

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

VILLA PATRICIA PHASE III, LLC, a Florida  
limited liability company.

Petitioner,

*FHFC Case No. 2008-116 UW*

vs.

APPLICATION NO. 2006-348CHR/  
2007-014C

FLORIDA HOUSING FINANCE CORP.,

Respondent.

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**PETITION FOR WAIVER FROM RULE  
67ER06-34(4), F.A.C.**

Villa Patricia Phase III, LLC, a Florida limited liability company ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for waiver from Rule 67ER06-34(4) Florida Administrative Code (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 and facsimile number of the Petitioner is:

Villa Patricia Phase III, LLC  
2950 S.W. 27<sup>th</sup> Avenue, Suite 200  
Miami, FL 33133  
(305) 476-8118  
(305) 476-1557

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

Brian J. McDonough, Esq.  
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.  
150 West Flagler Street, Suite 2200  
Miami, FL 33131  
(305) 789-3200  
(305) 789-3395

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FINANCE CORPORATION

3. Petitioner successfully applied for financing from Rental Recovery Loan Program (“RRLP”) in the 2006 RRLP Cycle that the Corporation administered pursuant to Chapter 67ER-06, Florida Administrative Code. The Petitioner’s Application number is 2006-348CHR / 2007-014C (the “Application”). Petitioner 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 in Miami-Dade County, Florida, to be known as Villa Patricia Phase III (the “Development”). The Development is an 89-unit apartment complex.

4. The waiver being sought is permanent in nature.

**THE RULES FROM WHICH WAIVER IS SOUGHT**

5. Petitioner requests a waiver from various sections of Rule 67ER06-34(4), Florida Administrative Code.

6. Rule 67ER06-34(4) provides “The supplemental loan shall be non-amortizing and shall be based on each ELI unit at 0% simple interest per annum with the principal forgivable provided the units for which supplemental loan amount is awarded are targeted to ELI Households for at least 20 years”. (emphasis added)

7. Petitioner requests a waiver from the provisions of Rule 67ER06-34(4) which provide for the forgiveness of principal; that is, a waiver of the underlined portion of the Rule referenced in Paragraph 5 above. Petitioner also requests that the maturity date of the supplemental loan be extended by 30 years.

**STATUTES IMPLEMENTED BY THE RULE**

8. Rule 67ER06-34(4) referenced above 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. In the 2006 RRLP Application Cycle, provision was made for the award of “supplemental” loans to applicants

agreeing to set aside a specified percentage of apartment units to extremely low-income persons (“ELI Households”). Rule 67ER06-34(4) sets forth the terms and conditions of such supplemental loans, providing in part that “. . . with the principal forgivable provided the units for which the supplemental loan amount is awarded are targeted to ELI Households for at least 20 years”. Accordingly, Rule 67ER06-34(4) implements the provision of Chapter 2006-69, Section 31.

9. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers 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>1</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.

10. Petitioner requires a waiver of that portion of Rule 67ER06-34(4) which requires, with respect to repayment of supplemental loans, that the principal balance thereof be automatically forgiven provided the units for which the supplemental loan amount is awarded are targeted to ELI Households for at least 20 years. Due to potential negative federal income tax ramifications pertaining to forgivable loans, Petitioner desires this Waiver in order to waive that portion of the foregoing rule requiring that such supplemental loan be automatically forgiven. In furtherance of such Waiver, it is requested that the loan documentation for such supplemental loan shall provide that the maturity of the such loan be extended by 30 additional years beyond its original 20 year maturity and that at maturity, the principal of such loan be repayable, provided the units for which

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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.

the supplemental loan amount were awarded were targeted to ELI Households for at least the first 20 years of the term of the loan and remain in programmatic compliance.

11. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rules if strict application of the rule will lead to unreasonable, unfair and unintended consequences in particular instances. Unless the Rule is waived to allow the changes as outlined above, the Petitioner will be subject to "phantom taxable income" which will result in substantial financial burden to the Petitioner.

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

12. Petitioner believes that a waiver of these rules will serve the purposes of Section 420.5099 and the Act which is implemented by the rules, because one of their 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 credit is sought. Section 420.5099(2), Fla. Stat.

The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in persons of low income. The creation of the Housing Credit program, and the appropriation of funds for supplemental loans to projects housing ELI Households, stimulates private sector initiatives to increase the supply of affordable housing. By granting this request, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

**ACTION REQUESTED**

13. Petitioner requests the following:

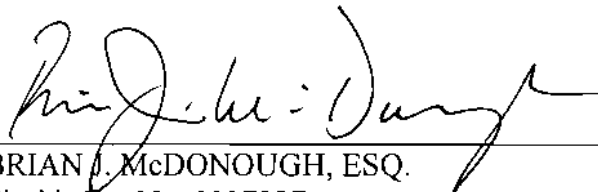
(a) Grant the Petition and all relief requested herein; and

(b) That the Corporation grant this waiver allowing for the loan documentation evidencing the supplemental loan from the Corporation to provide that the maturity date of the loan be extended by 30 years and that the principal amount of such loan then be repayable, provided the units for which the supplemental loan is awarded are targeted to ELI households for at least the first 20 years of the term of the supplemental loan and remain in programmatic compliance.

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

15. Should the Corporation have questions or require any additional information necessary for consideration of the Petition, please contact the undersigned.

Respectfully submitted this 18<sup>th</sup> day of December, 2008.



BRIAN J. McDONOUGH, ESQ.

Florida Bar No. 0337927

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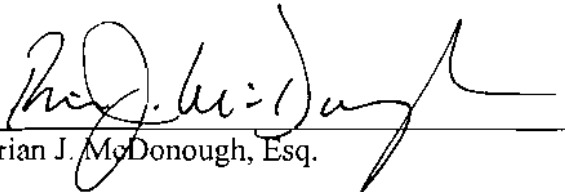
Facsimile: (305) 789-3395

Email: [bmcdonough@swmwas.com](mailto:bmcdonough@swmwas.com)

Counsel for Petitioner

**CERTIFICATE OF SERVICE**

The Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399-1300, this 19<sup>th</sup> day of December, 2008.

  
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Brian J. McDonough, Esq.