

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO: 2009-006VW

Application No. 2006-075C

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FLORIDA HOUSING FINANCE CORPORATION

HERON POND APARTMENTS II, LTD.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

**PETITION FOR WAIVER OF PART II.A.2.a.(1) OF THE 2006 UNIVERSAL
APPLICATION INSTRUCTIONS FOR A CHANGE OF PETITIONER'S OWNERSHIP
STRUCTURE**

Petitioner Heron Pond Apartments II, Ltd. ("Petitioner"), petitions Florida Housing Finance Corporation ("Florida Housing") for a waiver of the restriction against changes in Petitioner's ownership structure until after a Final Housing Credit Allocation has been issued. See Part II.A.2.a.(1), General Instructions of the 2006 Universal Application Instructions ("2006 Instruction").

In support of its petition, Petitioner states:

1. Pursuant to Section 120.542, Fla. Stat. (2008), and Rules 28-104.001 through 28.104.006, F.A.C. (2008), Petitioner requests waivers of the applicable provisions of the 2006 Instructions as set forth below.

2. The address, telephone number, facsimile number and e-mail address of Petitioner and its qualified representative are:

Heron Pond Apartments II, Ltd.
Heron Pond Apartments II, LLC
Attention: Lloyd J. Boggio
2950 S.W. 27th Avenue, Suite 200
Miami, Florida 33133
Telephone: 305-476-8118
Facsimile: 305-476-1557
E-mail: lboggio@carlisledevelopmentgroup.com

3. For purposes of this Petition, the name, address, telephone and facsimile numbers and e-mail address for Petitioner's attorney are:

Brian J. McDonough, Esquire
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Telephone: 305-789-3200
Facsimile: 305-789-3395
E-mail: bmcDonough@swmwas.com

4. During the 2006 cycle, Petitioner timely submitted its Universal Application¹ (Application No. 2006-075C) for housing tax credits ("HC") and received a preliminary annual allocation of \$1,435,000. The HCs are being used to finance the development of Heron Pond II, a new 100-unit multi-building apartment development (the "Development") intended to serve low-income elderly residents in Lehigh Acres, Lee County, Florida.

¹The Universal Application Package has been adopted and incorporated into Chapter 67-48 by Rule 67-48.004(1)(a), F.A.C. (2006).

5. When Petitioner submitted its 2006 Universal Application, its general partners were identified as Heron Pond Apartments II, LLC (“HPA II, LLC”) (.0049% ownership) and Fleet Reserve Association Lehigh Development, Inc. (“Fleet Reserve”) (.0051% ownership). See 2006 Application, Exhibit 9.

6. For reasons beyond the control of Petitioner, general partner Fleet Reserve and its parent entity are dissolving. Consequently, it is necessary to change the general partnership ownership interest of HPA II, LLC from 49% of the outstanding general partner interest in Petitioner to 100% ownership interest therein.

7. Petitioner requests a waiver of Part II.A.2.a.(1) of the 2006 Instructions that provides as follows:

(1) If applying for HC, the Applicant must be a limited partnership (including a limited liability limited partnership) or a limited liability company. The Applicant entity shall be the recipient of the Housing Credits and cannot be changed until after a Final Housing Credit Allocation has been issued. Replacement of the Applicant or **a material change (33.3% or more of the Applicant, a General Partner of the Applicant, or a member of the Applicant) in the ownership structure of the named Applicant prior to this time shall result in disqualification** from receiving an allocation and shall be deemed a material misrepresentation. Changes to the limited partner of a limited partnership will not result in disqualification. (Emphasis added).

8. Sections 420.501 through 420.516 of the Florida Statutes set forth the Florida Housing Corporation Act (the “Act”), which designates Florida Housing as the State of Florida administrator for the State Housing Tax Credit Program to establish procedures necessary for the proper allocation of tax credits and to ensure the maximum use of available credits in order to encourage development of low-income housing and associated mixed-use projects in urban areas

(the "Procedures"). See §§ 420.501, 420.5093, Fla. Stat. (2006). These Procedures are established in Rule Chapter 67, Florida Administrative Code (2006). Accordingly, as set forth herein, the applicable requirements subject to Petitioner's waiver requests are implementing, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Procedures for the State Housing Tax Credit Program. *Id.*

9. The facts and information provided in Paragraphs 4 through 7 above demonstrate the circumstances that justify the waiver of the prohibition on changing the ownership structure of Petitioner's general partners from two general partners to one, HPA II, LLC, which will own 100% of the ownership interest in the general partner of Petitioner. HPA II, LLC, is and will remain the managing general partner of Petitioner and in such capacity will continue to be responsible for all day-to-day operations of the Development.

10. The requested waiver will not adversely impact the Development or Florida Housing or be prejudicial to the Development or to the elderly residents to be served by the Development. However, a denial of the requested waiver could deprive Lee County of affordable housing for elderly residents in dire need of housing that meets their safety and functionality requirements by causing Petitioner to be involuntarily dissolved as a consequence of the involuntary dissolution of Fleet Reserve.

11. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief for changed circumstances that arise through no fault of an applicant. Florida Housing generally approves such waivers when it would not affect the scoring of an application or otherwise allow an applicant to obtain a possible unfair competitive advantage.

12. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developer entities in meeting the purpose of the Act through new construction in an economical and efficient manner.

13. The waiver being sought is permanent in nature.

14. Should Florida Housing require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of Part II.A.2.a.(1) of the 2006 Universal Application Instructions for a Change of Petitioner's Ownership Structure.

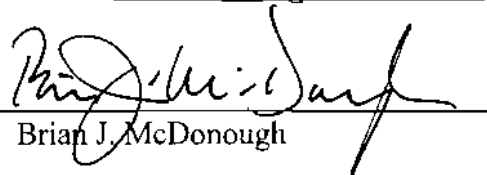
WHEREFORE, Petitioner Heron Pond Apartments II, Ltd., respectfully requests that the Florida Housing Finance Corporation:

- A. Grant this Petition and all the relief requested herein;
- B. Waive the restriction against changing a petitioner's ownership interest until after a Final Housing Credit Allocation has been issued under Part II.A.2.a.(1) of the 2006 Universal Instructions and permit Heron Pond Apartments II, LLC, to become Petitioner's sole general partner; and

C. Grant such further relief as may be deemed appropriate.

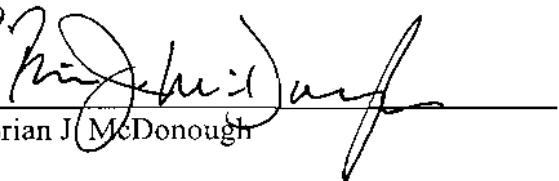
Respectfully submitted,

Brian J. McDonough, Esquire
Stearns Weaver Miller Weissler Alhadeff &
Sitterson, P.A.
Attorney for Heron Pond Apartments II, Ltd.
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Miami, FL 33130
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By: 
Brian J. McDonough

CERTIFICATE OF SERVICE

The Petition is being served by e-transmission and 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 by overnight delivery on the Joint Administrative Procedures Committee, Room 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399-1300, on March 11, 2009.


Brian J. McDonough