

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2004-010

EMERALD DUNES APARTMENTS, LTD.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

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**PETITIONER EMERALD DUNES APARTMENTS, LTD.'S PETITION FOR  
WAIVER OF RULE 67-48.002(111) TO CHANGE GENERAL PARTNER**

Petitioner Emerald Dunes Apartments, Ltd., a Florida limited partnership ("Emerald Dunes") petitions Respondent Florida Housing Finance Corporation ("Corporation") for a waiver of restrictions on changing an applicant's general partner before a Final Housing Credit Allocation has been issued. In support of its Petition, Emerald Dunes states:

1. Pursuant to Section 120.542, Fla. Stat.(2001) and Rules 28-104.001 through 28-104.006, F.A.C., Emerald Dunes requests a waiver of Rule 67-48.002(111), F.A.C. ("the Rule"), as applied to Universal Application Instruction, Part II, A, 2(a), (1) ("Instruction 2.a(1)"), to change the general partner of Emerald Dunes from Emerald Dunes Apartments, Inc. ("Emerald Inc.") to Emerald Dunes Apartments, LLC ("Emerald LLC"). The requested change will not adversely effect the development of the Emerald Dunes Apartments ("the Project"), but a denial of this request would result in substantial economic hardship to Emerald Dunes.

2. Petitioner's name, address, telephone and facsimile numbers are:

Emerald Dunes Apartments, Ltd.  
c/o Emerald Dunes Apartments, Inc.  
Its sole General Partner  
Attention: Francisco Rojo, Vice President  
1666 Kennedy Causeway  
Suite 505  
North Bay Village, Florida 33141  
Telephone: 305-538-9552, ext. 103  
Facsimile: 305-538-9553

3. The name, address, telephone and facsimile numbers of Emerald Dunes' qualified representative are:

Emerald Dunes Apartments, Inc.  
Francisco Rojo, Vice President  
1666 Kennedy Causeway  
Suite 505  
North Bay Village, Florida 33141  
Telephone 305-538-9552, ext. 103  
Facsimile: 305-538-9553

4. Rule 67-48.002(111) sets forth the applicable rule which is the subject of this Petition. Rule 67-48.002(111) provides:

"Universal Application Package"... means the forms and instructions, obtained from the Corporation ... which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HOME and/or HC Program(s). The Universal Application Package is adopted and incorporated herein by reference...

5. Instruction 2.a(1) of the Universal Application Package provides that:

If applying for HC, the Applicant must be a limited partnership (including a limited liability limited partnership) or a limited liability company. The Applicant entity shall be the recipient of the Housing Credits and cannot be changed until after a Final Housing Credit Allocation has been issued. Replacement of the Applicant of a material change (33.3% or more of the Applicant, a General Partner of the Applicant, or a member of the Applicant)

in the ownership structure of the named Applicant prior to this time shall result in disqualification from receiving an allocation and shall be deemed a material misrepresentation. Changes to the limited partner of a limited partnership will not result in disqualification.

6. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act,<sup>1</sup> the statute that created the HC Program. See § 420.5099, Fla Stat. (2001). The purpose of the HC Program is to encourage the development of low income housing.

7. Emerald Dunes requests a waiver of Instruction 2.a(1)'s restriction against changing its general partner before the issuance of its Final Housing Credit Allocation. Specifically, Emerald Dunes petitions for the waiver so it may change its general partner from Emerald Inc. to Emerald LLC. The requested change is a consequent of corporate tax laws preventing the current corporate general partner from passing through losses to the shareholders of the general partner of Emerald Dunes. Changing the general partner to a limited liability company allows the allocation of losses to the limited liability company's members. Consequently, the requested change will not adversely effect the Project, but a denial of this request would result in substantial economic hardship to Emerald Dunes and the shareholders of its current general partner, Emerald Inc.

8. The following facts demonstrate the economic hardship and other circumstances which justify a waiver of restriction against changing general partners before the issuance of its Final Housing Credit Allocation:

a. Emerald Dunes is obtaining financing for the construction of the Project;

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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. (the "Act"). See also Rule 67-40.020(1), F.A.C. ("Act' means the Florida Housing Finance Corporation Act, section 420.501 through 420.516 of the Florida Statutes").

- b. In connection with its financing of the Project, Emerald Dunes applied for a portion of its construction financing from the Corporation through the HC program. In its HC Application, Emerald Dunes identified Emerald Inc., as its general partner.
- c. The Corporation has notified Emerald Dunes that it was being provided with a Preliminary Allocation of Housing Credits. Consequently, there will be a Final Housing Credit Allocation in accordance with the Corporation's usual final allocation procedures;
- d. It has become apparent that during the construction phase of the Project, there may be losses that are allocable to Emerald Dunes' general partner Emerald Inc.;
- e. As a corporation, however, Emerald Dunes' general partner Emerald Inc. is unable to pass through the losses to its shareholders. As an applicant for very-low-income affordable housing the inability to pass through losses to shareholders results in substantial and unavoidable economic hardship;
- f. Emerald Dunes' proposed new general partner Emerald LLC is allowed to allocate losses to its members;
- g. Robert Saland and Francisco Rojo are the sole shareholders and Principals, as defined in Rule 67-48.002(82), F.A.C., of Emerald Inc. and Emerald LLC, the entity proposed by Emerald Dunes as its general partner, in lieu of Emerald Inc.
- h. Thus, there will be no change in the ultimate principals of the Applicant Emerald Dunes or of the beneficial ownership of the general partner interest of Emerald Dunes;
- i. The proposed General Partner can rely upon and benefit from the identical expertise, experience, services, resources and support personnel available to Emerald Dunes Apartments, Inc. Accordingly, the continuity, progress and quality of the Project will not be disrupted or otherwise effected by the change in General Partners;
- j. The change of general partner is requested solely to avoid unanticipated, negative tax consequences; and
- k. The requested Rule waiver will not adversely impact completion of the Development. However, a denial of the requested waiver will

result in substantial economic hardship to the shareholders of Emerald, Inc. and subsequently to the Project's owner, Emerald Dunes.

9. A waiver of the Rule and Instruction 2.a(1)'s restriction on changing general partners would serve the purposes of Section 420.5087, and the Act as a whole, because one of their primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to very-low-income persons and households. By granting a waiver, and permitting Emerald Dunes to change its general partner before the issuance of its Final Housing Credit Allocation, the Corporation would recognize the economic realities of developing affordable rental housing. This recognition would promote participation by owners such as Emerald Dunes in meeting the purpose of the Act by providing affordable housing, in an economical and efficient manner. Neither owners, such as Emerald Dunes, nor general partners would be placed in the untenable and unavoidable position of having obligations for taxes resulting from the inability to allocate losses to shareholders.

10. The waiver being sought is permanent in nature.

11. Should the Corporation have questions or require any additional information, Emerald Dunes is available to provide any additional information necessary for consideration of this Petition.

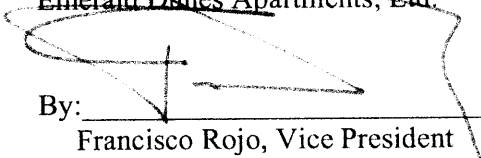
WHEREFORE, Petitioner Emerald Dunes Apartments, Ltd. respectfully requests that:

- A. The Corporation grant the Petition and all the relief requested therein;
- B. Waive Rule 67-48.002(111)'s restriction adopted from Universal Application Instruction 2.a(1) against changing general partners before the issuance of Final Housing Credit Allocations and permit Emerald Dunes to change its general partner from Emerald Dunes Apartments, Inc. to Emerald Dunes Apartments, LLC; and

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

Respectfully submitted,

EMERALD DUNES APARTMENTS, INC.  
Qualified Representative for  
~~Emerald Dunes Apartments, Ltd~~

By:   
Francisco Rojo, Vice President

**CERTIFICATE OF SERVICE**

The Original Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 N. 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, on May \_\_, 2004.

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