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STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

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FHFC CASE NO: 2011-005VW  
Application No. 2006-67(C)

VILLAGE CARVER PHASE I, LLC,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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**PETITION FOR WAIVER OR VARIANCE OF PART III.B. OF THE 2006 UNIVERSAL APPLICATION INSTRUCTIONS, UA1016 (Rev. 1-06) WHICH REQUIRES SPECIFIC FEATURES IN A SPECIFIC PERCENTAGE OF THE UNITS IIN A DEVELOPMENT**

Petitioner Village Carver Phase I, LLC, a Florida limited liability company ("Village Carver I"), through its undersigned counsel, petitions Florida Housing Finance Corporation ("Florida Housing") for a waiver or variance of the restriction on making changes to construction features or amenities included in the Development in the Application submitted by Village Carver Phase I, LLC during the 2006 Universal Application Cycle. In support of this petition, Petitioner states as follows:

1. Pursuant to Section 120.542, Fla. Stat. (2006), and Rules 28-104.001 through 28-104.006, F.A.C. (2006), Petitioner requests a waiver or variance of Part III B

of the 2006 Universal Application (the "Rule") to allow Village Carver I to remain in compliance with the Rule despite the fact that only eight five (85%) percent of the units in the Development have bathtubs in the bathrooms. The Rule requires there to be bathtubs and showers in ninety percent (90%) of the units in the Development.

2. Pursuant to Rule 67-48.004(1)(a), FAC. (2006), the 2006 Universal Application and Instructions are incorporated into Rule Chapter 67-48.

**A. THE PETITIONER**

3. The name, address, and telephone and facsimile numbers for the Petitioner and its qualified representative are:

Village Carver Phase I, LLC  
c/o Biscayne Housing Group, LLC  
Attention: Gonzalo DeRamon  
150 S.E. 2nd Avenue, Suite 1302  
Miami, Florida 33131  
Telephone: 305-372-5765  
Facsimile: 305-372-5797

4. The name, address, telephone and facsimile numbers, and e-mail address of Petitioner's attorneys, for purposes of this Petition are:

WASHINGTON & ASSOCIATES, P.A.  
4 Midtown  
3301 NE 1<sup>st</sup> Avenue, Suite M-501  
Miami, Florida 33131  
Attn: Lynn C. Washington, Esquire  
Telephone: 305-573-2929  
Facsimile: 305-749-8988  
E-mail: lwashington@walaw.us.com

5. On about August 3, 2006, Village Carver I, pursuant to the 2006 Combined Universal Cycle, submitted its Universal Application for Housing Credits under the Low Income Housing Tax Credit program for funding from the 2006 Housing Credit (HC) program administered by the Florida Housing to be used for the development of Village Carver Phase I LLC, a one hundred twelve (112) unit multi-story apartment building intended to serve extremely low and low income families in the City of Miami, Miami-Dade County, Florida (the "Development").

6. On or about November 27, 2007, Florida Housing awarded Village Carver I an allocation of tax credits in the amount of \$2,435,000.00 pursuant to the rules of the HC program.

7. 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.

B. RULE FROM WHICH THE WAIVER IS REQUESTED

8. The Petitioner requests a waiver of Part III. B. of the Universal Application Instructions<sup>1</sup>, which provides in pertinent parts as follows:

*B. Construction Features and Amenities*

*1. Required for All Developments*

*b. All Units in All Developments Except SRO:*

**Bathtub with shower in at least one bathroom in at least 90% of the new construction non-Elderly units.**

C. JUSTIFICATION FOR REQUESTED WAIVER

9. After the buildings for Village Carver I were designed and the application submitted to Florida Housing and construction completed, it was discovered that the design of the buildings in the Development included more “handicapped accessible bathroom” than originally contemplated. The original plans included one hundred twelve (112) units, with eleven (11) handicap accessible units (10% of the units). However, the completed development included sixteen (16) handicapped accessible units (15% of the units). This was not initially determined to be a negative factor. However, the problem arose when the compliance monitor noted this variance as a non-compliance factor.

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<sup>1</sup> As noted earlier, Rule 67-48.004(1)(a), FAC. (2006) incorporates by references the 2006 Universal Application and Instructions into Rule Chapter 67-48.

10. All of the bathrooms have showers and ninety six (96) of the bathrooms have a shower and a bathtub. However, sixteen (16) of the bathrooms have showers that are designed to allow wheelchairs to be rolled into the showers and therefore have no bathtubs. Those sixteen (16) bathrooms without showers are designed to be handicapped accessible bathrooms.

11. This waiver would not adversely affect any required set-asides or points considered by Florida Housing in the scoring of Village Carver I Application, and would not alter the scoring by Florida Housing that qualified Village Carver I for Housing Credits. The change would also not provide Village Carver I with an unfair competitive advantage over other applicants.

12. The requested waivers or variances will, however, provide the opportunity for more Florida residents with physical challenges to have a greater access to more units. The Rule as applied to this Development, without a waiver or variance, will allow for one hundred twelve (112) units, eleven (11) of which will be handicapped accessible units. The waiver if granted would allow for one hundred twelve (112) units, sixteen (16) of which will be handicapped accessible units.

13. The requested Rule Waiver or Variances, will not adversely impact the Village Carver I development or the Florida Housing process. A denial of this Petition, however, would (a) result in substantial economic hardship to Village Carver I, as a consequence of the costs to remodel the bathrooms to add bathtubs to the additional

units and the loss of revenue while the units are off line; (b) deprive the tenants of the existing units of a place of abode while the remodeling is underway and possibly require the relocation of tenants that are in the current handicapped accessible units which will not be handicapped accessible after the remodeling takes place; and (c) violate principles of fairness. § 120.542(2), Fla. Stat. (2006).

14. It is important to consider that the reconstruction efforts required to comply with the Rule if the waiver or variance is not granted would impose a substantial hardship on the developer as well as on the tenants in the existing units. The Village Carver I Development is now fully occupied, and is currently providing safe, affordable housing to its tenant population in accordance with the purposes of the HC program. Remodeling would require the displacement of at least five (5) tenants for a period of time. This displacement could have profound effects on the tenants' physical and/or mental health. As a practical matter, the Development is now available for use by one hundred twelve (112) families without physical challenges and sixteen (16) families with a family member that may need to use a wheelchair in a bathroom. If the waiver is denied and the units are required to be remodeled, the Development will still be useable by 112 families with no physical challenges, but would only be useable by eleven (11) families that have a family member that must use a roll-in shower. The denial of this waiver, which could cause fewer units to be accessible to those than can least afford to be relocated or displaced, even temporarily, would seem to be an unfair and a harsh result.

15. By granting the requested waivers or variances and permitting Village Carver I to remain in compliance with bathtubs in the bathrooms of ninety six (96) of the units, and having an additional five (5) units handicapped accessible furthers the purpose of Florida Housing by making safe and affordable housing available to a greater population of Florida citizens.

16. Failure to grant this waiver or rule will cause substantial economic hardship to the developer of Village Carver I, hardship to the existing tenants of the units that have to remodel, and unfairness to the residents of Florida that have physical challenges.

17. The waiver being sought is permanent in nature.

18. If Florida Housing has questions or requires additional information, Petitioner or its counsel is available to provide any information necessary for consideration of this Petition.

WHEREFORE, Petitioner Village Carver Phase I, LLC, respectfully requests that the Florida Housing Finance Corporation provide the following relief:

A. Grant the Petition and all the relief requested herein;

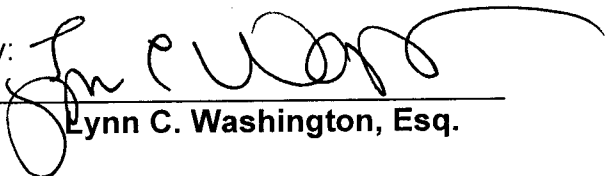
B. Enter an order granting a variance or waiver from the requirements of

Section 67-48.004 (a) of the Florida Administrative Code (2006), and Universal Application (2006 Cycle) Section III B, so as to allow the continued use and occupancy of Village Carver I with five (5) fewer bathtubs and five (5) more handicapped accessible units.

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

Respectfully submitted,

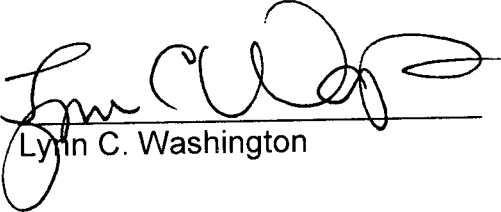
Lynn C. Washington, Esquire  
WASHINGTON & ASSOCIATES, P.A.  
Attorneys for Village Carver Phase I, LLC  
4 Midtown  
3301 NE 1<sup>st</sup> Avenue, Suite M-501  
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By:   
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Lynn C. Washington, Esq.



**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, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399-1300, this 18<sup>th</sup> day of February, 2011

  
Lynn C. Washington