Principal" as defined in subsection (85) of the Rule, and the requirement that all natural persons must be disclosed by or at the third principal disclosure level since all natural persons, regardless of the level at which they appear, have been disclosed. 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:

Douglas Pointe Preservation, Ltd., a Florida limited partnership
Attn: Mr. Jonathan Gruskin
201 Santa Monica Boulevard, #550
Santa Monica, CA 90401

Telephone: (424) 222-8253
Email: yoni@lincolnavecap.com

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

Brian J. McDonough, Esq.
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
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B. WAIVER IS PERMANENT

3. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

4. Petitioner requests a waiver of the definitions of "Applicant" and "Principal" in Rule 67-21.002(9) and (85)(a)2.g., (b)3.c., F.A.C., which provides as follows:

(9) "Applicant" means any person or legal entity of the type and with the management and ownership structure described herein that is seeking a loan or funding from the Corporation by submitting an Application or responding to a competitive solicitation pursuant to Rule Chapter 67-60, F.A.C., for one or more of the Corporation's programs. For purposes of Rule 67-21.031, F.A.C., Applicant also includes any assigns or successors in interest of the Applicant. Unless otherwise stated in a competitive solicitation, as used herein, a 'legal entity' means a legally formed corporation, limited partnership or limited liability company with a **management and ownership structure that consists exclusively of all natural persons by the third principal disclosure level**. For Applicants seeking Housing Credits, the Housing Credit Syndicator/Housing Credit investor need only be disclosed at the first principal disclosure level and no other disclosure is required. The terms 'first principal disclosure level' and 'third principal disclosure level' have the meanings attributed to them in the definition of "Principal."

(85) "Principal" means:

(a) With respect to an Applicant that is:

2. A limited partnership, at the first principal disclosure level, any general partner or limited partner of the Applicant limited partnership, and, unless otherwise excluded at subsection 67-21.002(9), F.A.C., with respect to any general partner or limited partner of the Applicant limited partnership, at the second principal disclosure level, that is:

g. A limited liability company, by the third principal disclosure level, any manager or member of the limited liability company, **each of whom must be a natural person**

(b) With respect to a Developer that is:

3. A limited liability company, at the first principal disclosure level, any manager or member of the Developer limited liability company, and, with respect to any manager or member of the Developer limited liability company that is:

c. A limited liability company, at the second principal disclosure level, any manager or member of the limited liability company.

See Rule 67-21.002(9) and (85)(a)2.g., (b)3.c., F.A.C. (emphasis added).

5. Under these definitions (*i.e.*, “Applicant” and “Principal”), Petitioner is ineligible to submit a housing credit application. Petitioner is requesting a waiver of the requirement imposed by these definitions that all natural persons be disclosed by or at the third level since all natural persons, regardless of the level at which they appear, have been disclosed.

D. STATUTES IMPLEMENTED BY THE RULE.

6. Rule 67-21.002, F.A.C., implements, among other sections of the Florida Housing Finance Corporation Act (the “Act”):

- Section 420.502, Legislative findings.
- Section 420.503, Definitions.¹
- Section 420.507, Powers of the corporation.
- Section 420.508, Special powers; multifamily and single-family projects.
- Section 420.509, Revenue bonds.
- Section 420.5099, Allocation of the low-income housing tax credit.

7. 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.

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE.

8. Petitioner requests a waiver of the definitions of “Applicant” and “Principal” that appear in Rule 67-21.002 at (9) and (85)(a)2.g., (b)3.c., F.A.C.

9. Petitioner timely submitted a housing credit application for Douglas Pointe Apartments, 3840 NW 183rd Street, Miami Gardens, FL (the “Development”). The Development has 176 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 that are allocated to projects that utilize such form of financing to fund greater than 50% of the cost of the project.

10. Florida Housing advised Petitioner that it was ineligible to submit the application because it did not disclose all natural persons by or at the third level of disclosure as required by the definitions of “Applicant” and “Principal” under the Rule.

¹ Neither “applicant” nor “principal” are defined in Section 420.503, Fla. Stat.

11. Petitioner is an affiliate in an organizational structure designed to meet certain family estate-planning goals. While two limited liability companies are identified at the third level, natural persons are identified at the fourth and fifth level and all natural persons have been disclosed to Florida Housing.

12. If the requested waiver is not granted, Petitioner will not be able to apply for housing credits and will lack the funds necessary to complete the Development.

13. 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,² 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).

14. Upon information and belief, the purpose of the requirement to identify all natural persons by or at the third level is to ensure all persons financially benefitted by the housing credits are disclosed. Because all natural persons, regardless of level, have been disclosed to Florida Housing, the requested waiver will prevent a substantial and unfair hardship from being imposed on Petitioner while still achieving the underlying purpose of the Rule.

15. In this instance, Petitioner meets the standards for the requested waiver. The requested waiver will not adversely impact the Development or Florida Housing and will ensure

² 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).

that 176 affordable housing units will be preserved and made available for the target population in Miami-Dade County, Florida. The strict application of the Rule will create a substantial hardship for Petitioner because it will not be able to rehabilitate the Development if it is ineligible to apply for housing tax credits. 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 would deny Miami-Dade County the preservation of these much-needed affordable housing units.

F. ACTION REQUESTED

16. For the reasons set forth herein, Petitioner respectfully requests Florida Housing: (i) grant the requested permanent waiver of the definitions of "Applicant" and "Principal" such that Petitioner is eligible to apply for housing credits even though all natural persons are not disclosed by or at the third level; (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
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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 overnight 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 overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 11th day of December, 2017.

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