

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

CREATIVE CHOICE HOMES XXIX, LTD.,

Petitioner,

vs.

FHFC Case No.: 2010-002
Application No: 2003-023CS

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR VARIANCE FROM OR WAIVER FROM
UNIVERSAL APPLICATION (2003 CYCLE) SECTION III D. 1. f**

Petitioner, CREATIVE CHOICE HOMES XXIX, LTD., through its undersigned counsel, hereby petitions the Respondent, FLORIDA HOUSING FINANCE CORPORATION (hereinafter the "FHFC"), pursuant to Section 120.542(2), Florida Statutes, Rule 67-48.002(111), Florida Administrative Code (2003), and Universal Application (2003 Cycle) III D. 1. f. to request that an order be entered granting a variance or waiver from the provision of the First Amendment to the Land Use Restriction Agreement and the First Amendment to Extended Use Agreement requiring that roll-in showers be provided in 15% of the New Construction units, but allowing that 5% of that requirement could be met

with walk-in shower stalls with a permanently affixed seat. In support of its Petition, Creative Choice Homes states:

1. Petitioner is Creative Choice Homes XXIX, Ltd. (hereinafter "Creative Choice Homes"), which is also known as Mariner's Landing Apartments. Mariner's Landing Apartments is located at 2120 Carrel Road, Fort Myers, Lee County, Florida 33901. Creative Choice Homes received a State Apartment Incentive Loan ("SAIL") and Low Income Housing Credit ("HC") from the FHFC for the 2003 cycle, Application No. 2003-023CS. For purposes of this proceeding, the contact information for Petitioner shall be that of its attorneys:

Pamela C. Marsh and J. Martin Hayes
AKERMAN SENTERFITT
106 E. College Ave, Suite 1200
Tallahassee, Florida 32301
Telephone: (850) 224-9634
Facsimile: (850) 222-0103

2. Section 120.542(2), Florida Statutes, states that variances and waivers shall be granted when a person subject to the rule demonstrates that the purpose of the underlying statute has been achieved by other means and the application of the rule will create a substantial hardship or would violate the principals of fairness. Such is the case in this matter.

3. This variance or waiver is sought pursuant to Rule 67-48.002(111) (2003), Florida Administrative Code, which incorporates by reference Universal Application (2003 Cycle) Section III D. 1. f.

4. The applicable statutory provisions pursuant to which this variance or waiver is sought are Sections 420.5087 and 420.5099, Florida Statutes, which is the statutory authority for 67-48.002(111), Florida Administrative Code.

5. Creative Choice Homes requests that a variance be granted from the provision of the First Amendment to the Land Use Restriction Agreement and First Amendment to the Extended Use Agreement and Universal Application (2003 Cycle) Section III D. 1. f. requiring that roll-in showers will be provided in 15% of the New Construction units. The Mariner's Landing Apartments were completed and have been occupied since 2006. At the time of this filing, Mariner's Landing is fully occupied.

6. It has recently been determined by the FHFC's Compliance Monitor that there should be 16 roll-in shower units and 1 walk-in shower stall with a permanently affixed seat. There are currently 12 roll-in shower units and 6 walk-in shower stalls with permanently affixed seats.

7. Consistent with the construction approved by the FHFC, there are 112 units at Mariner's Landing Apartments. The specific language contained in Exhibit

B to the First Amendment to the Land Use Restriction Agreement, First Amendment to the Extended Use Agreement and Universal Application (2003 Cycle) Section D. 1. f. provides:

Roll-In Showers* will be provided in **15%** of [New Construction] units and 10% of [rehabilitation/substantial rehabilitation ("SR")] units. **5%** of this requirement may be met with walk-in type shower stalls with permanently affixed seat.

*NOTE: This requirement may be waived in SR Developments if installation is determined to be not feasible as documented by a registered architect.

[See Attachment 1 to this Petition.]¹

8. The current discrepancy resulted due to a misunderstanding of the proper calculation of the percentages contained in the above-quoted language, and was not intentional or the result of any decision made in bad faith. Creative Choice Homes always intended to comply with the specifications contained in the contracts, and believed it was in full compliance with the specifications at all times. More specifically, Creative Choice Homes believed the proper calculation was as follows: 10% of 112 units is 11.2 units which rounds up to 12 units. 5% of 112 units is 5.6, which rounds up to 6 units. As a result, Creative Choice Homes

¹ The requirements in Exhibit "B" to both Agreements are precisely the same. To avoid duplication, Creative Choice Homes only attached one copy of Exhibit B to its petition as Attachment I.

constructed 12 units with roll-in showers, and 6 units with walk-in showers with permanently affixed seats.

9. The FHFC has calculated the percentages differently. According to the FHFC, the 5% should be applied to 15% of the units, not to the total number of units. As a result, proper calculation should be as follows: 15% of 112 units is 17 units. 5% of 17 units is .85, rounded up to 1. The FHFC asserts that there should be 16 roll-in showers, and only 1 walk-in shower with a permanently affixed seat in the complex. As a result, the discrepancy has resulted from an inadvertent difference in interpretations regarding the application of the percentages contained in the contract terms.

10. A variance or waiver of the number of roll-in shower requirements serves the purpose of the FHFC goal of providing safe, affordable housing to citizens of Florida. The grant of the variance or waiver is appropriate due to the circumstances surrounding the long ago completed and fully occupied units. A registered architect prepared a memorandum describing the significant work that would be required for the apartments to be remodeled in accordance with the FHFC's interpretation of the above provisions. His memorandum is attached to this Petition and is identified as Attachment 2. The architect also prepared an estimate of the costs associated with bringing the showers into full compliance,

{7L210499,1}


which is provided in Attachment 3 to this Petition. The estimate submitted in Attachment 3 does not, however, include costs of lost revenue or the costs associated with relocating current tenants during any reconstruction work. Those costs are estimated in Attachment 4 to this Petition.

11. Perhaps most importantly, the reconstruction efforts required to comply with the FHFC's interpretation of the contract terms would impose substantial hardship on the elderly tenants. As mentioned above, the complex at Mariner's Landing Apartments is now fully occupied, and is currently providing safe, affordable housing to its elderly tenant population in accordance with the purposes of the FHFC statute. Remodeling would require the displacement of at least six tenants for a significant period of time. This displacement could have profound effects on the tenants' physical and/or mental health. As a practical matter, even where a roll-in shower stall is available, a tenant has to make a transfer from a typical wheelchair to a shower-friendly wheelchair. The transfer from a wheelchair to the permanently affixed shower seat – already currently provided by the walk-in shower – does not require a substantially different effort by the tenant. Creative Choice Homes respectfully submits that the potential monetary and human costs significantly outweigh the need for renovation under the circumstances, and not granting the variance would create a substantial

hardship on the residents of Mariner's Landing Apartments. Therefore, granting the variance request furthers the purpose of the FHFC by providing safe and affordable housing to elderly citizens of Florida.

WHEREFORE, Petitioner, Creative Choice Homes XXIX, Ltd., requests that the Respondent, Florida Housing Finance Corporation, enter an order granting a variance or waiver from the requirements of Rules of Section 67-48.010(111) (2003) of the Florida Administrative Code (2003), and Universal Application (2003 Cycle) Section III D. 1. f. so as to allow the continued use and occupancy of the Mariner's Landing Apartments.

Respectfully submitted,



Pamela C. Marsh

Florida Bar No. 057400

J. Martin Hayes

Florida Bar No. 0971766

AKERMAN SENTERFITT

106 E. College Ave., Suite 1200

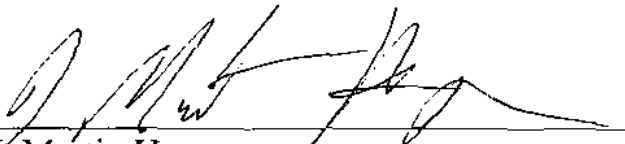
Tallahassee, Florida 32301

Telephone: (850) 224-9634

Facsimile: (850) 222-0103

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one copy of the foregoing has been furnished by hand delivery to the Corporation Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, a copy by hand delivery to Wellington H. Meffert, General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, and a copy by U.S. Mail to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 22nd day of January, 2010.



J. Martin Hayes

EXHIBIT "B"
(MARINER'S LANDING/2003-02JCS)
DESCRIPTION OF FEATURES AND AMENITIES

A. The Development will consist of:

112 Garden apartment units located in 3 residential buildings.

Unit Mix:

Seventy-two (72) one bedroom/one bath units containing a minimum of 731 square feet of heated and cooled living area.

Eight (8) two bedroom/one bath units containing a minimum of 988 square feet of heated and cooled living area.

Thirty-two (32) two bedroom/two bath units containing a minimum of 988 square feet of heated and cooled living area.

112 Total units

The Development is to be constructed in accordance with the final plans and specifications approved by the appropriate city or county building or planning department or equivalent agency, and approved as reflected in the Pre-Construction Analysis prepared for Florida Housing or its Servicer, unless a change order has been approved in writing by Florida Housing or its Servicer. The Development will conform to requirements of local, state & federal laws, rules, regulations, ordinances, orders and codes, Federal Fair Housing Act and Americans with Disabilities Act ("ADA"), as applicable.

B. Each unit will be fully equipped with the following:

1. Air conditioning in all units (window units are not allowed; however, through-wall units are permissible for rehabilitation).
2. Window treatments for each window inside each unit.
3. Termite prevention and pest control throughout the entire affordability period.
4. Exterior lighting in open and common areas.
5. Cable or satellite TV hook-up in all units.
6. Range, oven and refrigerator in all units.
7. At least two full bathrooms in all 3 bedroom or larger new construction units.

EXHIBIT "B"
(MARINER'S LANDING/2003-02JCS)
DESCRIPTION OF FEATURES AND AMENITIES

- B. Bathtub with shower in at least one bathroom in at least 90% of the new construction non-Elderly units.
- C. The Applicant has committed to provide the following features in each new construction unit:
 - 1. Ceramic tile bathroom floors.
 - 2. Microwave oven in all units.
 - 3. Marble window sills in all units.
 - 4. Dishwasher in all units.
 - 5. Garbage disposal in all units.
 - 6. Steel exterior entry door frames.
- D. The Applicant has committed to the following amenities in the Development:
 - 1. Emergency call service in all units.
 - 2. Exercise room with appropriate equipment.
 - 3. Community center or clubhouse.
 - 4. Swimming pool.
 - 5. Car-care area (for car cleaning/washing).
 - 6. Outside recreation facility; shuffleboard court.
 - 7. Thirty-year expected life roofing on all buildings.
- E. Elderly requirements.

The following will be provided in all units:

 - 1. Thermostat placed at 48" maximum height.
 - 2. Tight-napped Berber-type carpet.
 - 3. 36" wide entrances on all exterior doors.

EXHIBIT "B"
(MARINER'S LANDING/2003-02JCS)
DESCRIPTION OF FEATURES AND AMENITIES

4. All wall electrical outlets placed at 18" to 24" above the floor.
5. Scald control valves on shower faucet.
6. Fire retardant window treatments.
7. Peephole at 4' 10" on all exterior doors.
8. Toggle type switches for all lights, fans, etc.
9. Adjustable shelving in master bedroom closets.
10. Lever action handles on all doors in units and public areas.
11. Horizontal grab bars around shower per ANSI requirements.
12. Horizontal grab bars around toilet per ANSI requirements.

The following will be provided in at least fifteen percent (15%) all new construction units:

13. Roll-in showers (5% of this requirement may be met with walk-in type shower stalls with permanently affixed seat).
- F. The Applicant has committed to provide the following energy conservation features for all buildings in the Development:
1. Heat pump with a minimum HSPF of 7.4 instead of electric resistance.
 2. Air conditioning with SEER rating of 12 or better.
 3. Gas water heater with energy factor of .58 or better or electric water heater with energy factor of .91 or better.
 4. Wall insulation of R-13 or better for frame built construction or wall insulation of R-7 or better for masonry/concrete block construction.
 5. Attic insulation of R-30 or better.
 6. Ceiling fans in all bedrooms and living areas.
- G. The Applicant has committed to provide the following Resident Programs:

EXHIBIT "B"
(MARINER'S LANDING/2003-023CS)
DESCRIPTION OF FEATURES AND AMENITIES

1. *Health Care* – At least quarterly visits by health care professionals such as nurses, doctors, or other licensed care providers. At a minimum, the following services must be provided: health screening, flu shots, vision and hearing tests. Regularly scheduled is defined as not less often than once each quarter. On-site space must be provided. Service must be provided at no cost to the residents, with the exception that the residents may be charged for medications.
2. *Resident Activities* – These specified activities are planned, arranged, provided and paid for by the Applicant or its Management Agent. These activities must be an integral part of the management plan. The Applicant must develop and execute a comprehensive plan of varied activities that brings the residents together and encourages community pride. The goal here is to foster a sense of community by bringing residents together on a regularly scheduled basis by providing activities such as holiday and special occasion parties, community picnics, newsletters, children's special functions, etc.
3. *Health and Nutrition Classes* – At least 8 hours per year, provided on site at no cost to residents.
4. *Computer Lab* – The Applicant or its Management Agent must provide an area on-site, at no cost to the resident, with a minimum of one computer per 50 units, with basic word processing, spreadsheets and assorted educational and entertainment software programs. At least one printer must also be provided.
5. *Daily Activities* – The Applicant or its Management Agent must provide on-site supervised, structured activities, at no cost to the resident, at least five days per week.
6. *Manager On-Call 24 Hours Per Day* – Applicant must provide management personnel on the Development's premises at all times who will be available and accessible to the residents 24 hours per day, seven days per week, at no cost to the resident.
7. *Resident Assurance Check-In Program* – The Applicant commits to provide and use an established system for checking in with each resident on a pre-determined basis not less than once per day, at no cost to the resident. Residents may opt out of this program with a written certification that they choose not to participate.

BOB SNOW ASSOCIATES

Florida Architect Firm AA3531

Robert P. Snow, RA ~ Principal

Florida Registration AR 13179

4243 Northlake Blvd. ~ Palm Beach Gardens, FL 33410 (bob@creativemechanics.net)
(561)627-5210 x13 fax (561)627-5116 cell (772)214-8293

MEMO

date: 28 July 09
to: Jason Larson, CCH
from: Bob
project: Mariners Landing - Ft. Myers, FL
subject: roll-in shower issue

Total accessible showers are 15% or 17. The project has 12. (8 - 1 BR & 4 - 2 BR)
Under proposed interpretation, need 16 roll-in & 1 transfer type.
I suggest creating 3 - 1 BR & 2 - 2BR units to meet this interpretation. (For the record, I do not agree with this interpretation.)

The existing roll-in showers are all on the first floor. Two reasons, we could slope the concrete floor to the floor drain & potential leaks would not cause problems on units below. Proposed additional roll-in showers should be located on the first floor for the same reasons.

This will require cutting & demolishing existing concrete slabs on grade. This is very expensive & messy work that will prevent tenant use for a month. Clean up and preparing the apartment for the tenant to return will be a major challenge.

One Bedroom Units

To enlarge the shower space for a roll-in shower will eliminate the MBR closet. A new one, with adjustable shelf & rod, must be built within the existing Master Bed Room. The existing shower area must be totally demolished including partitions & plumbing and entirely rebuilt.

Two Bedroom Units

The area between the 2 showers has a number of pipes, which will all have to be relocated. The whole floor must be demolished & concrete repoured to create slopes to floor drain. All the piping must be relocated. The roll-in shower must face & be included in Bath 1. Bath 2 would become a half bath.

NEGATIVE RESULTS

One Bedroom Units - 1. relocate tenant, including furniture, 2. reduce size of existing Master Bedroom, 3. spend a lot of construction & cleaning money as well as lost rent. 4. second tenant disruption by moving them back after work complete.

Two Bedroom Units - 1. relocate tenant, including furniture, 2. remove shower from Master Bath, (reducing 2 bath unit to a 1 & 1/2 bath unit) 3. spend a lot of construction & cleaning money as well as lost rent. 4. second tenant disruption by moving them back after work complete.



Robert P. Snow, RA

Mariners Landing Apartments
 Budget Estimates
Convert basic apartment into roll-in shower style

ONE BEDROOM

| WORK | DETAILS | BUDGET COST | TIME |
|--------------------------------------|---|-------------|----------|
| demolition | 45 SF shower piping & fittings closet 15 SF sawn concrete SOG carpet | \$850 | 1 week |
| remove & reinstall | bi-fold door closet adj. rod & shelf shower drain carpet pad | \$350 | x |
| roll-in shower | shower pan & 15 SF conc. ceramic tile surface 70 SF cement backer board & tile wainscot | \$2,250 | 2 weeks |
| partition | 16 LF | \$450 | x |
| carpet | 25 SY bedroom | \$500 | x |
| plumbing & accessible fixtures | assume same location new head, hose, track, mixing valve 5 LF rod & shower curtain grab bars & soap dish | \$600 | 1 week |
| permit, hauling, dump charge | | \$350 | |
| subtotal | | \$5,350 | 1 month |
| O.H. + Profit | assume 20% | \$1,070 | |
| TOTAL | | \$6,420 | 2 months |

add move out, cleaning, etc.
rent loss

TWO BEDROOM

| WORK | DETAILS | BUDGET COST | TIME | |
|--------------------------------------|---|-------------|-------------|--|
| demolition | 25 SF 2 showers odd' l piping & fittings 15 SF sown concrete SOG carpet | \$850 | 1/2 week | coordinate with plumbing from above units |
| remove & reinstall | shower drain | \$150 | x | |
| roll-in shower | shower pan & 15 SF conc. ceramic tile surface 70 SF cement backer board & tile wainscot | \$2,250 | 2 weeks | |
| partition | 10 LF | \$250 | x | |
| plumbing & accessible fixtures | new fittings location new head, hose, track, mixing valve relocated piping from above 5 LF rod & shower curtain grad bars & soap dish | \$1,100 | 1-1/2 weeks | |
| permit, hauling, dump charge, | | \$250 | | |
| subtotal | | \$4,850 | 1 month | |
| D.H. + Profit | assume 20% | \$970 | | |
| TOTAL | | \$5,820 | 2 months | add move out, cleaning, etc. rent loss |

TABLATION PER my 28 July Memo to Jason

| | | |
|-------------------------------------|---------------|----------|
| 3 - 1 BR | \$6,420 X 3 = | \$19,260 |
| 2 - 2 BR | \$5,820 X 2 = | \$11,640 |
| Architect Fee including Inspections | | \$7,000 |
| Owner Property Mgr. coordination | | \$5,000 |
| TOTAL COST minus lost revenue | | \$42,900 |

10 months lost revenue x to be provided by Owner

MEMORANDUM

TO: PAMELA MARSH
FROM: JASON LARSON *AL*
SUBJECT: MARINER'S LANDING - RESIDENT DISPLACEMENT AND LOST RENTAL INCOME IN CONJUNCTION WITH DEMO, REDISIGN, AND CONSTRUCTION OF ROLL IN SHOWER UNITS
DATE: 11/6/2009

Pamela,

Per our architect's July 28, 2009 memo regarding the cost associated with reconfiguring the bathrooms of 3 one bedroom and 2 two bedroom units from a shower with seat to a roll-in shower, I am putting below an estimate as to the cost associated with lost rent and relocation expenses.

Because we remain 100% occupied these costs are very relevant.

It is also important to realize that because our residents are elderly, the stress of moving can be greater than that of a more youthful resident.

| | |
|--|-----------------|
| Monthly Rental Income One Bedroom unit: | \$598 |
| Monthly Rental Income Two Bedroom Unit: | \$715 |
| 10 Months Lost Rental Income One Bedroom: | \$5,980 |
| 10 Months Lost Rental Income Two Bedroom: | \$7,150 |
| 10 Months Lost Rental Income for 5 Units: | \$32,240 |
| Moving Expenses Per Unit: | \$1,500 |
| Moving Expense Total 5 Units: | \$7,500 |
| Total Moving and Lost Revenue Cost: | \$39,740 |