

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2010-001YW  
Application No. 2006-351CHR/2007-012C

VILLAGE ALLAPATTAH PHASE II, LLC

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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**PETITION FOR WAIVER OF PART III.D.1.f. OF THE 2006 RENTAL RECOVERY  
LOAN PROGRAM INSTRUCTIONS TO PROVIDE SPECIFIC FEATURES IN UNITS  
DEVELOPED FOR ELDERLY RESIDENTS**

Petitioner, Village Allapattah Phase II, LLC, a Florida limited liability company (“Village”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of the requirement to provide specific flooring in units developed for elderly residents. *See* Part III.D.1.f., 2006 Rental Recovery Loan Program Instructions (the “Rule”).

Pursuant to Section 120.542, Fla. Stat. (2006), and Rules 28-104.001 through 28-104.006, F.A.C. (2006), Village requests a waiver of the Rule to allow for the use of non-skid ceramic floor tile (“Non-Skid Flooring”) in lieu of tight-napped Berber-type carpet (“Carpet”).

**A. THE PETITIONER**

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

Village Allapattah Phase II, Ltd.  
c/o Carlisle Development Group, LLC  
Attention: Lloyd Boggio  
2950 SW 27<sup>th</sup> Avenue, Suite 200  
Miami, Florida 33133  
Telephone: 305-476-8118  
Facsimile: 305-476-1557

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

Brian McDonough, Esquire  
STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
150 West Flagler Street  
Miami, Florida 33130  
Telephone: 305-789-3350  
Facsimile: 305-789-3395  
E-mail: [bmcdonough@swmwas.com](mailto:bmcdonough@swmwas.com)

3. Village successfully applied for financing from Rental Recovery Loan Program ("RRLP") in the 2006 RRLP Cycle that Florida Housing administered pursuant to Chapter 67ER-06, Florida Administrative Code. Village's Application number is 2006-351CHR/2007-012C (the "Application"). Village applied for an allocation of housing credits and for a loan under the RRLP program to finance a portion of the costs to develop a multi-family rental apartment complex to be known as Village Allapattah Phase II Apartments (the "Development"). The Development is a 90-unit apartment complex intended to serve very-low and low-income elderly individuals in the City of Miami, Miami-Dade County, Florida.

4. The Development was allocated an RRLP Loan in the amount of \$5,910,000 and the final RRLP loan amount was underwritten at \$3,643,048 (consisting of a RRLP base loan non-ELI amount of \$2,323,091, a RRLP base loan ELI amount of \$409,957 and a \$910,000 supplemental loan).

5. The requested Rule waiver will not adversely affect the Development. However, a denial of this Petition (a) would result in substantial economic hardship to Village; (b) could deprive Miami-Dade County of essential, affordable housing units in a timely manner; and (c) would violate principles of fairness<sup>1</sup>. § 120.542(2), Fla. Stat. (2006).

6. The waiver being sought is permanent in nature.

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

7. Village requests a waiver of Part III.D.1.f. of the RRLP Application Instructions, which 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...

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<sup>1</sup> “Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or 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 the rule. Section 120.542(2), Florida Statutes.

8. The applicable Rule<sup>2</sup> for which the waiver is requested implements the provisions of Section 31 of Chapter 2006-69 (H.B. No. 1363), which act appropriated funds to assist those areas of the State that sustained housing damage due to hurricanes during 2004 and 2005.

**C. Justification for Village' Requested Waiver**

9. Pursuant to the Rule, Carpet is required in all units intended to serve the elderly populace. However, as a result of its experience in developing affordable housing units, the developer for the Development has found that Non-Skid Flooring, an upgraded amenity for which the developer 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.

10. 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.

11. 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.

12. Because the use of Carpet is a threshold requirement for an Applicant seeking RRLP funds 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

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<sup>2</sup> Pursuant to Rule 67ER05-10(1)(a), F.A.C. (2006), the 2006 RRLP Application Instructions are incorporated into Rule Chapter 67ER.

provide upgraded features and amenities within the units for the Development's elderly residents.

**D. Conclusion**

13. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 90 affordable housing units will be available for the elderly population in Miami-Dade County, Florida.

14. 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.

15. The requested waiver serves the purposes of Section 420.5099, Florida Statutes (2006), 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 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. (2006).

16. 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 for the elderly. 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, as well as providing safer, upgraded features and amenities within residential units developed for elderly residents.

17. Should Florida Housing require additional information, Village is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of Part III.D.1.f. of the 2006 RRLP Application Instructions to Provide Specific Features in Units Developed for Elderly Residents.

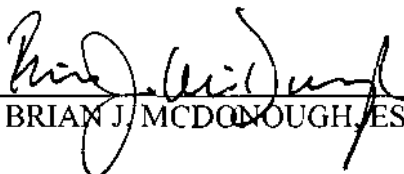
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WHEREFORE, Petitioner Village Allapattah Phase II, LLC, respectfully requests that the Florida Housing Finance Corporation grant the Petition and provide the following relief:

- A. Waive Part III.D.1.f. of the 2006 RRLP Application Instructions that requires the use of tight-napped Berber-type carpet in residential developments for the elderly, and allow the use of non-skid ceramic floor tile by Village in its Development; and
- B. Grant such further relief as may be deemed appropriate.

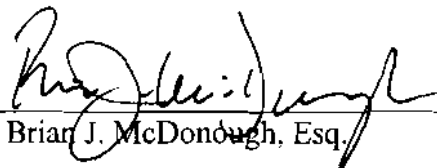
Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
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By:   
BRIAN J. MCDONOUGH, ESQ.

**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 12<sup>th</sup> day of January, 2010.

By:   
Brian J. McDonough, Esq.

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