

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. _____
Application No. 2006-330CHR

FRIENDSHIP TOWER, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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

Petitioner Friendship Tower, Ltd., a Florida limited partnership ("Friendship Tower") 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 ("RRLP") Application Instructions (the "RRLP Rule").

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

A. **THE PETITIONER**

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

Friendship Tower, Ltd.
c/o PHG-Friendship, LLC
Attention: David O. Deutch
9400 South Dadeland Boulevard, Suite 100
Miami, Florida 33156
Telephone: 305-854-7100
Facsimile: 305-859-9858

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

Mimi L. Sall, Esquire
STEARNS WEAVER MILLER WEISSLER
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4. During the 2006 RRLP Application Cycle, Friendship Tower was awarded a total commitment of up to \$5,585,000 in RRLP financing towards construction costs of Friendship Tower, a new 92-unit apartment development (the "Development") intended to serve the elderly community in Miami, Miami-Dade County, Florida.

5. Friendship Tower received the 2006 RRLP loan commitment because Miami-Dade County was designated as one of the Florida counties impacted by the 2004 and 2005 hurricane seasons, and 2006 RRLP financing was made available to assist affordable housing developments in their hurricane recovery efforts.

6. The requested Rule waiver will not adversely affect the Development. However, a denial of this Petition (a) would result in substantial economic hardship to Friendship Tower;

(b) could deprive Miami-Dade County of essential, affordable housing units in a timely manner; and (c) would violate principles of fairness. Section 120.542(2), Fla. Stat. (2006).

7. The waiver being sought is permanent in nature.

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

8. Friendship Tower requests a waiver of Part III.D.1.f. of the RRLP 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

9. The RRLP Rule¹ is implementing, among other things, Section 31, Chapter 2006-69, L.O.F., by establishing procedures under which Florida Housing shall:

Administer the Application process, determine loan amounts, make and service mortgage loans for the construction or Rehabilitation/Substantial Rehabilitation of affordable rental units utilizing [RRLP] funds.

67ER06-25(1), F.A.C. (2006).

¹ Rule 67ER06-27(1)(a), F.A.C. (2006), adopts the "RRLP Application Package" and its contents, including, without limitation, the RRLP Application Instructions.

10. The RRLP Rule is further implementing the enactment of Florida's response to housing disasters resulting from the 2004 and 2005 hurricane seasons. Section 420.55, Fla. Stat. (2006).

11. Specifically, "[t]he Florida Housing Finance Corporation is authorized to provide funds to eligible entities for affordable housing recovery in those areas of the state which sustained housing damage due to hurricanes during 2004 and 2005." Florida Housing adopted emergency rules pursuant to Section 120.54, Fla. Stat. (2006), and the Legislature found "that emergency rules adopted pursuant to this section meet the health, safety, and welfare requirement of s. 120.54(4)." In addition, the Legislature determined that:

such emergency rulemaking power is necessary for the preservation of the rights and welfare of the people in order to provide additional funds to assist those areas of the state that sustained housing damage due to hurricanes during 2004 and 2005.

§ 420.55, Fla. Stat. (2006).

12. The requested Rule waiver will not adversely affect the Development. However, a denial of this Petition (a) would result in substantial economic hardship to Friendship Tower; (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).

C. Justification for Friendship Tower's Requested Waiver

13. Pursuant to the RRLP 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.

14. 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.

15. 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.

16. Because the use of Carpet is a threshold requirement for an Application for 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 provide a safer feature within the units for the Development's elderly residents.

D. Conclusion

17. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 92 affordable housing units will be available for the elderly population in Miami-Dade County, Florida.

18. 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.

19. 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 elderly residents. 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 the elderly with safer, upgraded features and amenities within their residential units.

20. Should Florida Housing require additional information, Friendship Tower 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 Rental Recovery Loan Program Application Instructions' Requirement to Provide Specific Features in Units Developed for Elderly Residents.

WHEREFORE, Petitioner Friendship Tower, Ltd., 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 Rental Recovery Loan Program 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 Friendship Tower in its Development; and

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

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
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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 August, 2007.

By: Mimi L. Sall
Mimi L. Sall