

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

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

Petitioner,

vs.

FHFC CASE NO. 2005-059 VW

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

**PETITION FOR VARIANCE OF RULE  
67-21.008(1)(b), 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 variance of Rule 67-21.008(1)(b) Florida Administrative Code (2005), which imposes certain conditions on mortgage loans issued by the Corporation under its Multi-Family Mortgage Revenue Bond ("MMRB") Program. In support, Petitioner states the following:

**THE PETITIONER**

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

**Fox Hollow Associates, Ltd.  
c/o Enhanced Affordable Development Company, LLC  
9777 Wilshire Blvd., Suite 704  
Beverly Hills, CA 90212**

2. The address, telephone number and facsimile number of Petitioner's counsel is:

Maureen McCarthy Daughton  
Broad and Cassel  
215 S. Monroe Street, Suite 400  
Tallahassee, FL 32301  
(850) 681-6810  
(850) 521-1478 Facsimile

**THE RULE FROM WHICH VARIANCE IS SOUGHT**

3. Petitioner requests waiver of Rule 67-21.008(1)(b), F.A.C. (2005), which mandates that each recipient of a mortgage loan shall provide for a fully amortized payment of the loan beginning on the earlier of 36 months after closing, or stabilized occupancy or conversion to permanent financing pursuant to the loan documents.

**STATUTES IMPLEMENTED  
BY RULE 67-21.008(1)(b), F.A.C.**

4. Rule 67-21.008(1)(b), F.A.C. (2005), implements Sections 420.507 and 420.508, Florida Statutes. Section 420.507, Florida Statutes, authorizes the Corporation to, among other things, issue bonds for the provision of affordable housing; impose conditions respecting the granting of mortgage loans and make rules to carry out the purposes of and exercise any power granted by the Florida Housing Finance Corporation Act, Part V, of Chapter 420, Florida Statutes.<sup>1</sup> Section 420.508, Florida Statutes, authorizes the Corporation to, among other things, make and participate in the making of mortgage loans for permanent or construction financing of development costs of projects subject to specified conditions, and to establish terms of mortgage loans funded pursuant to Part V of Chapter 420, Florida Statutes. Pursuant to these provisions, the Corporation has adopted Rule 67-21.008, F.A.C. (2005), entitled "Terms and Conditions of MMRB Loans." Rule 67-21.008(1)(b), F.A.C. (2005), provides:

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes.

(1) Each Mortgage Loan for a Development made by the Corporation shall:

(b) Provide for a fully amortized payment of the Mortgage Loan in full beginning on the earlier of 36 months after closing, or stabilized occupancy, or conversion to permanent financing under the loan documents and ending no later than the expiration of the useful life of the property, and in any event, no later than 45 years from the date of the Mortgage Loan.

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**JUSTIFICATION FOR GRANTING  
VARIANCE OF RULE 67-21.008(1)(b), F.A.C.**

5. 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 is located in Orange County, Florida, and consists of a 156-unit Family Development. At the December 9, 2005 meeting of the Corporation Board, the Corporation approved the transfer of ownership of the Development from Tompkins/Fox Hollow, Ltd. to Fox Hollow Associates, Ltd. Prior to the December 9, 2005, Board meeting, the Petitioner applied for MMRB financing from the Corporation through the 2005 Supplemental MMRB Application Cycle. The Petitioner's application is currently in credit underwriting awaiting favorable recommendation. The transfer of ownership is scheduled to occur on January 3, 2006. The Petitioner seeks a variance from Rule 67-21.008(1)(b), F.A.C. (2005) to delay the start of the fully amortized payment of the mortgage loan to the Corporation for a period of up to 60 months from the date of the closing of the MMRB financing.

6. The Corporation is authorized by Section 120.54(1), Florida Statutes, and Rule Chapter 28-104, F.A.C., to grant variances to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Variances 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 fairness<sup>2</sup>; 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.

7. In this case, strict application of Rule 67-21.008(1)(b), F.A.C. (2005) will create a substantial hardship for Petitioner. Petitioner is purchasing the Development based on the financing structure presented to the Corporation in the Petitioner's Application for MMRB financing, during Credit Underwriting, and during continuing discussions with the Corporation, which is structured with a 54-month interest-only period. To deny Petitioner's request for a rule variance will create a severe hardship to Petitioner, in that Petitioner will have purchased the Development but will not be able to proceed with the rehabilitation of the Development due to the inability to meet the conditions necessary to close on the financing for the transaction. Additionally, as the Development is being purchased prior to the closing of the MMRB transaction, Petitioner has obtained bridge financing to carry the costs of the Development until the closing of the MMRB transaction. To deny Petitioner's request for variance will cause additional hardship to Petitioner, in that it will be required to repay the bridge loan in accordance with the bridge loan documents, and to the extent Petitioner cannot close on the MMRB financing, Petitioner may not be able to repay the bridge loan in accordance with its terms and could suffer substantial penalties, which may include loss of the property, in connection with the extension or acceleration of the bridge loan beyond its maturity date.

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<sup>2</sup> "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance. "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.

8. Further, the variance will serve the underlying purpose of the statutes because the variance will ensure the viability of this affordable housing development by allowing Petitioner to proceed with the current financing structure in a timely manner to rehabilitate the Development such that the Development will be maintained as an affordable housing development and thus continue the Corporation's purpose to provide decent, safe and affordable housing in Florida. In addition, because the Petitioner will be assuming the SAIL loan currently in existence for the Development and will be closing on negotiated SAIL loan terms in conjunction with the MMRB financing, the viability of the Development as an affordable housing development will be continued for an extended affordability period beyond the current affordability period.

**ACTION REQUESTED**

9. For the reasons set forth herein, Petitioner respectfully requests the Corporation to grant the requested variance of Rule 67-21.008(1)(b), F.A.C. (2005), to allow a delay of the start of payment of the fully amortized mortgage payments until a period of up to 60 months after closing.

10. 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 20 day of December, 2005.



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