

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

MAPLE CREST LIMITED PARTNERSHIP,  
a Florida limited partnership

Petitioner,

vs.

APPLICATION NO. 2006-103C  
CASE NO. 2007-066VW

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

**PETITION FOR WAIVER FROM RULE 67-48.004(14)(j), FLORIDA  
ADMINISTRATIVE CODE (2006)**

MAPLE CREST LIMITED PARTNERSHIP, a Florida limited partnership ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver from Rule 67-48.004(14)(j), Florida Administrative Code ("F.A.C") (2006). This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

**THE PETITIONER**

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

Maple Crest Limited Partnership  
c/o Beneficial Maple Crest LLC  
Donald W. Paxton  
6455 Gateway Avenue, Suite A  
Sarasota, Florida 34231  
(941)-929-1270  
(941)-929-1271 Facsimile

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

Heather M. Conger, P.L.  
Broad and Cassel  
390 North Orange Avenue, Suite 1400  
Orlando, Florida 32801  
(407) 839-4252  
(407) 650-0966 Facsimile

3. Petitioner successfully applied for financing from the Housing Tax Credit ("HC") program in the 2006 Universal Application Cycle – Multifamily Mortgage Revenue Bonds (MMRB) Program; State Apartment Incentive Loan (SAIL) Program; Home Investment Partnership (HOME) Rental Program and Housing Credit (HC) Program (the "Universal Cycle") that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner's application number is 2006-103C (the "Application"). Petitioner applied for HC Funds to finance a portion of the costs to develop multi-family garden apartments in Lee County, Florida, to be known as Maple Crest Apartments (the "Development").

**THE RULE FROM WHICH WAIVER IS SOUGHT**

4. Petitioner requests a waiver from Rule 67-48.004(14)(j), F.A.C. (2006). More specifically, Petitioner is seeking a waiver from provisions of the Universal Application Instructions and certain provisions of Rule 67-48.004 entitled "Application and Selection Procedures for Development."

5. Rule 67-48.004(1)(a) states, as follows:

(a) The Universal Application Package or UA1016 (Rev. 1-06) is adopted and incorporated herein by reference and consists of the forms and instructions, obtained from the Corporation, for a fee, at 227 North Bronough Street, STE 5000, Tallahassee, Fl 32301-1329, or available, without charge, on the Corporation's website under the 2006 Universal Application link labeled Instructions and Application, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HOME, HC, or SAIL and HC program(s).

6. The following provision of the Universal Application Instructions is applicable to this Petition:

Part III. Development.

A. General Development Information.

6. State the total number of units in the proposed Development. Note: Corporation-issued MMRB Developments with a Development Category of “new construction” may not exceed 400 total units and HOME Developments with a Development Category of “new construction” may not exceed 100 total units.

7. Section (14)(j) of Rule 67-48.004(14) states, as follows:

(14) 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. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

\* \* \*

(j) Total number of units;

\* \* \*

8. Rule 67-48.004(15) provides:

(15) A Development will be withdrawn from funding and any outstanding commitments for funds or HC will be rescinded if, at any time, the Board determines that the Applicant’s Development or Development team is no longer the Development or Development team described in the Application, and the changes made are prejudicial to the Development or to the market to be served by the Development.

### **STATUTES IMPLEMENTED BY THE RULES**

9. Among other sections of the Florida Housing Finance Corporation Act,<sup>1</sup> the Rule implements Section 420.5093, Florida Statutes, the statute that created the HC Program.

10. Pursuant to Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its rule requirements when the strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Section 120.542(2), Florida Statutes, addresses the granting of waivers in relevant part, as follows: “Waivers shall be granted when the applicant demonstrates that application of the rule would create a substantial hardship or would violate principles of fairness.”<sup>2</sup> Section 120.542(2) defines a “substantial hardship” as a “demonstrated economic, technological, legal or other type of hardship” to the applicant.

### **FACTS SUPPORTING PETITIONER REQUEST FOR RULE WAIVER**

11. The Petitioner filed and submitted its Application based upon information stated in preliminary engineering and associated site reports (the “Preliminary Reports”) the Petitioner obtained in conjunction with its acquisition of the real property (“Property”) on which the Development will be constructed.

12. Based upon the Preliminary Reports when Petitioner submitted the Application the Petitioner anticipated that the Property would support one hundred twenty (120) residential units.

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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.

<sup>2</sup> “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, Florida Statutes.

13. After the Application Deadline and the approval of Petitioner's Application, Petitioner obtained further detailed engineering and design reports (the "Further Reports") for the Development.

14. The Further Reports concluded that based upon the Petitioner's site plan and design the Property could only support a maximum of one hundred eighteen (118) units rather than the one hundred twenty (120) units as Petitioner had originally contemplated in its Application.

15. The proposed revision to the total number of units in the Development represents a change of less than two percent (2%) of the total number of Development units stated in the Petitioner's Application.

16. The application of the Rule in these circumstances will create a substantial hardship for the Petitioner who, if it must redesign the Development to produce an additional two (2) units, will not only incur significant economic and technological hardships (such as site redesign and re-engineering), but will also confront considerable time constraints resulting from such redesign and re-engineering processes, coupled with the review and approval processes of the applicable local governments. The time constraints result in a further hardship on Petitioner because Petitioner received an award of HC, and thus must meet certain deadlines to place the buildings in service to receive the HC for the Development. Petitioner's ability to meet those deadlines will be severely impeded if Petitioner must go through the design and approval processes again, resulting in further delays in commencing and completing the Development in the time period allotted by under the Tax Code.

17. Accordingly, if the Petition is not granted or if the Petitioner is unable to commence and complete the Development redesign, approval process, and construction within

the considerable time constraints it faces, the Petitioner may be unable to construct the Development resulting in a loss of affordable housing units that would otherwise be available to lower income tenants.

**WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE**

18. In contrast, granting the requested waiver to the Rule will serve the purposes of the statute that the Rule implements. The Florida Housing Finance Corporation Act (Section 420.501, *et seq.*) was enacted to encourage private and public investment in housing for persons of low income. The Housing Tax Credit Program was created to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver and permitting Petitioner to make the requested Application change, the Corporation will permit the Development to be timely constructed and placed into service with more than ninety-eight percent (98%) of the units stated in the approved Application. Consequently, a grant of the requested waiver will further the Corporation's efforts to fulfill its goal of increasing the supply of affordable housing through private investment.

**TYPE OF WAIVER**

19. Petitioner's requested waiver is permanent in nature.

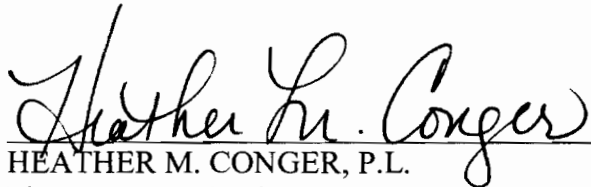
20. The Petitioner will immediately respond to any questions that the Corporation may have regarding this Petition and, upon receipt of the Corporation's request, the Petitioner will deliver any additional information the Corporation believes necessary for it to consideration the Petition.

**ACTION REQUESTED**

21. Petitioner requests that the Corporation grant the requested waiver from Rule 67-48.004(14)(j), F.A.C., permitting Petitioner to revise its Application to state that the Total Number of Units in the Development is one hundred eighteen (118), and

22. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Respectfully submitted this 6<sup>th</sup> day of November, 2007.



HEATHER M. CONGER, P.L.

Fla. Bar No. 0118206

Broad and Cassel

390 N. Orange Avenue, Suite 1400

Orlando, Florida 32801

(407) 839-4252

(407) 650-0966 Facsimile

Counsel for Petitioner