

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

FOX HOLLOW ASSOCIATES, LTD.,
a Florida limited partnership,

Petitioner,

vs.

FHFC CASE NO 2007-024VW

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULES
67-21.003(14)(j) & 67-48.004(14)(j), FLORIDA ADMINISTRATIVE CODE**

FOX HOLLOW ASSOCIATES, LTD., a Florida limited partnership ("Petitioner"), by and through its undersigned counsel and pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code ("F.A.C."), hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of Rules 67-21.003(14)(j) and 67-48.004(14)(j), Florida Administrative Code (2005), which prohibit changing the total number of units in a development after submission of an application for funding under the Corporation's Multi-Family Mortgage Revenue Bond ("MMRB") Program and Housing Credit Program (non-competitive 4% with Tax-Exempt Bonds) ("4% HC"). In support, Petitioner states the following:

THE PETITIONER

1. The address, telephone number and facsimile number of the Petitioner is:

**Fox Hollow Associates, Ltd.
Enhanced Affordable Development Co., LLC
4221 Wilshire Blvd. Ste. 260
Los Angeles, CA 90010**

FLORIDA HOUSING FINANCE CORPORATION

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Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. These items include:

- (j) Total number of units;

All other items may be submitted as cures pursuant to subsection (6) above.

* * *

5. Rule 67-48.004(14)(j), F.A.C. (2005), implements Sections 420.5087, 420.5089 and 420.5099, Florida Statutes. Section 420.5099 Florida Statutes, authorizes the Corporation to, among other things, establish procedures necessary for proper allocation and distribution of low-income housing tax credits and exercise all powers necessary to administer the allocation of such credits and exercise any power granted by the Florida Housing Finance Corporation Act, Part V, of Chapter 420, Florida Statutes. Pursuant to these provisions, the Corporation has adopted Rule 67-48.004, F.A.C. (2005), entitled "Application and Selection Procedures for Developments." Rule 67-48.004(14)(j), F.A.C. (2005), provides:

(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. These items are as follows:

- (j) Total number of units;

All other items may be submitted as cures pursuant to subsection (6) above.

* * *

JUSTIFICATION FOR GRANTING

WAIVER OF RULES 67-21.003(14)(j) and 68-48.004(14)(j), F.A.C.

6. In 1990, the Corporation provided \$2,110,000 in SAIL funding and \$737,370 in 9% Tax Credits to the Fox Hollow Apartments (the "Development") on behalf of its former owner, Tompkins/Fox Hollow, Ltd. The Development, located in Orange County, Florida, consisted of a 156-unit Family Development. At the December 9, 2005 meeting of the Corporation's Board of Directors, the Corporation approved the transfer of ownership of the Development from Tompkins/Fox Hollow, Ltd. to Petitioner. Prior to the December 9, 2005, Board meeting, the Petitioner applied for MMRB financing and 4% HC from the Corporation through the 2005 Supplemental MMRB Application Cycle to rehabilitate the Development (the "MMRB/Credit Application"). In Petitioner's MMRB/Credit Application, Petitioner provided the total number of units in existence at that time for the Development (156), which consisted of 1 one-bedroom unit, 75 two-bedroom units and 80 three-bedroom units. Petitioner was awarded MMRB funding and 4% HC from the Corporation and subsequently closed on the MMRB financing and assumed the existing SAIL Loan.

7. Before the rehabilitation, the Development did not have any facilities available to tenants for the offering of tenant programs and tenant activities. Part of the rehabilitation anticipated by Petitioner was the addition of a community center that would be available to the tenants of the Development (the "Community Center"). Since the Development was already in existence, not only was the construction of a new building to add a Community Center extremely cost prohibitive, but such construction also was not feasible because the permitting and approval process to construct the new building was determined to be at least six to nine months. The length of that permitting and approval process could have resulted in Petitioner not completing the construction of the new building before Petitioner's tax credit deadlines. Therefore, in order

to add a Community Center to meet the needs of tenants and provide a facility for Petitioner to offer the tenant programs contemplated in the MMRB/Credit Application, it was necessary to convert a resident unit into the Community Center. Petitioner chose to convert the sole one-bedroom unit because that unit provided the least amount of living space to potential tenants, and it was also conveniently located adjacent to the management office, and thus provided a convenient central location of the management office and Community Center as well as a kitchen and bathroom available for tenant use within the Community Center. Although the conversion of the sole one-bedroom unit reduced the total number of units in the Development from 156 to 155, all of the tenants of the Development benefit from the new Community Center. The Petitioner seeks a waiver of Rules 67-21.003(14)(j) and 67-48.004(14)(j), F.A.C. (2005) to allow the reduction in the total units of the Development from 156 units to 155 units.

8. The Corporation is authorized by Section 120.54(1), Florida Statutes, and Rule Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or violate principles of fairness²; and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes. The application of this rule will have a material adverse effect on the viability of the Development.

9. In this case, strict application of Rules 67-21.003(14)(j) and 67-48.004(14)(j), F.A.C. (2005) will create a substantial hardship for Petitioner. Subsequent to the submission of

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

Petitioner's MMRB/Credit Application, an Extended Low-Income Housing Agreement was executed by the Corporation and Petitioner and recorded, stating that the Development has 155 units, and requiring Petitioner to provide certain tenant programs. To deny Petitioner's request for a rule waiver will create a severe hardship to Petitioner, in that Petitioner will have to convert the Development's Community Center to a residential unit. Such conversion of the one unit is cost-prohibitive, and the addition of 1 one-bedroom unit would not add significant value to the Development and does not fit into the scheme of the Development make-up. Further, the Development's tenants will suffer because they will not have a Community Center. Without the Community Center, Petitioner will not have a facility to conduct tenant programs and tenant activities, which programs it is committed to provide pursuant to the Extended Low-Income Housing Agreement and the MMRB Program.

10. Further, the waiver will serve the underlying purpose of the statutes because the waiver will ensure the viability of this affordable housing development by allowing Petitioner to continue with 155 units and a Community Center, instead of 156 units and no Community Center. Not only is the conversion of the Community Center into a residential unit cost-prohibitive, replacement of the Community Center with 1 one-bedroom unit will detract from the marketability of the Development as the tenants of the Development will be deprived of the benefit of the Community Center. Further, if this waiver is denied, Petitioner will no longer be able to offer the tenant programs it committed to offer pursuant to the Extended Low-Income Housing Agreement and MMRB Program because the Development will no longer have appropriate facilities for such programs. Because the Development is a rehabilitation of an existing structure, the construction of an additional structure to serve such purpose would not be economically feasible. The waiver will ensure that the Development will be maintained as an

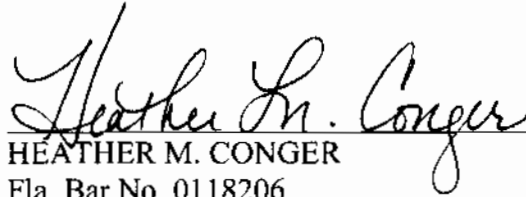
affordable housing development offering valuable programs to its residents and thus continue the Corporation's purpose to provide decent, safe and affordable housing in Florida.

ACTION REQUESTED

11. For the reasons set forth herein, Petitioner respectfully requests the Corporation to grant the requested waiver of Rules 67-21.003(14)(j) and 67-48.004(14)(j), F.A.C. (2005), to allow a reduction in the total number of units in the Development from 156 to 155.

12. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300, as required by Section 120.542(5), Florida Statutes.

Respectfully submitted this 26th day of June, 2007.



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