

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING  
FINANCE CORPORATION

CASE NO. \_\_\_\_\_

FINLAY INTERESTS 46, LTD.  
a Florida limited partnership,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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**PETITION FOR WAIVER OF RULE 67-21.008(1)(g) AND  
CONDITION 4'S REQUIREMENTS FOR AN AUDITED  
FINANCIAL STATEMENT FOR FISCAL YEAR 2003**

Petitioner Finlay Interests 46, Ltd., a Florida limited partnership ("Finlay 46"), petitions Respondent Florida Housing Finance Corporation (the "Corporation") for a waiver of the requirements to submit an audited financial statement for fiscal year 2003. *See* Rule 67-21.008(1)(g), F.A.C.

1. Pursuant to Section 120.542, Fla. Stat.(2001) and Rules 28-104.001 through 28-104.006, F.A.C., Finlay 46 requests a waiver of the requirements under Rule 67-21-008(1)(g), F.A.C. (the "Rule"), and Section 4 of the General Conditions ("Condition 4") of the August 25, 2003 Florida Housing Finance Corporation Loan Commitment (the "Loan Commitment"), for the submission of an audited financial statement for fiscal year 2003 ("2003 Financial Statement"). The requested waiver will not adversely affect the development of the Collins Cove Senior Apartments (the "Development"). However, a denial of this request would result in substantial economic hardship to Finlay 46.

2. Petitioner's name, address, telephone and facsimile numbers are:

Finlay Interests 46, Ltd.  
c/o Finlay Holdings, Inc., its general partner  
Attention: Christopher C. Finlay  
4300 Marsh Landing Boulevard  
Suite 101  
Jacksonville Beach, Florida 32250  
Telephone: 904-280-1000  
Facsimile: 904-280-9993  
Email: cfinlay@finlayllc.com

The name, address, telephone and facsimile numbers of Finlay 46's attorneys are:

Brian J. McDonough, Esquire  
Mimi L. Sall, Esquire  
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.  
Museum Tower, Suite 2200  
150 West Flagler Street  
Miami, Florida 33130  
Telephone: (305) 789-3200  
Facsimile: (305) 789-3395

3. Rule 67-21.008(1)(g), Florida Administrative Code, requires:

the submission to Florida Housing of an annual audited financial statement for the Development, and for the Applicant if revenue from multiple projects is being pledged.

4. In addition, audited financial statements are required under Condition 4 of the Loan Commitment, with Finlay 46, as Borrower, and the Florida Affordable Housing Guarantee Program and the United States Department of Housing and Urban Development Risk Sharing Program, as Credit Enhancer. Condition 4 requires, in part, that:

The Borrower, the Servicer and Florida Housing shall execute a Financial Monitoring Agreement under which the Borrower shall provide among other things, at its expense to the Trustee, the Servicer and Florida Housing certified annual audited financial statements of the Property. The annual financial statements shall be prepared in accordance with generally accepted accounting principles applied on a basis consistent with prior years (except as otherwise specified in such report) and delivered within 120 days after the end of each fiscal

year of the Borrower (commencing with the year ending 2003) and prepared by an independent certified public accounting firm selected by the Borrower.

5. The Florida Housing Finance Corporation Act<sup>1</sup> designates the Corporation 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, the Corporation is responsible for and is authorized to establish procedures for (a) stimulating creative private sector lending activities; (b) creating security mechanisms to allow lenders to sell affordable housing loans in the secondary market; and (c) encouraging affordable housing lending activities that would not have taken place or that serve persons who would not have been served but for the creation of this program. §§ 420.5092 (1)(a) - (c), Fla. Stat. (2003). These procedures were established in Rule Chapter 67 of the Florida Administrative Code. Accordingly, the Rule subject to Finlay 46's waiver request is implementing, among other sections of the Act, the statutory authorization for the Corporation's creation of a guaranteed fund established with proceeds of revenue bonds. §§ 420.5092, Fla. Stat. (2003).

6. Finlay 46 requests a waiver of the Rule and Condition 4's requirements for submitting the 2003 Financial Statement. The following facts demonstrate the economic hardship and other circumstances that justify a waiver of the required 2003 Financial Statement:

- a. Finlay 46 was formed as a sole purpose entity for the development, construction and ownership of the Development, a 160 unit multifamily senior housing community located in Jacksonville, Duval County, Florida;
- b. As of December 31, 2003, the Development was under construction and had no occupancy;

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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. (the "Act"). See also Rule 67-40.020(1), F.A.C. ("Act" means the Florida Housing Finance Corporation Act, section 420.501 through 420.516 of the Florida Statutes").

- c. As of December 31, 2003, income for the Development was limited to only interest earning income;
  - d. As Finlay 46, a developer of low-income affordable housing, has limited income, the financial burden of incurring the expense of an audited financial statement and the economic hardship for Finlay 46 is unavoidable; and
  - e. The requested Rule and Condition 4 waivers will not adversely impact completion of the Development, but would relieve Finlay 46 from the burden of obtaining an audited financial statement without the source of funds available for this purpose. Consequently, a denial of the requested waiver will result in substantial economic hardship to Finlay 46.
7. A waiver of the requirements for submitting the 2003 Financial Statement would serve the purposes of Section 420.5092 and the Act, as a whole. Further, the requested waiver would recognize the existence of and the need to remedy:

A serious shortage of decent, safe, and sanitary housing in the state available to persons and families of low, moderate, and middle income, which impairs the economic value of larger areas, characterized by depreciated value, impaired investments, reduced capacity to pay taxes, and lack of new development to meet the needs of area residents, and which is a menace to the health, safety, morals, and welfare of the citizens of the state.

§ 420.502(4), Fla. Stat. (2002).

8. By granting a waiver for the submission of the 2003 Financial Statement, the Corporation would recognize the economic realities of developing and constructing affordable rental housing. This recognition would promote participation by owners and developers such as Finlay 46 in meeting the Act's purpose by providing affordable housing, through new construction or rehabilitation of existing housing, in an economical and efficient manner. Neither owners, such as Finlay 46, nor developers would be placed in the untenable and unavoidable position of having financial obligations for audited financial statements without a sufficient source of income for this expense.

9. The waiver being sought is limited to the 2003 Financial Statement.

10. Should the Corporation have questions or require any additional information, Suzanne Hosch, Controller for Finlay 46 is available to answer any questions and to provide any additional information necessary for consideration of this Petition.

**WHEREFORE**, Petitioner Finlay Interests 46, Ltd. respectfully requests that the Corporation:

- A. Grant the Petition and the relief requested therein;
- B. Waive the requirements for submission of an audited financial statement for fiscal year 2003 under Rule 67-21.008(1)(g), and Section 4 of the General Conditions of the Florida Housing Finance Corporation Loan Commitment; and
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

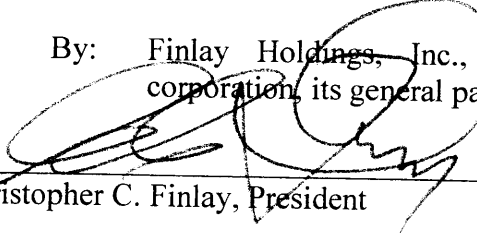
FINLAY INTERESTS 46, Ltd., a Florida limited partnership

By: Finlay Interests GP 46, LLC., a Florida limited liability company, its general partner

By: Finlay GP Holdings, Ltd., a Florida limited partnership, its sole member

By: Finlay Holdings, Inc., a Florida corporation, its general partner

By:

  
\_\_\_\_\_  
Christopher C. Finlay, President

**CERTIFICATE OF SERVICE**

The Original Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 N. 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, on October \_\_\_, 2004.

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