

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

MLF 2 LTD.,

Petitioner

FHFC CASE NO. 2017-041VW
APPLICATION NO. 2011-106C

v.

FLORIDA HOUSING
FINANCE CORPORATION

Respondent

_____ /

**PETITION FOR WAIVER OF SECTION III (B)(1)(b)
OF INSTRUCTIONS AND CHAPTER 67-48**

Petitioner MLF 2, Ltd., a Florida limited corporation (“MLF”) pursuant to Section 120.542, Florida Statutes (F.S.) and Rule 28-104.002, Florida Administrative Code (“F.A.C.”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of the requirement to provide a 40 gallon = .93 EF water heater in each unit of the MLF Tower (aka 540 Town Center) Development. *See* 2011 Universal Application Instructions, Housing Credit Program, Part III, Section B(4) (the “Instructions”) and Chapter 67-48.004(1)(a), Florida Administrative Code (the “Rule”). In support of this request MLF provides as follows:

A. The Petitioner

1. The name, address, telephone and facsimile numbers, and emails for MLF and its qualified representative are:

MLF 2, Ltd
Attention: James Chadwick
5300 W. Cypress Street
Suite 200
Tampa, FL 33607

2. The name, address, telephone and facsimile numbers, and email address of MLF's attorney, for purposes of this Petition are:

Michael P. Donaldson, Esq.
Carlton Fields, P.A.
Post Office Drawer 190
Tallahassee, FL 32302-0190
Telephone: 850-224-1585
Facsimile: 850-222-0398
Email: mdonaldson@carltonfields.com

3. In 2011, MLF applied for and was awarded housing tax credits from Florida Housing pursuant to the 2011 Universal Cycle. See Application No. 2011-106C. The Universal Application package has been adopted and incorporated by Rule 67-48.004(1)(a), F.A.C. (2011).

4. MLF has closed on the financing and housing tax credit syndication which will provide funds for the renovation of a high rise apartment with 145 units intended to serve low-income persons in Pinellas County, Florida (the "Development").

5. This requested Rule waiver will not adversely affect the overall Development. However a denial of this Petition: (a) would result in substantial economic hardship to MLF by requiring larger than needed water heaters to be installed , (b) would require removing properly-sized water heaters that are in good working condition and replacing them with new water heaters causing the property to unnecessarily expend replacement reserves, (c) could deprive Pinellas County of essential, affordable housing units in a timely manner; and (d) would violate principles of fairness.¹ §120.542(2), Fla. Stat. (2011)

6. The waiver being sought is permanent in nature.

¹ "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. "Principals 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, Section 120.542(2), Florida Statutes.

B. Rule from Which Relief is Requested and Statute Implemented by the Rule

7. MLF requests a waiver of Part III, Section B (4) of the Universal Application Instructions, at page 49 which provides as follows:

Part III. Proposed Development:

Units in buildings that are not eligible for Energy Star New Homes must include, at a minimum, the following:

- Water heating (choose gas, electric, gas tankless, or boiler/hot water heater):
 - Electric
 - 40 gal = .93 EF; or
 - 50 gal = .92 EF; or
 - 80 gal = .89 EF

The provisions of the Universal Application have been adopted by 67-48, F.A.C.

8. Additionally the Extended Low Income Housing Agreement (“EUA”) entered into between Florida Housing and MLF at Exhibit B Subsection (E)(c) requires that each unit of the Development include an Electric 40 gal = .93 EF water heater.

C. Justification for Requested Waiver

9. 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 these rules would lead to unreasonable, unfair and unintended consequences in particular will alleviate the need for substantial revisions to the plans for the Development’s renovations and thereby ensure timely delivery of the renovated units for occupancy by residents.

10. The provisions of the Instructions and EUA, requires the installation in each unit of a water heater of 40 gallons in size with an energy efficiency rating of .93 EF. In its Application for funding MLF agreed “to provide these water heaters as determined by a capital

needs assessment (“CNA”) performed during credit underwriting.” A CNA was prepared for the credit underwriter which found that many of the 145 existing water heaters were under 3 years old and didn’t need to be replaced. The CNA also found that the existing water heaters were 40 gallons in size within EF of 0.93 to 0.95. (See Attachment A)

11. In reality however the existing units were 19.9 gallon units. It is not clear why the existing water heaters were identified as 40 gallons in size the CNA rather than the 19.9 gallon units which actually existed. At the time the CNA was prepared 40 gallon tanks with a .93 EF were not in production.

12. As part of the initial renovation the existing older 19.9 gallon units have been replaced with 30 gallon units with a .93 EF. As provided in the attached letter from a licensed engineer both the existing 19.9 gallon units and the proposed 30 gallon units can accommodate the required capacity of the 1 bedroom units. Additionally, the 30 gallon units will have the required .93 EF. (See Attachment B)

13. Because the installation of 40 gal = .93 EF water heaters is a requirement for all units in the Development, a waiver is necessary to prevent MLF from being in default under the Rule and EUA. Additionally, it will save the additional cost associated with the installation of the larger but unnecessary units. To the extent water heaters are replaced, MLF requests that it be allowed to install 30 gallon units with .93 EF.

D. Conclusion

14. Controlling statute and Florida Housing’s Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be granted when the applicant subject to the rule demonstrates that strict application would: (a)

create a substantial hardship or violate principals of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. §120.542(2), Fla. Stat. (2011)

15. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that affordable housing units will be available for the target population in Pinellas County, Florida.

16. However, a denial of the requested waiver could result in a substantial hardship for MLF.

17. The requested waiver serves the purpose of Section 420.5099, Florida Statutes (2011), and the Florida Housing Finance Corporation Act (the "Act"), as a whole, because one of their primary goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households by ensuring:

The maximum use of available tax credits in order to encourage development of low-income housing in the state, taking into consideration of the timelessness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.

§420.5099(2), Fla. Stat. (2011)

18. 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 rehabilitation projects in an economical and efficient manner, as well as providing practical features and amenities within residential units developed for low-income residents.

19. Should Florida Housing require additional information, MLF is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of Part III, section B(1)(b) of the Instructions and Chapter 67-48.

WHEREFORE, Petitioner MLF respectfully requests that Florida Housing grant this Petition and provide the following relief:

- A. Grant the Petition and all relief requested herein.
- B. Acknowledge that the previously existing water heaters were actually 19.9 gallons in size and not 40 gallons as represented in the CNA.
- C. Waive the requirement for the use of 40 gallon = .93 EF water heaters and allow MLF to when needed install 30 gallon = .93 EF water heaters.
- D. Grant such further relief as may be deemed appropriate.

Respectfully submitted this 25th day of May 2017.

/s/ Michael P. Donaldson
MICHAEL P. DONALDSON
Carlton Fields Jordan Burt
Florida Bar No. 802761
215 S. Monroe Street, Suite 500
Tallahassee, FL 32301
Telephone: 850-513-3613
Facsimile: 850-222-0398
Email: mdonaldson@carltonfields.com

Attorney for Petitioner

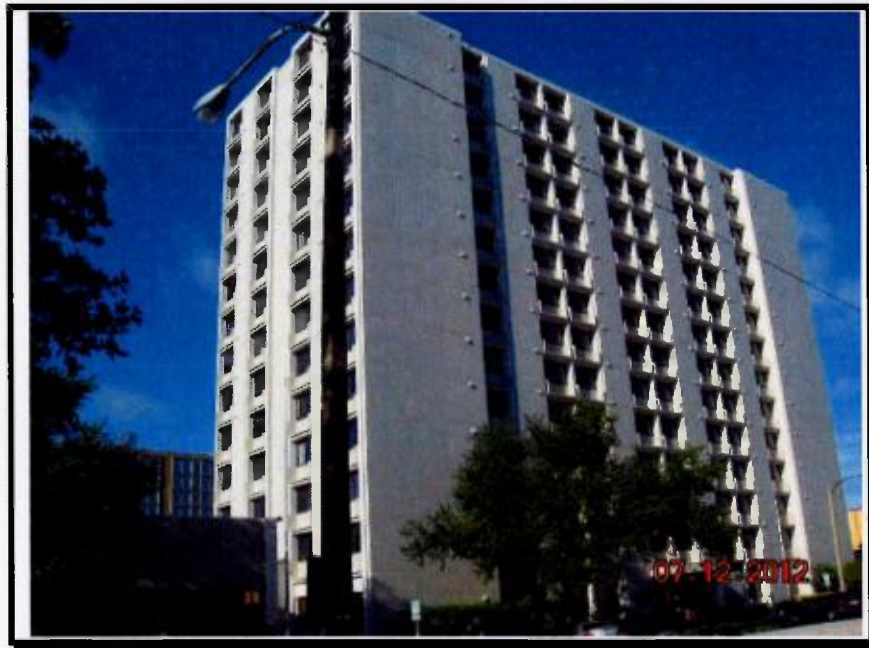
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Petition for Waiver is being served by Hand-Delivery for filing with Kate Flemming, Agency Clerk and Hugh Brown, General Counsel for the Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, with copies served via Hand-Delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399 this 25th day of May 2017.

/s/ Michael P. Donaldson
Michael P. Donaldson

PHYSICAL NEEDS ASSESSMENT AND ENERGY AUDIT

SELTZER MANAGEMENT GROUP, INC.
AS AGENT FOR FLORIDA HOUSING FINANCE CORPORATION
17633 Ashley Drive
Panama City Beach, Florida 32413
Wanda Greggo



PHYSICAL NEEDS ASSESSMENT AND ENERGY AUDIT

of

MLF TOWERS

540 2nd Avenue South
St. Petersburg, Florida 33701

PREPARED BY:

EMG
222 Schilling Circle, Suite 275
Hunt Valley, Maryland 21031
800.733.0660
www.emgcorp.com

EMG CONTACT:

Matt Anderson
Program Manager
800.733.0660, x7607
manderson@emgcorp.com

EMG Project #: 102449.12R-001.294
Date of Report: August 13, 2012
On site Date: July 12, 2012

YOUR PARTNER IN REAL ESTATE LIFECYCLE PLANNING & MANAGEMENT
www.emgcorp.com



ATTACHMENT A

TABLE OF CONTENTS

Certification	1
1. Executive Summary	3
1.1. Summary of Findings	3
1.2. Follow Up Recommendations	6
1.3. Methodology	6
1.4. Opinions of Probable Cost and Property Life Estimate	7
2. Physical Needs Assessment-Purpose and Scope	12
2.1. Purpose	12
2.2. Deviations from the ASTM E2018-01 Guide	12
2.3. Additional Scope Considerations	13
2.4. Property's Remaining Useful Life Estimate	13
2.5. Personnel Interviewed	13
2.6. Documentation Reviewed	14
2.7. Pre-Survey Questionnaire	14
2.8. Weather Conditions	14
3. Code Information, Accessibility, and Mold	15
3.1. Code Information, Flood Zone and Seismic Zone	15
3.2. ADA Accessibility	15
3.3. Mold	18
4. Existing Building Evaluation	20
4.1. Apartment Unit Types and Unit Mix	20
4.2. Apartment Units Observed	20
5. Site Improvements	22
5.1. Utilities	22
5.2. Parking, Paving, and Sidewalks	22
5.3. Drainage Systems and Erosion Control	23
5.4. Topography and Landscaping	23
5.5. General Site Improvements	23
6. Building Architectural and Structural Systems	25
6.1. Foundations	25
6.2. Superstructure	25
6.3. Roofing	25
6.4. Exterior Walls	26
6.5. Exterior and Interior Stairs	26
6.6. Windows and Doors	27
6.7. Patio, Terrace, and Balcony	27
6.8. Common Areas, Entrances, and Corridors	27
7. Building Mechanical and Electrical Systems	30
7.1. Building Heating, Ventilating, and Air-conditioning (HVAC)	30
7.2. Building Plumbing	31
7.3. Building Gas Distribution	32
7.4. Building Electrical	32
7.5. Building Elevators and Conveying Systems	33
7.6. Fire Protection and Security Systems	33

102449.12R-001.294

8. Dwelling Units	35
8.1. Interior Finishes	35
8.2. Dwelling Appliances and Cabinets	35
8.3. HVAC.....	36
8.4. Plumbing.....	36
8.5. Electrical.....	37
8.6. Furniture, Fixtures and Equipment (FF&E)	37
9. Other Structures	38
10. Energy Audit –Purpose and Scope	39
11. Energy Conservation Measures.....	40
12. Unit Blower Door Tests.....	43
13. Utility Analysis	45
13.1. Electricity.....	46
13.2. Natural Gas	48
13.3. Water and Sewer	50
14. Recommended Operations and Maintenance Plan.....	52
15. Appendices.....	53



CERTIFICATION

EMG has completed a Physical Needs Assessment (PNA) and an Energy Audit of the subject property, MLF Towers, located at 540 2nd Avenue South in St. Petersburg, Florida. The PNA and Energy Audit were performed on July 12, 2012.

The PNA and Energy Audit was performed at the Client's request using methods and procedures consistent with good commercial and customary practice conforming to ASTM E2018-01, *Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process*. Within this Physical Needs Assessment Report, EMG follows the ASTM guide's definition of User, that is, the party that retains EMG for the preparation of a baseline PNA of the subject property. A User may include, without limitation, a purchaser, potential tenant, owner, existing or potential mortgagee, lender, or property manager of the subject property.

This report is exclusively for the use and benefit of the Client identified on the first page of this report. The purpose for which this report shall be used shall be limited to the use as stated in the contract between the client and EMG.

This report is not for the use or benefit of, nor may it be relied upon by, any other person or entity without the advance written consent of EMG.

The opinions EMG expresses in this report were formed utilizing the degree of skill and care ordinarily exercised by any prudent architect or engineer in the same community under similar circumstances. EMG assumes no responsibility or liability for the accuracy of information contained in this report which has been obtained from the Client or the Client's representatives, from other interested parties, or from the public domain. The conclusions presented represent EMG's professional judgment based on information obtained during the course of this assignment. EMG's evaluations, analyses and opinions are not representations regarding the building design or actual value of the property. Factual information regarding operations, conditions and test data provided by the Client or their representative has been assumed to be correct and complete. The conclusions presented are based on the data provided, observations made, and conditions that existed specifically on the date of the assessment.

EMG certifies that EMG has no undisclosed interest in the subject property, EMG's relationship with the Client is at arm's-length, and that EMG's employment and compensation are not contingent upon the findings or estimated costs to remedy any deficiencies due to deferred maintenance and any noted component or system replacements.

EMG's PNA cannot wholly eliminate the uncertainty regarding the presence of physical deficiencies and the performance of a subject property's building systems. Preparation of a PNA in accordance with Public Housing Modernization Standards Handbooks 7485.2 is intended to reduce, but not eliminate, the uncertainty regarding the potential for component or system failure and to reduce the potential that such component or system may not be initially observed. This PNA was prepared recognizing the inherent subjective nature of EMG's opinions as to such issues as workmanship, quality of original installation, and estimating the remaining useful life of any given component or system. It should be understood that EMG's suggested remedy may be determined under time constraints, formed without the aid of engineering calculations, testing, exploratory probing, the removal of materials, or design. Furthermore, there may be other alternate or more appropriate schemes or methods to remedy the physical deficiency. EMG's opinions are generally formed without detailed knowledge from individuals familiar with the component's or system's performance.

102449.12R-001.294

Any questions regarding this report should be directed to Matt Anderson at manderson@emgcorp.com or at 800.733.0660, 7613.

Prepared by: Lawrence J. Phaller, Field Observer

Reviewed by:



Matthew Anderson
Program Manager

Approximately five percent of the kitchen cabinets have been replaced in the last few years. These are constructed of wood. The remaining cabinets are original and are constructed of plastic-laminated wood. The countertops are wood and have a plastic-laminated finish.

Observations/Comments:

- According to the POC, apartment appliances are reportedly replaced on an "as needed" basis.
- The appliances are in fair condition. As a condition of financing a full-size range, oven and Energy Star qualified refrigerator must be installed in all apartments. The current appliances do not meet these requirements and must be replaced. According to the maintenance records, over 75 percent of the refrigerators and ranges are over 15 years old. Provision of a 30-inch wide range will require reconfiguration of the kitchen layout. The cost of this work is included in the Rehabilitation Needs Cost Estimate. Based on its Estimated Useful Life, the refrigerators will require additional replacement during the reserve term will be required. The cost for this work is included in the Replacement Reserves.
- The kitchen cabinets vary in age and are in fair to poor condition. Approximately 90 percent of them are original. As a condition of financing, new kitchen cabinets and counter tops shall be installed in all units. Double compartment kitchen sinks must be installed. As noted in Section 3.2, twenty-two of the kitchens will be modified in accordance with the Florida Optional Universal Design and Visitability Features. The remaining cabinets will be replaced to meet the standards identified in Section 32. The cost of this work is included in the Rehabilitation Needs Cost Estimate.

8.3. HVAC

Cooling and heating for the apartment unit water cooled heat pumps is detailed in Section 7.1 of this report. Each apartment unit has one water cooled heat pump mounted in the wall of the apartment and typically rated at 1.5-tons. Based on their age, the water cooled heat pumps are estimated to have an EER of 6.

Each heat pump has one 4 kW resistive heating element to supplement the heating capability of the water cooled heat pump when the heat pump reaches its heating limit.

All of the water cooled units were manufactured by McQuay, and they use R-22 as a refrigerant.

The temperature in the apartment units is controlled by thermostats mounted in each apartment unit. The thermostats are an integral part of the heat pump unit.

Natural ventilation is provided by operable windows. Mechanical ventilation is provided in the bathrooms and kitchens by the central system described in Section 7.1.

Observations/Comments:

- In general, the water cooled heat pumps in the apartments are original. Based on their estimated Remaining Useful Life and the observed conditions, replacement is recommended. The cost of this work is included in the Rehabilitation Cost Estimate. Based on their Estimated Useful Life, the water cooled heat pumps will require additional replacement during the reserve term will be required. The cost for this work is included in the Replacement Reserves.
- The thermostats are in good to fair condition. Replacement will be required. To comply with the Florida design code, they should be replaced with digital programmable thermostats. The cost of this work is included in the Rehabilitation needs Cost Estimate

8.4. PLUMBING

The bathrooms include a water closet, an enameled-steel bathtub, a vanity, and a lavatory.

A 40-gallon electric water heater is located in each apartment unit.

Observations/Comments:

- The bathroom fixtures are in fair condition and will require replacements as part of the renovation work. At a minimum, new plumbing fixtures in kitchens and bathrooms shall be installed in all rehabilitation units. This includes new sinks and faucets in the kitchen, and new tubs/showers and surrounds, new toilets, new sinks and new faucets in bathrooms. The present toilets are 3.5 gallons per flush and the faucet aerators and showerheads are 3.0 gallons per minute. All new fixtures shall be Water Sense certified faucets, Water Sense certified toilets, and shower heads with a flow rate of 2.2 gallons per minute or less in all bathrooms. Note that the faucet and tub/shower faucets must have lever handles as noted in Section 3.2. The cost of this work is included in the Rehabilitation Needs Cost Estimate.
- The water heaters appear to be in good to fair condition. According to the Facility Staff Representative, apartment unit water heaters are reportedly replaced on an "as needed" basis. Approximately 15 percent are less than three years old. Based on their estimated Remaining Useful Life (RUL), all of the water heaters will require replacement during the assessment period. The cost for replacing the older units (85%) is included in the Rehabilitation Needs Cost Estimate. Additionally, based on their Estimated Useful Life, these water heaters plus the newer water heaters (15%) will require replacement during the reserve term. The cost of this work is included in the Replacement Reserves Report. The existing water heaters already meet the Florida standards for 40 gallon water heaters with an EF of 0.93 to 0.95.

8.5. ELECTRICAL

The electrical service to each apartment unit is 100 amps. A circuit breaker panel inside each unit supplies the HVAC system, appliances, receptacles and light fixtures.

The apartment units have 60 Watt incandescent and T-12 fluorescent light fixtures. Each apartment unit has at least one cable television outlet and telephone jack.

Observations/Comments:

- The apartment unit light fixtures are in good to fair condition. Light fixture replacement will be required over the reserve term. Based on the existing conditions, the T12 fluorescent lighting should be replaced with the more energy efficient T8 light fixtures, and the incandescent lighting with the more energy efficient compact fluorescent lighting. The cost of this work is included in the Rehabilitation Cost Estimate.
- Cable or satellite TV hook-up is required in each unit. The hook-ups already exist in the units. High speed internet service can be delivered over the existing cable system.
- The current electrical system at the Project Site is in good overall condition and is adequately configured with regard to "provided" versus "demanded" electrical capacity for each apartment unit.

8.6. FURNITURE, FIXTURES AND EQUIPMENT (FF&E)

Not applicable. There are no furnished apartments.



EMG PHOTOGRAPHIC RECORD

Project No.: 102449.12R-001.294

Project Name: MLF Towers



Photo #25: Exterior mounted meters on rear of the building



Photo #26: Closet mounted apartment electric water heater



Photo #27: Building's main entrance lobby



Photo #28: Activity room located on 1st floor



Photo #29: Dining room located on 1st floor



Photo #30: Commercial kitchen



Mashayekhi Consultants, Inc.

MECHANICAL AND ELECTRICAL CONSULTING ENGINEERS

Project: 540 Town Center
Date Prepared: 4/27/17
Re: Water Heater Replacement 2012-2013 Renovation

Dear Mr. Hines,

Prior to the 2012-2013 renovation, the water heaters in the units were 19 gallon Bradford White M120L6DS Lowboy Energy Savers. These 19 gallon water heater are acceptable to accommodate the capacity required for the 1 bedroom apartments in this building. The manufacturer has stated that no water heaters smaller than 30 gallons are required to establish an EF rating, so these are not marked with that criteria. However, this is an Energy Saver line of water heaters and the 19 gallon size should be more efficient than the larger tank capacities in the line, the next largest of which meets the 0.93 EF.

During the design process it was established that any of these 19 gallon water heaters less than 3 years old, would remain. The other water heaters were replaced with a larger 30 gallon water heaters with a 0.93 EF, and those are also acceptable to accommodate the required capacity for the 1 bedroom apartments.

Sincerely,

A handwritten signature in cursive script that reads "Reza Mashayekhi".

Reza Mashayekhi, PE

1411 16th street north, st. petersburg, florida 33704
phone (727) 821-3484 rezamash@mindspring.com