

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. _____
Application No. 2005-054C

POSTMASTER ASSOCIATES, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVERS OF RULE 67-48(14)(b) TO ADD CO-DEVELOPER,
AND PART III.D.1.f. OF THE 2005 UNIVERSAL APPLICATION INSTRUCTIONS'
REQUIREMENT TO PROVIDE SPECIFIC FEATURES FOR ELDERLY
RESIDENTIAL UNITS**

Petitioner Postmaster Associates, Ltd., a Florida limited partnership ("Postmaster") petitions Respondent Florida Housing Finance Corporation ("Florida Housing") for waivers of the restriction on changing developers after the Application Deadline, and the requirement to provide specifically identified flooring in elderly residential units. *See* Rule 67-48(14)(b), F.A.C. (2005) (the "Rule"), and Part III.D.1.f., 2005 Universal Application Instructions (the "Instruction").

1. Pursuant to Section 120.542, Fla. Stat. (2006), and Rules 28-104.001 through 28-104.006, F.A.C. (2006), Postmaster requests waivers of the Rule to add Pinnacle Housing Group, LLC ("Pinnacle") as the Co-Developer of the Postmaster project, and the Instruction to allow for the use of non-skid ceramic floor tile ("Non-Skid Flooring") in lieu of the Instruction's tight-napped Berber-type carpet ("Carpet").

A. THE PETITIONER

2. The name, address, and telephone and facsimile numbers for Postmaster and its qualified representative are:

Postmaster Associates, Ltd.
c/o Maria de Pedro-Gonzalez
7483 S.W. 24th Street, Suite 209
Miami, Florida 33155
Telephone: 305-267-3624
Facsimile: 305-267-3676

3. The name, address, telephone and facsimile numbers, and e-mail address of Postmaster' attorney, for purposes of this Petition, are:

Mimi L. Sall, Esquire
STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
200 East Las Olas Blvd., Suite 2100
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4. Pursuant to the 2005 Combined Universal Cycle, Postmaster submitted its Universal Application for Housing Credits under the Low Income Housing Tax Credit program.¹ See Application No. 2005-054C.

5. Florida Housing issued its Final Housing Credit Allocation to Postmaster in the annual amount of \$454,666.00.

6. Equity raised from Housing Credits is being used for the development of Postmaster Apartments, a new 55-unit apartment development (the "Development") intended to serve very-low and low-income elderly individuals in Miami, Miami-Dade, Florida.

¹The Universal Application Package has been adopted and incorporated into Chapter 67-48 by Rule 67-48.004(1)(a), F.A.C. (2005).

7. The requested Rule and Instruction waivers will not adversely affect the Development. However, a denial of this Petition (a) would result in substantial economic hardship to Postmaster; (b) could deprive Miami-Dade County of essential, affordable housing units in a timely manner; and (c) would violate principles of fairness. § 120.542(2), Fla. Stat. (2006).

8. The waivers being sought are permanent in nature.

B. Rule and Instruction from Which Relief is Requested and Statute By Which They Are Implemented

9. Postmaster requests a waiver of Rule 67-48.004(14) which identifies non-curable matters in a Universal Application as follows:

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 ... Those items are as follows: . . .

(b) Identity of each Developer, including all co-Developers;

10. Postmaster also requests a waiver of Part III.D.1.f. of the Universal Application Instructions that provides as follows:

D. Demographic Commitment (Threshold)

1. Elderly

In order for a proposed Development to be classified as Elderly (ALF or non-ALF), the Development must meet the following requirements: . . .

f. The Applicant must provide the following features in the specified percentages of all units in new construction (NC) and Rehabilitation/Substantial Rehabilitation (SR) Developments.

The requirement to provide the following features is in addition to the features committed to by the Applicant in the

Construction Features and amenities section of this Application.

Tight-napped Berber-type carpet

11. The applicable Rule and Instruction for which the waivers are requested are implementing Florida Housing Finance Corporation Act's statute that created the Housing Credits Program. § 420.5099, Fla. Stat. (2005).³ The Act designates Florida Housing as the State of Florida's housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits. §§ 420.5099(1) and (2), Fla. Stat. (2005). Accordingly, the Rule and Instruction that are the subject of Postmaster's waiver requests are implementing, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2005).

C. Justification for Postmaster's Requested Waivers

1. Addition of Pinnacle as Co-Developer

12. In its Application, Postmaster identified MDHA Development Corporation as its Developer.

13. Postmaster has determined that the Development would benefit by adding Pinnacle, an experienced developer in the affordable housing industry, as the Development's Co-Developer.

14. During the past 10 years, Pinnacle, on its own and through its related entities, has acquired extensive expertise, experience, knowledge, and access to resources from developing,

^{3/}The Florida Housing Finance Corporation Act (the "Act") is set forth in Sections 420.501 through 420.516 of the Florida Statutes. *See also* Rule 67-40.020(1), F.A.C. (2005).

owning, and managing quality affordable rental housing developments for very low-income and low-income individuals and families. On behalf of entities for which it acted as a developer, Pinnacle developed approximately 5,000 affordable rental housing units. Through its efforts, Pinnacle has established a successful record in the specialized area of developing quality affordable rental housing units with Florida Housing.

15. Postmaster and its current Developer can rely on and benefit from the identical expertise, experience, services, resources, and support personnel available through Pinnacle. Accordingly, the continuity, progress, and quality of the Development will not be disrupted, and the addition of Pinnacle, as the Co-Developer, will ensure the Development's completion.

16. The requested waiver would not have provided Postmaster with an unfair advantage in the scoring of its Universal Application, and will not prejudice the Development or the affordable housing market to be served by the Development.

2. Use of Non-Skid Flooring

17. Pursuant to the Instruction, Carpet is required in all units intended to serve the elderly populace. However, as a result of its experience in developing affordable housing units, proposed Co-Developer Pinnacle has found that Non-Skid Flooring, an upgraded amenity for which Postmaster will bear the increased cost, allows for greater mobility by elderly individuals who rely on walkers, wheelchairs, and other forms of assistance to ambulate within their residential units.

18. Additionally, whereas carpeting can accumulate, dust, molds, bacteria, and other pollutants that can effect an individual's health, Non-Skid Flooring is easier to maintain and provides a cleaner environment that is more beneficial for elderly residents suffering from allergies, asthmas, respiratory ailments, and other health issues.

19. The use of Non-Skid Flooring, therefore, would be more effective in meeting the health, safety, and daily-living needs of the elderly individuals for whom the Development is intended.

20. Because the use of Carpet is a threshold requirement for developments designated for elderly residents, a waiver is necessary to permit the use of Non-Skid Flooring. However, the requested waiver will not prejudice the Development or the affordable housing market to be served by the Development, and will provide a safer feature within the units for the Development's elderly residents.

21. The requested waiver would not have provided Postmaster with an unfair advantage in the scoring of its Universal Application, and will not prejudice the Development or the affordable housing market to be served by the Development.

D. Conclusion

22. The requested waivers will not adversely impact the Development or Florida Housing, and will ensure that 55 affordable housing units will be available for the elderly population in Miami-Dade County, Florida.

23. 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.

24. The requested waivers serve the purposes of Section 420.5099, Florida Statutes (2006), and 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 the timeliness 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. (2005).

25. Finally, by granting the requested waivers, 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.

26. Should Florida Housing require additional information, Postmaster is available to answer questions and to provide all information necessary for consideration of its Petition for Waivers of Rule 67-48(14)(b) to Add a Co-Developer, and Part III.D.1.f. of the 2005 Universal Application Instructions' Requirement to Provide Specific Features for Elderly Residential Units.

WHEREFORE, Petitioner Postmaster Associates, Ltd., respectfully requests that the Florida Housing Finance Corporation grant the Petition and provide the following relief:

A. Waiver Rule 67-48.004(14)(b)'s restriction on changing the Developer's identity after the Application Deadline and permit Postmaster to add Pinnacle Housing Group, LLC, as its Co-Developer;

B. Waive Part III.D.1.f. of the 2005 Universal Application Instructions that requires the use of tight-napped Berber-type carpet in residential developments for the elderly, and allow for the use non-skid ceramic floor tile by Postmaster in its Development; and

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


Respectfully submitted,

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By: 
MIMI L. SALL

CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation 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, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 21st day of September, 2007.

By: 
Mimi L. Sall